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WHEN: April 18, 2000

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

RIN 0560–AG13

1999 Crop and Market Loss Assistance; Correction

AGENCIES: Commodity Credit Corporation; USDA.

ACTION: Final Rule; Correction.

SUMMARY: The Commodity Credit Corporation published in the **Federal Register** of February 16, 2000, a final rule promulgating regulations for crop and market loss programs. Inadvertently, one portion of the rule was incorrectly set out concerning the eligibility of producers for loan deficiency payments and marketing loan gains for commodities already marketed. This document corrects that error.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250–0540, Telephone: (202) 205–5851.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation published in the **Federal Register** of February 16, 2000, (65 FR 7942) a final rule promulgating regulations for crop and market loss programs. As correctly set out in the preamble for that rule, amendments were to be made by that rule to 7 CFR parts 1421 and 1427 to implement provisions of new legislation that changed the payment limitations for certain commodity activities and that allowed farmers who had already marketed a commodity, but had not received a marketing loan gain or loan deficiency payments for that commodity, to receive such payments. Normally, such payment is available only if the crop has not yet been marketed.

That is, the preamble to the rule stated that, subject to certain conditions, the new regulations adopted in that rule would allow a producer who was otherwise eligible to receive a gain or payment to receive a marketing loan gain or loan deficiency payment even though the producer marketed the commodity. The preamble stated that this would only apply for commodities marketed on or before the date of publication of the and to otherwise eligible producers on commodities for which no such gain or payment had been paid.

Those changes were to be incorporated into the regulations at 7 CFR 1421.1 and 1427.1. However, the February 16, 2000 rule inadvertently left out the conditions referred to in the preamble and used language that suggested that these new payments would be available only if the request for such relief was made prior to the date of publication of the rule a condition that would have been impossible to meet.

This correction provides regulatory language that reflects the intent of the February 16, 2000, rule, as expressed in the Preamble to that rule.

In rule FR Doc. 00–3406, published on February 16, 2000, (65 FR 7942) make the following corrections:

1. On page 7954, in the second column, amendatory instruction 18 and the amendment to § 1421.1 are corrected to read as follows:

18. Amend § 1421.1 by adding paragraph (e) to read as follows:

§ 1421.1 Applicability.

* * * * *

(e) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during the 1999 crop year, the $75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loan made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be $150,000 per person.

(2) For eligible crops produced in the 1999 crop year, a producer may receive with respect to a commodity, a marketing loan gain in connection with loans made under this part or loan deficiency payments in connection with the administration of loans under this part even though the crop has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the commodity;

(ii) The person seeking the payment is the actual producer of the commodity and had beneficial interest in the commodity at the time of the operative marketing, for commodities to which paragraph (e)(2)(iii) of this section applies, or the time at which the commodity was redeemed in the case of commodities to which paragraph (e)(2)(iv) of this section applies;

(iii) For those commodities that were previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For commodities not covered by paragraph (e)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the commodity;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the commodity prior to February 16, 2000.

2. On page 7954, in the second column, amendatory instruction 20 and the amendment to § 1427.1 are corrected to read as follows:

20. Amend § 1427 by adding paragraph (d) to read as follows:

§ 1427.1 Applicability

* * * * *

(d) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during the 1999 crop year, the $75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loan made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be $150,000 per person.

(2) For eligible cotton produced in the 1999 crop year, a producer may receive with respect to cotton, a marketing loan gain in connection with loans made under this part or loan deficiency payments in connection with the

administration of loans under this part even though the cotton has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the cotton;

(ii) The person seeking the payment is the actual producer of the cotton and had beneficial interest in the cotton at the time of the operative marketing, for cotton to which paragraph (d)(2)(iii) of this section applies, or the time at which the cotton was redeemed in the case of cotton to which paragraph (d)(2)(iv) of this section applies;

(iii) For cotton that was previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For cotton not covered by paragraph (d)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the cotton;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the cotton prior to February 16, 2000.

Signed at Washington, DC, on March 10, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–6424 Filed 3–13–00; 8:54 am]

BILLING CODE 3410–05–p

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925 and 950

[No. 2000–10]

RIN 3069–AA94

Amendment of Membership Regulation and Advances Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Membership Regulation and Advances Regulation to conform certain provisions to the requirements of the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), and is making certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

DATES: This interim final rule shall be effective on March 15, 2000. The Finance Board will accept written comments on the interim final rule on or before April 14, 2000.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Janet M. Fronckowiak, Acting Deputy Director, (202) 408–2575, Jennifer R. Salamon, Program Analyst, (202) 408–2974, or Patricia L. Sweeney, Program Analyst, (202) 408–2872, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Federal Home Loan Banks (Banks), which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a) (1994). Institutions, including those not meeting the Qualified Thrift Lender (QTL) test,[1] may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Bank Act and the Finance Board's implementing Membership Regulation *See id.* sections 1424, 1426, 1430(e)(3) (1994); 12 CFR part 925.[2] Members may obtain advances from a Bank subject to certain statutory and regulatory requirements. *See* 12 U.S.C. 1430(a) (1994). Prior to recent amendments to the Bank Act, discussed further below, access to advances by non-QTL members was restricted in various ways. *See id.* section 1430(e).

The recently enacted Modernization Act[3] amended certain membership eligibility provisions, and repealed certain stock purchase and non-QTL advances provisions, in the Bank Act. *See* Pub. L. 106–102, sections 602, 603, 604(c), (d)(1), 605, 608 (1999). Accordingly, the Finance Board is amending its regulations to conform them to the Modernization Act amendments. The Finance Board also is taking this opportunity to make certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

II. Analysis of the Interim Final Rule

A. Removal of the Automatic Membership Provision For Mandatory Members—§ 925.4(a)

Section 5(f) of the Home Owners' Loan Act (HOLA) formerly provided that ''[e]ach Federal savings association, upon receiving its charter, shall become automatically a member'' of its district Bank. *See* 12 U.S.C. 1424(f) (1994). Consistent with section 5(f), section 925.4(a) of the Finance Board's Membership Regulation provides that any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 925.20(b)(1). *See* 12 CFR 925.4(a). The Modernization Act amended section 5(f) of the HOLA to provide that ''[a]fter the end of the 6-month period beginning on [Nov. 12, 1999], a Federal savings association may become a member of the [Bank] System, and shall qualify for such membership in the manner provided in the [Bank Act] * * * with respect to other members.'' *See* Modernization Act, section 603. Staff of the Office of Thrift Supervision (OTS), the agency that charters federal savings associations and administers the HOLA, has interpreted this amended language to mean that, as of November 12, 1999, a federal savings association is eligible to become a member, but no longer automatically becomes a member, of the Bank System, and federal savings associations that were members of the Bank System prior to November 12, 1999 may not withdraw from the Bank System and redeem their Bank capital stock until the 6-month period has expired (May

[1] *See* discussion QTL test in II.E. below.

[2] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). The Membership Regulation, which formerly was part 933 of the Finance Board's regulations, 12 CFR part 933 (1999), was redesignated as part 925. *See* 65 FR 8253, 8260 (to be codified at 12 CFR part 925).

[3] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

12, 2000). As the HOLA is administered by the OTS and not the Finance Board, the Finance Board defers to the OTS for interpretations of the HOLA.

In deference to and consistent with the OTS interpretation of the HOLA, the Finance Board is removing section 925.4(a) of the Finance Board's Membership Regulation, which provides for automatic Bank membership for federal savings associations. No change is required to the provision of section 925.26(a) of the Finance Board's Membership Regulation stating that any member ''that is eligible under applicable law'' to withdraw from Bank membership may do so after providing the Finance Board and its Bank at least six months written notice of the member's intention to withdraw from membership. *See* 12 CFR 925.26(a). The language ''that is eligible under applicable law'' requires that a federal savings association meet the amended HOLA requirement that it may not withdraw from Bank membership until after May 12, 2000. The interim final rule amends section 925.26 to provide that Federal savings association members may submit notices of intention to withdraw from Bank membership prior to May 13, 2000.

B. Removal of the 10 Percent Residential Mortgage Loans Requirement For Community Financial Institution Applicants For Membership—Sections 925.6(b), 925.10, 925.14(a)(3)

Section 4(a)(2(A) of the Bank Act formerly provided that an insured depository institution may become a member of a Bank only if it has at least 10 percent of its total assets in residential mortgage loans (10 percent requirement). *See* 12 U.S.C. 1424(a)(2)(A) (1994). Section 4(a)(2) also provided that an insured depository institution commencing business operations after January 1, 1989 (*de novo* institution), may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. *See id.* section 1424(a)(2). Section 4(a)(2) is implemented by sections 925.6(b), 925.10 and 925.14(a)(3) of the Finance Board's Membership Regulation. *See* 12 CFR 925.6(b), 925.10, 925.14(a)(3).

The Modernization Act amended section 4(a)(2) of the Bank Act to exempt from the 10 percent requirement any applicants, including *de novo* institutions, that qualify as ''community financial institutions.'' *See* Modernization Act, section 605 (*to be codified at* 12 U.S.C. 1424(a)(2)(A)(4)). The Modernization Act defines a ''community financial institution'' to mean, generally, an institution whose deposits are insured under the Federal Deposit Insurance Act (FDIA) and that has less than $500 million in average total assets, based on an average of total assets over the three preceding years. *See id.* section 602 (*to be codified at* 12 U.S.C. 1422(13)). Accordingly, the Finance Board is amending sections 925.6(b), 925.10 and 925.14(a)(3) of its Membership Regulation to include an exemption from the 10 percent requirement for community financial institutions, and is adding a definition of ''community financial institution'' in new section 925.1(ff). A definition of ''community financial institution,'' which predates the Modernization Act, in section 925.1(n)(1)(iii), also is being removed. The Finance Board requests comments on what source of data should be used in calculating the average of total assets over the three preceding years.

C. Amendment of the Conditional Approval Provision For De Novo Insured Depository Institution Applicants Sections 925.14(a)(3), 925.29(a)(1)

As discussed above, section 4(a)(2) of the Bank Act formerly provided that an insured depository institution commencing business operations after January 1, 1989, may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. *See id.* section 1424(a)(2) (1994). The Modernization Act amended this provision to provide an exemption for *de novo* community financial institutions. *See* Modernization Act, section 605. Thus, a *de novo* institution's membership is conditioned on the timely satisfaction of the 10 percent requirement. If an institution fails to satisfy this condition within the one-year period, it would not have met one of the statutory criteria for membership and the conditional approval (as well as the institution's membership) would be deemed null and void by operation of law. Thus, although the Membership Regulation is silent as to the consequences of a *de novo* institution's failure to meet the 10 percent requirement, compliance is required by statute no later than one year after commencing operations.

Notwithstanding the statutory conditional approval language, there has been some confusion at a number of Banks as to how they should deal with *de novo* members that would fail to satisfy the 10 percent requirement within the one-year time frame. To provide regulatory clarity, the Finance Board is amending section 925.14(a)(3) of the Membership Regulation to reinforce the conditional nature of the *de novo* membership application approval, as required by the statute. This regulatory amendment is consistent with the conditional approval requirements applicable to the home financing policy eligibility requirement in section 925.14(a)(4) of the Membership Regulation. *See id.* section 925.14(a)(4). The provisions of section 925.29(a)(1) of the Membership Regulation dealing with orderly liquidation of advances and redemption of stock in the event an institution ceases to be a member also are amended to include references to sections 925.14(a)(3) and (a)(4).

D. Amendment of the Provision on Reacquisition of Membership After 10 Years— § 925.30

Former section 6(h) of the Bank Act provided:

> Notwithstanding any other provision of this chapter, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association * * *.

12 U.S.C. 1426(h) (1994). Former section 6(h) is implemented by section 925.30 of the Finance Board's Membership Regulation in virtually identical form. *See* 12 CFR 925.30.

The Modernization Act repealed section 6(h) of the Bank Act and replaced it with new section 6(g), which provides that:

> (1) IN GENERAL—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.
>
> (2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

Public Law 106–102, section 608. This amendment, which took effect upon enactment, reduced the statutory period for readmission from 10 years to 5 years. The result of the amendment is that an institution that withdraws or withdrew from membership may reacquire

membership, *i.e.,* purchase shares of Bank capital stock, after the expiration of a period of 5 years from the date of completion of divestiture of all shares of the institution's capital stock in the Bank. An institution that withdrew from membership before December 31, 1997 that does not meet the 5-year requirement may reacquire membership in a Bank subject to Finance Board approval. Any applicant for membership in a Bank is still required, of course, to meet all of the applicable eligibility requirements in order to be approved for membership.

The Finance Board is amending section 925.30 of its Membership Regulation to reflect the above-described statutory changes in the waiting period for readmission to membership.

The Finance Board has not received any requests from former members seeking readmission under section 6(g)(2) and, thus, has not determined what factors it would consider in such a proceeding. The Finance Board does anticipate that any requests for readmission would be submitted pursuant to the Finance Board's Procedures in 12 CFR part 907.

E. Removal of the Additional Capital Stock Purchase Requirements and Restrictions on Advances Applicable to Non-QTL Members—Sections 925.20, 925.22(c), 950.1, 950.13, 950.15

Section 604(c) of the Modernization Act repealed section 10(e) of the Bank Act, which had imposed a number of restrictions on members that did not meet the QTL test.[4] Section 10(e) limited the purposes for which a non-QTL member could obtain an advance, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e) (1), (2) (1994). Section 10(e) also limited the dollar amount of advances that a non-QTL member could obtain by progressively reducing its ability to leverage its investment in the capital stock of the Bank. In practice, a non-QTL member with a QTL ratio of 50 percent could obtain only half the amount of advances that a QTL member with the same amount of Bank capital stock could borrow. If the member's QTL ratio decreased further, its ability to borrow against its capital stock would be reduced further. *See id.* section 1430(e).

Separately, section 10(e)(3) of the Bank Act established a statutory presumption that each member has at least 30 percent of its assets in home mortgage loans, which presumption was used in determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act. *See id.* section 1430(e)(3). Section 6(b) requires all members to subscribe to a minimum amount of Bank capital stock, which must equal at least one percent of the member's aggregate unpaid loan principal (home mortgage loans, home purchase contracts and similar obligations). As a practical matter, this provision would have applied only to non-QTL members, as QTL members (which have at least 65 percent of their assets in housing-related investments) likely would have had more than 30 percent of their assets in home mortgage loans.

Section 10(e) was added to the Bank Act in 1987 by the Competitive Equality Banking Act of 1987, Public Law 100–86, section 105, 101 Stat. 552 (Aug. 10, 1987) (CEBA), which also established the QTL test. Congress established the QTL test principally as a means of encouraging unitary savings and loan holding companies to ensure that their subsidiary savings associations maintained at least 60 percent of their assets in housing-related investments. If the savings association failed the QTL test, the business activities of the holding company would be sharply curtailed. Similarly, section 10(e) reduced the ability of the non-QTL savings association to obtain advances from its Bank; *i.e.,* an association with a QTL ratio of 59 percent could obtain only 59 percent of the amount of advances that it could obtain were it to meet the QTL test.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, section 714(b), 103 Stat. 418 (Aug. 9, 1989) (FIRREA), amended section 10(e) by revising the sanctions imposed on non-QTL members, which were, with only minor exceptions, the same as those described earlier that the Modernization Act repealed. Congress described its amendments to section 10(e), referring to both the housing finance purposes restriction and the reduced leverage on Bank capital stock, as ''special eligibility requirements for advances to members that are not qualified thrift lenders.'' *See* FIRREA Conference Report, No. 101–222, at 428 (August 4, 1989). Congress did not describe any of FIRREA's QTL amendments to section 10(e) as amendments to the capital structure of the Banks. Indeed, Congress chose to locate the QTL provisions in section 10(e), which relates solely to Bank advances, rather than in section 6, which establishes the capital structure for the Banks.

Section 604(c) of the Modernization Act repealed section 10(e) in its entirety. There is little legislative history for the amendment. The Managers' Statement accompanying the bill as reported by the Conference Committee refers specifically to each of the QTL provisions in section 10(e) and states simply that each such provision is ''eliminated'' or ''removed.'' Because section 604(c) of the Modernization Act does not provide a separate effective date for the QTL repeal, the amendments are to take effect upon enactment, unless they are preserved by some other provision of the Modernization Act.

The only provision in the Modernization Act that could even arguably be read to preserve the QTL provisions of section 10(e) would be the transition provision for the amendments to section 6 of the Bank Act, relating to the capital structure of the Banks. *See* Modernization Act, section 608 (*to be codified at* 12 U.S.C. 1426(a)(6)). That section provides that:

> Notwithstanding any other provisions of [the Modernization Act], the requirements relating to the purchase and retention of capital stock of a [Bank] by any member thereof in effect on [November 11, 1999], shall continue in effect * * * until the [capital] regulations required by [the Modernization Act] have taken effect and the capital structure plan * * * has been approved by the Finance Board and implemented by such [B]ank.

Although certain provisions of section 10(e) bear some relation to the capital stock of a Bank, such as the reduced leverage and the 30 percent presumption of home mortgage loans, they do not appear to have been intended by Congress to function as capital provisions *per se,* nor do they appear to be so closely linked to the capital provisions in section 6 of the Bank Act that they must necessarily be preserved by the transition provisions in the Modernization Act.

As originally enacted in CEBA, section 10(e) was simply a limitation on the amount of advances that a non-QTL member could obtain; it included no reference to Bank capital. Though

[4] The ''Qualified Thrift Lender'' test is set forth in section 10(m) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations or commercial banks that did not meet the test.

FIRREA reduced the borrowing leverage on Bank capital stock for non-QTL members and established the 30 percent presumption of home mortgage loans, the Congress did not refer to either provision as an amendment to the capital structure of the Bank System. Instead, Congress expressly described both of those provisions as ''special eligibility requirements for advances to'' non-QTL members. That characterization suggests an intent that section 10(e) continue to function primarily as a limitation on the ability of a non-QTL member to obtain advances, albeit using the provisions relating to capital as one of the means of implementing that limitation.

The repeal of section 10(e) is one of several provisions of the Modernization Act that were intended to equalize access to the Bank System for all members. The explanation by the Conferees' Managers Statement that the QTL provisions are ''removed'' and ''eliminated'' by the Modernization Act suggests strongly that the Congress intended that those amendments would take effect upon enactment. To read the Modernization Act otherwise would require an inference that Congress intended the QTL provisions to remain in effect for another 3 to 5 years, which is at odds with the language used in the Managers' Statement. Moreover, the history of the legislation, in which the amendments to section 6 (including the transition provision) were adopted at an earlier time than the repeal of section 10(e), would counsel against applying the transition provision so broadly as to preserve the QTL limitations.[5] Given that history, the Finance Board believes that the transition provision in section 608 of the Modernization Act should not be read as applying to the QTL provisions in section 10(e) of the Bank Act, and that the QTL provisions are not preserved beyond the date of enactment.

[5] As passed by the House of Representatives, H.R. 10 would have amended section 6 of the Bank Act, the capital structure provision, in its entirety, and would have included within the amended section 6 a transition provision preserving the existing capital structure until the new capital structures could be implemented. That transition provision is identical to the provision included in the so-called ''Chairmen's Mark'' that was considered by the Conference Committee and later was enacted in the Modernization Act. The repeal of section 10(e), however, was not included in the original Chairmen's Mark and had not been in either H.R. 10 or S. 900, as those bills were passed by their respective houses. The language repealing section 10(e) was adopted later in the Conference and was included among the amendments made by section 604 of the Modernization Act, which related to advances, rather than those made by section 608 of the Modernization Act, which includes all of the amended capital provisions, including the transition provision.

Accordingly, the Finance Board is removing sections 925.20(a)(2), 950.13 and 950.15(a)(2) of its regulations, which contain the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. Section 925.20(a)(1) is revised to set forth the new minimum stock purchase requirement for all members as the greater of:

(i) $500;

(ii) 1 percent of the member's aggregate unpaid loan principal; or

(iii) 5 percent of the member's aggregate amount of outstanding advances.

The Finance Board is aware that the repeal of the QTL limitations could result in excess capital stock positions for as much as 40 percent of the members of the Banks and that this will necessitate serious, thoughtful and active management of capital and business operations by the Banks during the transition period until final capital regulations and Bank capital plans are in place, as required by the Modernization Act. *See* Modernization Act, section 608. This will also require the Finance Board to monitor the Banks closely during this period. Any safety and soundness concerns raised during this transitional period as a result of the repeal of the QTL limitations will be addressed by the Finance Board through the supervisory process.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

IV. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule implement recently enacted statutory amendments that rendered obsolete certain provisions of the Finance Board's regulations. *See* 5 U.S.C. 553(b)(3)(B).

V. Paperwork Reduction Act

For the reasons stated in IV. above, the Finance Board is adopting this interim final rule on an expedited basis to conform provisions of its regulations to the recently enacted statutory amendments to the Bank Act. Due to the expedited nature of this rulemaking, the Finance Board has not completed its analysis of the information collection requirements contained in the interim final rule. The amendments in the interim final rule may result in a reduction in the information collection burden for institutions that qualify as community financial institutions, and an increase in the number of respondents that apply for Bank membership. The Finance Board intends to submit to the Office of Management and Budget the information collection requirements contained in this interim final rule in accordance with the requirements of section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

List of Subjects 12 CFR Parts 925 and 950

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts 925 and 950, Code of Federal Regulations, as follows:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend section 925.1 by:

a. In paragraph (n)(1)(iii), removing the second and third sentences; and

b. Adding paragraphs (ff) and (gg) to read as follows:

§ 925.1 Definitions.

* * * * *

(ff) *Community financial institution* means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in average total assets, based on an average of total assets over the three years preceding that date.

(gg) *Community financial institution asset cap* means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted cap.

§ 925.4 [Amended]

3. Amend section 925.4 by:

a. Removing paragraph (a); and

b. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

4. Amend § 925.6 by revising paragraph (b) to read as follows:

§ 925.6 General eligibility requirements.

* * * * *

(b) *Additional eligibility requirement for insured depository institutions other than community financial institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

* * * * *

5. Revise § 925.10 to read as follows:

§ 925.10 10 percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part, shall be deemed to be in compliance with such requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 925.1(bb)(6) of this part shall not be used to meet this requirement.

6. Amend section 925.14 by revising paragraph (a)(3) to read as follows:

§ 925.14 De novo insured depository institution applicants.

(a) * * *

(3) *10 percent requirement*—(i) *One-year requirement.* An applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part, shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 925.10 of this part.

(ii) *Conditional approval.* The applicant shall be conditionally deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 925.20 of this part and the advances provisions of part 950 of this chapter.

(iii) *Approval.* The applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act and section 925.6(b) of this part upon receipt by the Bank from the applicant, within one year after commencement of the applicant's initial business operations, of evidence acceptable to the Bank that the applicant satisfies the 10 percent requirement.

(iv) *Conditional approval deemed null and void.* If the requirements of paragraph (a)(3)(iii) of this section are not satisfied, the applicant shall be deemed to be in noncompliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 925.6(b) of this part, and its conditional membership approval is deemed null and void.

(v) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(3)(iv) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 925.29 of this part.

* * * * *

§ 925.18 [Amended]

7. Amend § 925.18(e) by removing the phrase ''within 10 years''.

8. Amend § 925.20 by:

a. Revising paragraph (a); and

b. In paragraphs (b)(1) and (b)(2), removing ''§ 925.4(a) or (d)'' and adding ''§ 925.4(c)'' in its place, to read as follows:

§ 925.20 Stock purchase.

(a) *Minimum stock purchase.* Each member shall purchase stock in the Bank in which it is a member in an amount equal to the greater of:

(1) $500;

(2) 1 percent of the member's aggregate unpaid loan principal; or

(3) 5 percent of the member's aggregate amount of outstanding advances.

* * * * *

9. Amend § 925.26 by revising paragraph (a) to read as follows:

§ 925.26 Procedure for withdrawal.

(a) *Notice of withdrawal.* (1) Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Finance Board and its Bank at least six months written notice of the member's intention to withdraw from membership.

(2) Federal savings association members may submit notices of intention to withdraw from Bank membership under paragraph (a)(1) of this section prior to May 13, 2000, but may not withdraw from membership prior to May 13, 2000.

* * * * *

§ 925.29 [Amended]

10. Amend the first sentence of § 925.29(a)(1) by adding ''925.14(a)(3), 925.14(a)(4),'' before ''925.26''.

11. Revise § 925.30 to read as follows:

§ 925.30 Reacquisition of membership.

An institution that withdraws or withdrew from membership pursuant to § 925.26 of this part may acquire membership in a Bank only after the expiration of a period of 5 years from the date of completion of divestiture of all shares of the institution's capital stock in the Bank, except:

(a) Such institution may acquire membership in a Bank if such divestiture is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to § 925.18 of this part; and

(b) An institution that withdrew from membership pursuant to § 925.26 of this part before December 31, 1997 that does not meet the 5-year requirement in this section may acquire membership in a Bank subject to Finance Board approval.

PART 950—ADVANCES

1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

§ 950.13 [Removed]

2. Remove § 950.13.

3. Amend § 950.15 by:

a. Redesignating paragraph (a)(1) as paragraph (a);

b. Removing paragraph (a)(2); and

c. Revising the first sentence of paragraph (b)(1) to read as follows:

§ 950.15 Capital stock requirements; unilateral redemption of excess stock.

* * * * *

(b) *Unilateral redemption of excess capital stock; fee in lieu prohibited.* (1) A Bank, after providing 15 calendar days advance written notice to a member, may require the redemption of that amount of the member's Bank capital stock that exceeds the capital stock requirements set forth in paragraph (a) of this section, provided the minimum amount required in section 6(b)(1) of the Act is maintained.

* * *

* * * * *

Dated: February 23, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–6200 Filed 3–14–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–57–AD; Amendment 39–11623; AD 2000–05–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, this amendment also requires replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, this amendment requires modification of the mounting flange holes of the brake torque tube. This amendment is prompted by reports of cracking in the axle flange and by reports of deterioration of the brake mounting gasket. The actions specified by this AD are intended to prevent fracture of the MLG axle and separation of the wheel from the MLG, and consequent reduced controllability of the airplane.

DATES: Effective April 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2000.

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

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on October 29, 1998 (63 FR 57953). That action proposed to require a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, that action proposed to require replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, that action proposed to require modification of the mounting flange holes of the brake torque tube.

Comments

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

Support for the Proposal

One commenter supports the proposed rule.

Requests to Extend Compliance Time

Several commenters request that the FAA extend the compliance time (i.e., within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later) for accomplishing the requirements of the proposed AD.

One commenter states that the proposed AD should be carried out within 250 days or 2,500 aircraft cycles, whichever occurs later. The commenter supports this request by stating that its standard practice is to clean and visually inspect all landing gear axle flanges each time the brake assemblies and wheel assemblies are removed from the axle. The commenter further states that it has never experienced loss of a MLG wheel with BFGoodrich brake assemblies, and that BFGoodrich is not aware of the loss of a wheel on aircraft equipped with BFGoodrich brake assemblies.

Another commenter, the airplane manufacturer, states that the inspection of axle flanges that have been repaired with nickel sulfamate or bushings would require removal of the repair. The commenter notes that this will have a significant impact on the cost and time required to perform the proposed inspection. Therefore, consideration should be given to increasing the compliance time or modifying the inspection requirements.

One commenter states that the inspection schedule specified in paragraphs (b) and (c) of the proposed AD should be increased to at least 1 year or 4,000 cycles, whichever is later. The commenter states that the currently proposed inspection schedule for most of the operators will fall during a line maintenance check. The commenter points out that the inspection and repair specified in Boeing All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996 [which is referenced in the proposed AD the appropriate source for accomplishing the proposed inspection in paragraphs (b)(1) and (c)(1) and the proposed repair in paragraphs (b)(2) and (c)(2)], involves repairs that should be accomplished at a heavy check or overhaul facility.

One commenter states that the inspection should be accomplished during a heavy maintenance visit where equipment and trained personnel are more readily available.

The FAA concurs with the commenters' requests. The FAA concurs that the magnetic particle inspection, high frequency eddy current (HFEC) inspection, modification, and repair, if necessary, required by this AD should be accomplished at an overhaul facility. The FAA has determined that an extension of the compliance time to within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, will not compromise safety provided that an interim detailed visual inspection to detect fretting and corrosion of the axle flange bolt holes is accomplished within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later. The FAA has added a new paragraph (d) to the final rule to include such an option. The FAA also has added a note to the final rule to clarify the definition of the detailed visual inspection.

One commenter states that, if the FAA mandates modifications to the ten or eleven bolt configuration, it requests that the compliance time for paragraph (c) of the proposed AD be extended to 5 years. (This comment is discussed in more detail below under the heading ''Requests to Exclude Actions on the Basis of Configuration'').

The FAA does not concur with the commenter's request. Although the two stud/ten bolt configuration provides better clamp-up between the brake

assembly and the MLG axle flange, the FAA has determined that improved clamp-up by itself does not justify a 5-year compliance time.

Requests to Exclude Actions on the Basis of Configuration

One commenter requests that operators utilizing ten or eleven bolt configurations regardless of gasket material not be subject to the requirements of the proposed AD. One commenter states that, according to Boeing AOT M–7272–96–1442, dated March 29, 1996, previous failures are primarily due to poor maintenance of finish, improper plating repairs, and installation of incorrect wheel bearings, rather than design deficiencies. The commenter suggests that no evidence exists which shows that a ten or eleven bolt brake mounting configuration with phenolic gaskets is unsafe or susceptible to cracking, and subsequent axle failure.

The FAA does not concur with the commenter's request. Although the two stud/ten bolt configuration provides better clamp-up between the brake assembly and the MLG axle flange, the FAA has determined that an improved clamp-up by itself will not prevent fretting. Furthermore, Boeing AOT M–7272–96–1442 lists deterioration of the phenolic gasket as another of the basic causes of reported axle fractures. Brake heat and vibration can lead to deterioration of the phenolic gasket. The FAA finds that an increase in clamp-up with the two stud/ten bolt configuration will help decrease the magnitude of vibration, but will not alleviate the gasket deterioration brake heat caused by the gasket. The FAA has determined that the aluminum-nickel-bronze (Al-Ni-Br) gasket used in conjunction with brake mounting hardware, which includes two studs and ten bolts, will ensure proper clamp-up and resistance to brake heat and vibration.

Another commenter requests that operators with a one stud/eleven bolt brake mounting configuration be required to add one stud and one nickel bronze gasket to comply with the intent of the proposed rule. No justification was provided.

The FAA does not concur with the commenter's request. The FAA has determined that the existing shear studs used with the phenolic gasket will not properly mate with the aluminum-nickel-bronze gasket. Therefore, two new studs will be required. Furthermore, prior to installing the gasket, magnetic particle or HFEC inspections are required to evaluate the existing integrity of the axle flange and bolt holes.

Requests for Credit for Previous Incorporation of Certain Service Information

One commenter requests that the FAA give credit for airplanes on which MLG assemblies with an Al-Ni-Br gasket have been installed in accordance with Boeing Service Bulletin 737–32–1253, and that have been inspected/reworked/overhauled in accordance with Boeing AOT M–7272–96–1442 and/or original equipment manufacturer/FAA-approved operator designed rework procedures.

The FAA concurs with the commenter's request provided that the inspection has been accomplished concurrent with or after installation of the Al-Ni-Br gasket. The FAA has determined that accomplishment of the magnetic particle or HFEC inspections in accordance with Boeing AOT M–7272–96–1442, dated March 29, 1996, concurrent with or after installation of an aluminum-nickel-bronze gasket and shear studs, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (c)(1) of this final rule. Therefore, the FAA has added a new note after paragraph (a) of this AD to provide credit for accomplishing the required inspection concurrently with or after accomplishment of the subject installation.

Two commenters request that the inspection required by paragraph (a)(1) of the proposed AD be deleted. One of these commenters requests that the inspection required by paragraph (b)(1) also be deleted. One commenter states that the inspection should not be required because a new aluminum-nickel-bronze gasket has been installed in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991, and the torque tube mounting holes on the mounting flange have been modified in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997. If operators installed this new gasket along with the modification on the axle flange and brake flange, the commenter contends that they have already accomplished the initial inspection in accordance with Boeing Service Bulletin 737–32–1253. One commenter states that there have been no reported axle failures on airplanes that have incorporated Boeing Service Bulletin 737–32–1253. The commenter further states that the inspection of these airplanes will impose an unreasonable financial burden on the operators.

Another commenter states that paragraph (c) of the proposed AD contains no requirement for repetitive inspections after incorporation of Boeing Service Bulletin 737–32–1253. Therefore, the commenter requests that no further action be required, if the magnetic particle inspection and modification specified in that service bulletin were already accomplished during the previous landing gear overhaul or at a maintenance opportunity.

Another commenter requests that, if an MLG has been inspected, overhauled, and modified in accordance with Boeing Service Bulletins 737–32–1253, dated November 7, 1991, and 737–32–1235, dated April 12, 1990, affected airplanes should not be subject to the requirements of the proposed AD. The commenter also states that In Service Report (ISR) #95–03–3210–20, dated February 16, 1995, states that incorporation of these service bulletins is the recommended action according to Boeing.

The FAA does not concur with the commenters' requests. The FAA has determined that, for airplanes on which the installation of the brake mounting hardware in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991, and Boeing Service Bulletin 737–32–1235, dated April 12, 1990, has been accomplished, the magnetic particle or HFEC inspection required by this AD must be accomplished because these service bulletins do not contain inspection procedures. These service bulletins only describe procedures for installing the improved brake mounting hardware and an additional shear stud. The FAA points out that there is a possibility that some of the aluminum-nickel-bronze gaskets could have been installed on axle flanges that already had cracks or fretting damage. A magnetic particle or HFEC inspection of this area will ensure detection of cracks in the axle flange and brake attach bolt holes.

One commenter further requests that airplanes on which the shear stud replacement in accordance with Boeing Service Bulletin 737–32–1253 has been incorporated not be required to install new studs, as required in paragraph (a)(4) of the proposed AD. The commenter believes this to be unnecessary since Service Bulletin 737–32–1253 already requires replacement of the shear studs.

The FAA concurs with the commenter's request. The FAA finds that accomplishment of the gasket replacement in accordance with the subject service bulletin includes replacing the shear studs. The FAA notes that paragraph (a) of the AD applies to certain airplanes ''on which the original gaskets have been replaced with aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin

737–32–1253, dated November 7, 1991.'' The FAA finds it unnecessary for those airplanes to accomplish the replacement of the shear studs a second time. Therefore, the FAA has deleted paragraph (a)(4) of the proposed AD from the final rule.

Requests to Allow Flight with Cracks

Two commenters request that repair of cracks, prior to further flight, as required by paragraphs (a)(1), (b)(1), and (c)(1) of the proposed AD, apply only to those axle flange cracks found progressing inward from the brake attach holes towards the MLG axle. The commenters suggest that operations should be allowed to continue on airplanes with axle flanges that have cracks on up to four bolt holes, as long as they progress towards the outer edge of the flange. One of the commenters states that this type of cracking is sufficiently covered under the current Boeing Overhaul Manual 32–11–11. One commenter further states that if repair is deemed necessary, then the FAA should develop and include an approved repair scheme in the final rule.

The FAA partially concurs with the commenter's request. The FAA does not concur that operations should be allowed to continue on airplanes with axle flanges that have any crack. While outwardly progressing cracks should not affect axle integrity, if such cracks are completely ignored, they could change direction and begin progressing inwards towards the MLG axle. Therefore, the FAA has determined that any subject axle flange that is found to be cracked must be repaired prior to further flight in accordance with a method approved by the FAA.

However, the FAA does concur that accomplishment of the repair in accordance with Boeing Overhaul Manual 32–11–11 is considered acceptable for compliance with the repair requirements of paragraphs (a)(1), (b)(1), and (c)(1) of the AD. Therefore, the FAA has revised the final rule to include as new note to clarify this point. In addition, operators may request approval of an alternative method of compliance if data are provided to substantiate that such a method would provide an acceptable level of safety.

Request to Change Terminology

Two commenters request that the term ''brake assemblies'' in paragraphs (b)(4) and (c)(3) of the proposed AD be changed. One commenter suggests ''brake mounting hardware,'' and the other commenter suggests ''axle flange assemblies'' as alternative terms.

One commenter further suggests that the term ''torque tube'' be changed to ''brake torque tube'' in paragraphs (a)(3) and (b)(3) of the proposed AD; delete ''on the mounting flange'' from paragraph (a)(3) of the proposed AD; and change ''brake modification'' to ''brake mounting hardware modification'' in the Cost Impact section of the proposed AD.

The FAA concurs with the commenters' requests. The FAA has revised paragraphs (b)(4) and (c)(3) of the final rule to read ''brake mounting hardware.'' The FAA also has revised the term ''torque tube'' to ''brake torque tube'' in the Summary, Supplementary Information, and Cost Impact sections of the AD; and deleted the phrase ''of the mounting flange'' from paragraph (b)(3) of this AD to be consistent with the changes noted previously.

Other Changes Made to the Proposed AD

The FAA inadvertently omitted information from paragraphs (b)(1) and (c)(1) of the proposed rule for HFEC inspections of axle flanges that have not been repaired previously and coated with a nickel sulfamate finish. As stated in paragraph (a)(1) of the proposed rule, an HFEC inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. However, the FAA inadvertently omitted this clarification in paragraphs (b)(1) and (c)(1) of the proposed AD, which applies to airplanes equipped with certain AlliedSignal brake assemblies on which the original gaskets have not been replaced and on all other affected airplanes, respectively. The clarification regarding HFEC inspections applies to all repaired axle flanges, independent of gasket replacement and independent of whether the airplanes are equipped with certain AlligedSignal brake assemblies. Therefore, the FAA has revised paragraphs (b)(1) and (c)(1) of the final rule to include the clarification that an HFEC inspection is not appropriate for repaired axle flanges.

As published, the NPRM contains a typographical error in paragraph (a)(1). It references Boeing All Operators Telex (AOT) ''M–7272–76–1442,'' dated ''Mach 29, 1996,'' as the appropriate source of service information for accomplishment of the magnetic particle or HFEC inspection. However, as indicated throughout the rest of the proposed AD, the correct reference is ''Boeing All Operators Telex (AOT) ''M–7272–96–1442, dated March 29, 1996.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,015 airplanes of the affected design in the worldwide fleet. The FAA estimates that 893 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $214,320, or $240 per airplane.

It will take approximately 32 work hours per airplane at an average labor rate of $60 per work hour should an operator be required to accomplish the required brake mounting hardware modification. Required parts will cost approximately $2,052 per airplane. Based on these figures, the cost impact of the brake mounting hardware modification required by this AD on U.S. operators is estimated to be $3,972 per airplane.

Additionally, the FAA estimates that it will take approximately 5 work hours per airplane to accomplish the required brake torque tube modification, and that the average labor rate is $60 per work hour. The FAA estimates that this action will be required to be accomplished on approximately 400 U.S.-registered airplanes. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $120,000, or $300 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

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

List of Subjects 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–05–13–Boeing: *Amendment 39–11623.* Docket 98-NM–57–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line positions 1 through 2135 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the main landing gear (MLG) axle and the separation of the wheel from the MLG, and consequent reduced controllability of the airplane, accomplish the following:

Inspection, Modification, and Corrective Action

(a) For Model 737–100 and –200 series airplanes equipped with AlliedSignal (ALS/Bendix) brake assembly installations having Boeing part numbers (P/N) 10–61063–14, –18, or –21, on which the original gaskets have been replaced with aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991: Except as provided by paragraph (d) of this AD, within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the ''Recommended Operator Action'' section of Boeing All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG flange, in accordance with Boeing Overhaul Manual 32–11–11, or other method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (a)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the brake torque tube mounting holes, in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997.

Inspection, Modification, and Corrective Action

(b) For Model 737–100 and –200 series airplanes equipped with AlliedSignal (ALS/Bendix) brake assembly installations having Boeing P/N 10–61063–14, –18, or –21, on which the original gaskets have not been replaced with new aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991: Except as provided by paragraph (d) of this AD, within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG flange, in accordance with Boeing Overhaul Manual 32–11–11, or other method approved by the Manager, Seattle ACO.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (b)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the brake torque tube mounting holes, in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997.

(4) Accomplish the modification of the affected brake mounting hardware in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

Inspection, Modification, and Corrective Action

(c) For Model 737–100, –200, –300, –400, and –500 series airplanes other than those identified in paragraphs (a) and (b) of this AD: Except as provided by paragraph (d) of this AD, within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG flange, in accordance with Boeing Overhaul Manual 32–11–11, or other method approved by the Manager, Seattle ACO.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (c)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the affected brake mounting hardware in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

Note 2: Accomplishment of the magnetic particle or HFEC inspections of unrepaired axle flanges in accordance with Boeing Telex M–7272–96–1442, dated March 29, 1996, concurrent with or after installation of an aluminum-nickel-bronze gasket and shear studs, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (c)(1) of this AD.

Optional Visual Inspection

(d) The actions required by paragraphs (a), (b), and (c) of this AD may be accomplished at the time specified in paragraph (d)(1) of this AD, provided that the action specified in paragraph (d)(2) is accomplished.

(1) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the actions specified in paragraph (a), (b), or (c) of this AD, as applicable; and

(2) Within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect fretting or corrosion of the axle flange bolt holes. If any fretting or corrosion is detected, prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

Note 3: For the purposes of this AD, a detailed 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

(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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraphs (a)(1), (b)(1), and (c)(1) of this AD, the actions shall be done in accordance with Boeing All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996; AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997; and Boeing Service Bulletin 737–32–1253, dated November 7, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on April 19, 2000.

Issued in Renton, Washington, on March 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5890 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–85–AD; Amendment 39–11627; AD 2000–05–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model EC 120B helicopters, that currently requires, at specified time intervals, inspecting the engine coupling tube for cracks and replacing any cracked engine coupling tube with an airworthy engine coupling tube. This amendment requires, at specified time intervals, visually inspecting and dye-penetrant inspecting the coupling tube for any crack and replacing any cracked coupling tube with a reinforced, airworthy coupling tube. Replacing all coupling tubes and certain engine support fitting components is required on or before March 31, 2000. This amendment is prompted by the discovery of cracks in several coupling tubes. The actions specified by this AD are intended to prevent coupling failure, loss of engine drive, and a subsequent forced landing.

DATES: Effective March 27, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 27, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–85–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, Regulations Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 2, 1999, the FAA issued Emergency Priority Letter AD 99–19–23 and on September 22, 1999, issued the final rule; request for comments for AD 99–19–23, Amendment 39–11343 (64 FR 53623, October 4, 1999), to require within 10 hours time-in-service (TIS), and thereafter, at intervals not to exceed 10 hours TIS, inspecting a specified engine coupling tube for cracks and replacing any cracked engine coupling tube with an airworthy engine coupling tube. That action was prompted by the discovery, during routine maintenance inspections, of three cracked engine coupling tubes caused by structural resonance. That condition, if not corrected, could result in coupling failure, loss of engine drive, and a subsequent forced landing.

Since the issuance of that AD, the manufacturer has issued Eurocopter Service Bulletin No. 05–001, dated September 23, 1999, which introduces a new alternative check procedure. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued AD 1999–349–002(A) R2, dated November 3, 1999, to ensure the continued airworthiness of these helicopters in France. The manufacturer has also issued Eurocopter Service Bulletin No. 63–001, dated November 10, 1999, which recommends installing a reinforced coupling tube and disassembling the engine mount fitting assembly. The manufacturer then issued Eurocopter Service Bulletin No. 01–002, dated December 23, 1999, which declares that coupling tubes, P/N C631A1002101, and certain engine support fitting components are unfit for flight after March 31, 2000. The DGAC classified this service bulletin as mandatory and issued AD 2000–058–

003(A), dated February 9, 2000, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provision 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 operations in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model EC 120B helicopters of the same type design, this AD supersedes AD 99–19–23 to require periodic visual and dye-penetrant inspections on each coupling tube, replacement of any cracked coupling tube, and replacement of the coupling tube and certain engine mount fitting components on or before March 31, 2000. The actions must be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions stated previously must be accomplished at the specified time intervals, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 12 helicopters will be affected by this proposed AD, that it will take approximately 1 work hour to visually inspect each coupling tube and 6.5 work hours to dye-penetrant inspect each coupling tube. Replacing each coupling tube and installing the engine mount fitting components will take approximately 12 work hours per helicopter. The average labor rate is $60. The manufacturer states that they will provide the components necessary for replacing the coupling tubes free of charge. Based on these figures and the manufacturer's representation that it will provide the repair parts free of charge, the total cost impact of the AD on U.S. operators is estimated to be $19,400, assuming 2 visual inspections, 2 dye-penetrant inspections, 1 coupling tube replacement, and 1 installation of the engine support fitting components on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–85–09AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11343 (64 FR 53623, October 4, 1999), and by adding a new airworthiness directive (AD), Amendment 39–11627, to read as follows:

AD 2000–05–17 Eurocopter France: Amendment 39–11627. Docket No. 99–SW–85–AD. Supersedes AD 99–19–23, Amendment 39–11343, Docket No. 99–SW–53–AD.

Applicability: Model EC 120B helicopters with engine coupling tube (coupling tube), part number (P/N) C631A1002101, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent coupling failure, loss of engine drive, and a subsequent forced landing, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 10 hours TIS except when required to perform the inspection required by paragraph (b) of this AD while each coupling tube, P/N C631A1002101, is installed, inspect for any crack in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter Service Bulletin No. 05–001, dated September 23, 1999 (SB 05–001).

(b) Within 10 hours TIS, and thereafter at intervals not to exceed 30 hours TIS, after each coupling tube, P/N C631A1002101, has been removed, inspect for any crack in accordance with paragraph 2.B.2. of SB 05–001.

Note 2: Operators are not required to inform the manufacturer when a crack is found.

(c) When a crack is found as a result of the inspections conducted in accordance with either paragraph (a) or (b) of this AD, or by March 31, 2000, whichever occurs first, replace the coupling tube with a reinforced, airworthy coupling tube, P/N C631A1101101, and replace the engine mount fittings in accordance with Eurocopter Service Bulletin No. SB 63–001, dated November 10, 1999, using new, airworthy, engine mount fitting components to replace the following:

- Teflon spacer, P/N C714A1010208;
- Black-colored spring washers, 10.2 x 28 Type-C;
- Blue-colored hinge yoke, P/N C714A1010212; and
- Special washer, P/N C714A1010213.

Note 3: Eurocopter Service Bulletin No. 01–002 pertains to unairworthiness of the four engine mount fitting components listed in paragraph (c) of this AD.

(d) Installing the reinforced, airworthy coupling tubes, P/N C631A1101101, and replacing the engine mount fitting components using new, airworthy, engine mount fitting components, as specified in paragraph (c) of this AD, constitutes terminating action for the requirements of this AD.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

(g) The inspections and modifications shall be done in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter Service Bulletin No. 05–001, dated September 23, 1999; Eurocopter Service Bulletin No. 63–001, dated November 10, 1999; and Eurocopter Service Bulletin No. 01–002, dated December 23, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 27, 2000.

Note 5: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 1999–349–002(A) R2, dated November 3, 1999 and AD 2000–058–003(A), dated February 9, 2000.

Issued in Fort Worth, Texas, on March 6, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–6034 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–61–AD; Amendment 39–11626; AD 2000–05–16]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Model S–61 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Sikorsky Model S–61 helicopters. This action requires inspecting certain pylon upper and lower hinge web fittings (web fittings) for corrosion or a crack and either repairing certain web fittings or replacing any unairworthy web fittings with airworthy web fittings. The AD also requires creating a log card or equivalent record and implementing a recurring inspection of the web fittings. This amendment is prompted by the discovery of extensive cracking in the area of the web fittings. The actions specified in this AD are intended to prevent structural failure of the tail boom due to a crack or corrosion of certain web fittings and subsequent loss of control of the helicopter.

DATES: Effective March 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–61–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brian K. Murphy, Aerospace Engineer, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7739, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD applicable to Sikorsky Model S–61 helicopters with pylon, part number, (P/N) S6120–76265–001 or S6120–76266–507, installed. The AD requires inspecting and repairing or, if necessary, replacing certain web fittings and the fitting faying surfaces. The AD also requires making an entry on the log card or equivalent record.

This amendment is prompted by the discovery of extensive cracking in the area of the web fitting. The actions specified in this AD are intended to prevent structural failure of certain web fittings due to stress corrosion and subsequent structural failure of the tailboom. This condition, if not corrected, could result in loss of control of the helicopter.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB), which describes procedures for inspecting and repairing or, if necessary, replacing certain web fittings having a crack or corrosion.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Model S61 helicopters of the same type design, this AD is being issued to prevent structural failure of certain web fittings due to a crack or corrosion. This AD requires

inspecting and repairing or replacing the web fittings as necessary. The actions are required to be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspecting for a crack or corrosion in the web fittings and repairing or replacing, if necessary, an unairworthy web fitting with an airworthy web fitting is required prior to further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 125 helicopters will be affected by this AD, that it will take approximately 115 work hours to accomplish the inspection and replacement of parts, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,237,500 if the parts have to be replaced on the entire fleet.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–61–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2000–05–16 Sikorsky Aircraft Corporation: Amendment 39–11626. Docket No. 99–SW–61–AD.

Applicability: Model S–61 helicopters with pylon, part number (P/N) S6120–76265–001 or S6120–76266–507, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to a crack or corrosion of pylon upper and lower hinge web fittings (web fittings), P/N S6120–76261–012, –013 (upper) or S6120–76262–012, –013 (lower), and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS),

(1) Determine the alloy-temper of the web fittings in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB), Accomplishment Instructions, paragraph 3.A.

(2) Prepare the web fittings for inspection in accordance with the ASB Accomplishment Instructions, paragraph 3.B.

(3) Inspect the web fitting in accordance with the ASB Inspection Plan, Chart A, and the Accomplishment Instructions, paragraphs 3.C., 3.D, and 3.E. Nicks, scratches, corrosion pitting or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(4) Repair or replace web fittings, as necessary, in accordance with the ASB Accomplishment Instructions, paragraph 3.C.(3) through (6). Nicks, scratches, corrosion pitting, or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(5) If replacing an unairworthy web fitting with an airworthy web fitting, replace it in accordance with the ASB Accomplishment Instructions, paragraph 3.F., prior to further flight.

(6) Create a log card for the pylon, if none exists. Make an entry on the log card or equivalent record implementing recurring inspection intervals in accordance with Chart A of the ASB.

(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, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

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

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

(d) The inspection, repair, and replacement shall be done in accordance with the Inspection Plan, Chart A, and the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 30, 2000.

Issued in Fort Worth, Texas, on March 6, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–6036 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 000204027–0027–01]

RIN 0694–AC14

Correction to Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 10, 2000 the Bureau of Export Administration published a final rule (65 FR 12919) revising License Exception CTP and revising the Commerce Control List to liberalize the national security thresholds for digital computers to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies. This rule corrects an inadvertent error that appeared in the March 10 rule by inserting the word ''not'' which was inadvertently omitted from the note to the License Requirements section of Export Control Classification Number 4A003.

DATES: This rule is effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 13, 1999 (64 FR 44101).

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730–799) is amended to read as follows:

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 774—CORRECTED

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising the License Requirements section of Export Control Classification Number (ECCN) 4A003, to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, .d, .e, and .g.	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to digital computers for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on digital computers with a CTP ≥ 6 but ≤ to 6,500 Mtops).	AT Column 1.

NP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP not greater than 6,500 Mtops, and for assemblies described in

4A003.c that are not capable of exceeding a CTP greater than 6,500 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

Dated: March 10, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Admininistration.

[FR Doc. 00–6348 Filed 3–10–00; 1:12 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 111 and 178

[T.D. 00–17]

RIN 1515–AC34

Customs Brokers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed revision of part 111 of the Customs Regulations, which governs the licensing and conduct of customs brokers in the performance of customs business on behalf of others. The revision includes changes to the regulatory texts to reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act and also includes changes to reflect the recent reorganization of Customs as well as changes to improve the content, layout and clarity of the regulatory texts. The document also includes conforming changes to parts 24 and 178 of the Customs Regulations.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Mike Craig, Office of Field Operations (202–927–1684). Legal Aspects: Gina Grier, Office of Regulations and Rulings (202–927–2320).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in Part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act (''the Act''), Public Law 103–182, 107 Stat. 2057. Title VI of the Act set forth Customs Modernization provisions that included, in section 648, certain amendments to section 641 of the Tariff Act of 1930. The substantive amendments to section 641 were as follows:

1. In the definition of ''customs business'' in section 641(a)(2), a second sentence was added that provides that customs business ''also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of (the customs business activities listed in the first sentence), whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.''

2. Section 641(c)(1) was amended by adding a provision for the issuance of a national permit for the conduct of such customs business as the Secretary of the Treasury prescribes by regulation.

3. A new subsection (c)(4) was added to provide that when electronic filing (including remote location filing) of entry information with Customs at any location is implemented by the Secretary of the Treasury pursuant to the provisions of the National Customs Automation Program (''the NCAP,'' which was established by section 631 of the Act and is codified at 19 U.S.C. 1411–1414), a licensed broker may appoint another licensed broker who holds a permit in a Customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted to be filed electronically. New subsection (c)(4) also provides that the broker who appoints a subagent remains liable for all obligations arising under bond and for all duties, taxes and fees, and for any other liabilities imposed by law, and cannot delegate such liability to the subagent.

4. Section 641(d)(2)(B), which sets forth the procedures for the suspension or revocation of a broker's license or permit, was amended to increase to 30 days the period within which a hearing is to be held after written notice of a hearing is provided to the broker.

5. Finally, section 641(f) was amended to provide: That the Secretary of the Treasury may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business; that for purposes of any provision of the Tariff Act of 1930 pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium; and that, pursuant to such regulations as the Secretary of the Treasury shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

On September 27, 1995, Customs published the following documents in the **Federal Register** as a result of changes in the Customs Headquarters and field organizational structure:

1. T.D. 95–77 (60 FR 50008) amended the Customs Regulations on an interim basis. The amendments included extensive changes to §§ 101.1, 101.3 and 101.4 (19 CFR 101.1, 101.3 and 101.4) to reflect the changes to the basic Customs field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the

Customs field structure and would be empowered with most of the functions and authority that had been held in the district and regional offices and also involving the designation of some ports as service ports having a full range of cargo processing functions, including inspection, entry, collection, and verification. T.D. 95–77 also included amendments to parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174 of the Customs Regulations (19 CFR parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174) to reflect these organizational changes. The background portion of T.D. 95–77 pointed out that districts and regions would still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes, and T.D. 95–77 therefore set forth certain additional regulatory changes in order to reflect this fact; these changes included the addition of definitions for ''district,'' ''district director'' and ''region'' in § 111.1 (19 CFR 111.1) to enable the current statutory broker licensing and permitting schemes to operate. (The background portion of T.D. 95–77 also noted that the Customs reorganization included the creation of twenty Customs Management Centers and five Strategic Trade Centers for which no regulatory changes were being made because these new organizational entities will not have direct contact with the public.)

2. T.D. 95–78 (60 FR 50020) also amended the Customs Regulations on an interim basis and involved nomenclature changes. The T.D. 95–78 changes were set forth in a table format in numerical order by section affected and in most cases involved the replacement of outdated references with new references to reflect the new Customs Headquarters and field organizational structure. The majority of these changes involved replacing ''district'' with ''port'' and replacing ''district director'' with ''port director,'' or some variation thereof. The T.D. 95–78 changes involved almost every part within Chapter I of the Customs Regulations (19 CFR Chapter I) and included a large number of changes to part 111.

3. A general notice (60 FR 49971) informed the public of the geographic areas covered for purposes of Customs broker permits and for certain cartage and lighterage purposes where the word ''district'' appears in the Customs Regulations. The notice was a consequence of the publication of T.D. 95–77 and T.D. 95–78 and, in particular, of the T.D. 95–77 regulatory changes made in order to retain the concept of a ''district'' for certain Customs broker and cartage and lighterage purposes. The information contained in that notice is republished in a general notice also appearing in this issue of the **Federal Register**.

Based on a review of the changes to section 641 made by section 648 of the Act, Customs determined that the part 111 regulatory texts should be amended as follows: (1) To reflect the change to the section 641(a)(2) definition of ''customs business;'' (2) to provide for the issuance of national permits as authorized under amended section 641(c)(1); (3) to reflect the 30-day period within which a suspension or revocation hearing is to be held under amended section 641(d)(2)(B); (4) to implement the amended section 641(f) proscription against prohibiting a broker from limiting its liability to other persons; and (5) to reflect the amended section 641(f) recordkeeping provisions. With regard to the appointment of subagents as authorized under amended section 641(c)(4), Customs determined that it would be premature to amend part 111 at this time; rather, Customs concluded that it would be preferable to address this issue at such time as related NCAP test procedures have been concluded, appropriate programming enhancements have become operational, and appropriate regulatory proposals have been formulated.

Customs also performed a general review of Part 111 to determine whether other regulatory changes should be made. Based on that review, Customs identified a number of other areas where significant improvement could be made to the existing regulatory texts. These improvements included: (1) The elimination of obsolete or otherwise unnecessary provisions; (2) the addition of new provisions where the regulations appeared to be incomplete or were otherwise in need of clarification; (3) further textual changes arising out of the reorganization of Customs that were not fully addressed in the district/port terminology changes made by T.D. 95–77 and T.D. 95–78, including some changes to those previously-published changes and particularly in order to clarify certain procedural aspects of the regulations (for example, where to file permit applications and broker status reports and where to pay permit user fees); and (4) a large number of nonsubstantive, editorial changes to improve the precision and clarity of the regulations, ranging from the reorganization or complete redrafting of existing texts to minor word changes within a particular regulatory provision.

Based on the above considerations, on April 27, 1999, Customs published in the **Federal Register** (64 FR 22726) a notice of proposed rulemaking setting forth a complete revision of part 111. The notice of proposed rulemaking included a detailed section-by-section discussion of the proposed amendments (other than those of a minor wording or other editorial nature) and provided a 60-day period for the submission of public comments on the proposed changes. On June 29, 1999, a notice was published in the **Federal Register** (64 FR 34748) to extend the public comment period to July 28, 1999.

Discussion of Comments

A total of 20 commenters responded to the solicitation of comments in the April 27, 1999, notice of proposed rulemaking. A discussion of those comments follows.

Section 111.1

Comment:

The following two comments addressed the proposed definition of ''customs business'':

1. The first comment stated that the definition of ''customs business'' should specify which activities constitute the ''preparation and activities related to the preparation of documents''.

2. The second comment asserted that the language in § 111.1 expands the definition in a manner not authorized by statute, by inserting the phrase ''in furtherance of *any other customs business activity*'' (emphasis added) in place of the statutory language ''in furtherance of *such activities*'' (emphasis added) in the second sentence of the definition.

Customs response: 1. In determining how to define ''customs business'' in part 111, Customs concluded that the range of activities which potentially could be categorized as ''customs business'' was too broad for individual activities to be listed in the regulatory text. Questions on which activities constitute ''customs business'' will be answered through the prospective ruling and internal advice procedures and through the issuance of informed compliance publications. Consequently, the new definition of ''customs business'' in part 111 does not include specific exemplars or otherwise go beyond the general approach of the definition in 19 U.S.C. 1641.

2. Customs disagrees with the second comment. The language used in the second sentence of the regulatory text was intended to ensure that those ''other'' activities refer to the customs business activities listed in the first sentence in the definition, and not to the document preparation and transmission activities mentioned in that second sentence. Given that what is

defined is ''customs business,'' this textual clarification simply avoids the appearance of a tautology or circularity. No expansion of the statutory definition was intended or will result from the proposed regulatory text.

Comment: A commenter suggested that the interchangeable use of the terms ''customs broker'' and ''broker'' throughout the regulations is confusing.

Customs response: Both terms are defined for purposes of part 111, and it is clear from those definitions that both have the same meaning. Accordingly, Customs does not believe that any change to the regulatory texts should be made in response to this comment.

Comment: A commenter recommended that the term ''port director'' be used consistently throughout the regulations, instead of being used interchangeably with the term ''director of the port''. This commenter also asked that the terms ''port director'' and ''port'' be defined in part 111.

Customs response: As regards the first point, the term ''director of the port'' is used as a substitute for ''port director'' purely for reasons of sentence structure, and Customs believes it is clear that the two terms have the same meaning. On the second point, Customs believes that the suggestion is unnecessary, because ''port'' is already defined for general Customs Regulations purposes in 19 CFR part 101, and the meaning of ''port director'' can be logically inferred when it appears in conjunction with the word ''port'.

Section 111.2

Comment: A commenter questioned the need for district permits, now that districts and regions have been eliminated for other Customs purposes and Customs has the ability to monitor a broker's activities through automation.

Customs response: Until such time as Congress repeals the permit system required by 19 U.S.C. 1641(c), brokers must have, as appropriate, either a national permit or a district permit, or both, to transact customs business for others.

Comment: A commenter stated that § 111.2(a)(2)(i) is contrary to law because it precludes persons other than the importer, his or her authorized regular employees or officers, or a customs broker from transacting customs business on behalf of the importer. The commenter asserted that this regulation conflicts with section 484(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(1)).

Customs response: Customs disagrees. Section 484(a)(1) authorizes one of the parties qualifying as ''importer of record,'' either in person or by an agent authorized by the party in writing, to make entry. An ''importer of record'' can be the owner or purchaser of imported merchandise, or a licensed customs broker appropriately designated by the owner, purchaser, or consignee of the merchandise. (19 U.S.C. 1484(a)(2)(B)). The statute governing brokers further restricts who may make entry. Section 641(b)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(1)) states that ''no person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license * * *'' The filing of entry documentation qualifies as ''customs business'' (19 U.S.C. 1641(a)(2)). It follows that the only ''agents'' eligible to make entry on behalf of the owner or purchaser of imported merchandise are either persons from within the owner or purchaser's own organization, such as an employee or officer, or alternatively, a licensed customs broker.

Comment: A commenter recommended amendment of § 111.2(a)(2)(i) to allow corporations under common ownership or control to be considered a single entity. This would enable companies with subsidiaries and incorporated divisions to centralize their personnel with customs knowledge under one unit and to have that unit provide comprehensive customs services to all subsidiaries and divisions.

Customs response: Parent corporations and their subsidiaries and incorporated divisions are precluded by their separate legal status from providing customs business assistance to each other, unless they have a broker's license and the necessary district permits and powers of attorney. Customs cannot agree to amend § 111.2(a)(2)(i) as suggested, because to do so would have the effect of denying the reality of the separate legal status of these entities. Affected parties should keep in mind, however, that a licensed entity with a national permit may be able to offer comprehensive customs business assistance to related subsidiaries, divisions, and parents, without having to obtain multiple district permits, by taking advantage of the employee implant and post-entry representation exceptions to the district permit rule.

Comment: One commenter questioned the requirement in § 111.2(a)(2)(ii)(A)(*1*) that employees of brokers who are authorized to sign customs business documents be U.S. residents. This commenter pointed out the inconsistency of imposing a residency requirement on employees of brokers but not on licensed and permitted brokers, who, if they are individuals, may also be signing customs documents.

Customs response: Customs agrees that the restriction lacks logic. Accordingly, the regulatory text in question has been modified in this final rule by removing the residency requirement for employees with signature authority.

Comment: A commenter asked whether § 111.2(a)(2)(iv), which allows carriers without a broker license to make in-bond transportation entries for others, applies to agents of carriers and to all types of in-bond transportation entries.

Customs response: Yes. Agents of carriers may make in-bond transportation entries for all types of in-bond transportation entries.

Comment: A commenter suggested that § 111.2(a)(2)(v) would be an appropriate vehicle for amending the Customs Regulations to clarify that a broker must obtain a power of attorney to file a commercial informal entry for a client. Section 111.2(a)(2)(v) authorizes an unlicensed person to enter a noncommercial shipment for another.

Customs response: Customs believes that the suggested change is not necessary, because § 141.46 of the Customs Regulations already requires a broker to obtain a valid power of attorney before transacting customs business for a client. The fact that an entry is ''commercial informal'' does not remove the activity from designation as ''customs business.''

Comment: A commenter suggested insertion of the word ''rule'' after ''General'' in the heading to § 111.2(b)(1), to make it clear that this is the ''general rule'' to which § 111.2(b)(2) refers.

Customs response: It is the opinion of Customs that the proposed layout and terminology are sufficiently clear in this regard and that the suggested change is therefore unnecessary.

Comment: Several commenters submitted observations on the proposed § 111.2(b)(2)(i) provision regarding an employee working in a client's facility (the ''employee implant'' rule). This new provision is an exception to the general rule that a broker must have a district permit to conduct customs business for another in that district. It allows a broker to place an employee in the facility of a client for whom the broker is filing entries at one or more other locations covered by a district permit issued to the broker, even though the broker has no district permit in the broker district in which the facility is

located. The points made by these commenters were as follows:

1. One commenter objected to the requirement that the broker must be filing entries for the client elsewhere; instead, this commenter suggested that brokers should be allowed to place implants if they are conducting ''customs business'' for the client elsewhere. The commenter argued that the adoption of this change would eliminate the exclusivity of this particular district permit exception, which currently would only benefit customs brokers who file entries.

2. Another commenter stated that a broker with an implanted employee should not be subject to penalties if errors are discovered in documentation filed by the client in the broker district in which the client's facility is located. The stated rationale for this comment is the fact that broker implants are precluded by the regulatory text from filing the client's entries or other documents with Customs in the broker district servicing that location.

3. A commenter stated that proposed § 111.2(b)(2)(i) should specify the activities that an implanted employee may perform at the client's facility.

4. Another commenter expressed concern that the implant exception to the district permit diminishes the importance of both the permit system and the requirement for responsible supervision and control.

Customs response: 1. Customs agrees with the suggestion of the commenter, and the regulatory text has been modified in this final rule by inserting the words ''conducting customs business'' in place of ''filing entries.'' It is noted that proposed § 111.2(b)(2)(i) has been redesignated as § 111.2(b)(2)(i)(A) in this final rule.

2. Customs disagrees with the general principle stated by this commenter that brokers should not be held liable in the described circumstances. The broker employee, by virtue of working with the client, may be involved in customs business activities relating to the preparation of the documents which the client files. The law imposes sanctions on brokers who perform customs business activities improperly. Customs will examine each situation on a case-by-case basis to determine if sanctions are warranted.

3. It was the intent of Customs that the broker implant would confine his customs business activities to those matters that can be accomplished on-site. Since the range of activities which could potentially fall under the definition of ''customs business'' is so broad, it would more appropriate to specify qualifying activities on a case-by-case basis through the binding rulings process.

4. Customs agrees that the proposed regulation is inconsistent with the statutory requirement that a broker have a national permit or a district permit, or both, to conduct customs business for another: Under the proposed text, a broker could use employee implants to conduct customs business in a broker district without coverage of either a local district permit or a national permit. (The concept of a ''regional waiver'', authorized by 19 U.S.C. 1641(c)(2) and reflected in proposed § 111.19(d)(2), would not apply, because a client facility may be located outside of the borders of the ''broker region'' in which the broker has a district permit.) To ensure consistency with the statutory standard, and in consideration of the fact that an employee implant situation represents an exception to the statutory district permit rule, the regulatory text has been modified in this final rule to require that brokers obtain a national permit before using employee implants (see also the discussion below regarding the reorganization of proposed § 111.2(b)(2)). Finally, in response to the concern expressed by this commenter regarding the potential lack of responsible supervision and control in the implant environment, Customs will continue to expect that any work performed by an employee of a broker will be reviewed by an individually licensed permit qualifier of the broker (see 19 U.S.C. 1641(c)(1)(B) and § 111.19(b)(4) as set forth below), regardless of where the work is performed.

Comment: A commenter objected to the decision reflected in § 111.2(b)(2)(ii) to restrict the district permit waiver to the filing of manual, but not electronic, drawback claims in the designated drawback office located in a district in which the broker does not have a district permit.

Customs response: Customs has reconsidered this matter and agrees with the commenter that brokers should be allowed to file both manual and electronic drawback claims in the drawback office designated by Customs for their broker district, without having to obtain an additional district permit if the designated drawback office is physically located in a broker district in which the broker is not permitted. The first sentence of the regulatory text as proposed has been modified in this final rule to reflect this point. However, the requirement in the second sentence of the proposed text, that a broker must have a national permit to file electronic drawback claims at designated drawback offices covering geographical areas in which the broker does not have a district permit, remains but is set forth in this final rule as § 111.2(b)(2)(i)(B) and with some wording changes to clarify its intended filing context (that is, part 143 electronic filing in a not-designated-drawback office). See also the discussion below regarding the reorganization of proposed § 111.2(b)(2).

Comment: A commenter stated that it would be consistent with the Customs policy of ''nationalizing'' drawback to allow brokers to file notices of intent to export in districts in which they are not permitted.

Customs response: Customs disagrees. The filing of a notice of intent to export is a customs business activity. As already emphasized in this document, brokers are required to have a permit to transact customs business for others.

Comment: A commenter recommended that § 111.2(b)(2)(ii) be amended to allow brokers to file electronic and manual drawback entries, and to represent their drawback clients before Customs, at all locations without having to have district or national permits until the drawback component of the National Customs Automation Program (''NCAP'') becomes operational.

Customs response: Customs cannot adopt this recommendation, because it runs counter to a broker's statutory obligation to conduct customs business under cover of a permit.

Comment: Customs received a relatively large number of comments on the representation after entry acceptance provision of § 111.2(b)(2)(iv). Before proceeding to a discussion of those comments, it is necessary to clarify that this district permit exception provision was intended to apply to representations made after entry summary acceptance, and the regulatory text in this final rule has been modified to reflect that intent and redesignated as § 111.2(b)(2)(i)(D) (see also the discussion below regarding the reorganization of proposed § 111.2(b)(2)).

The points made by the various commenters on the provision regarding representation after entry acceptance were as follows:

1. One commenter requested clarification of the meaning of the term ''representations before Customs.''

2. The same commenter also asked how ''representing a client before Customs'' differs from the ''performing of customs business.'' This commenter also expressed confusion over the ''different permit requirement(s)'' for the performing of customs business and the making of post-entry summary representations.

3. One commenter claimed that the standard set forth in proposed § 111.2(b)(2)(iv), under which a broker must have a national permit in order to represent an importer on post-entry matters in situations where the broker did not file the entry and entry summary and does not have a district permit in the broker district in which the representations are made, is in conflict with a broker's right under § 111.5 to represent a client before government agencies.

4. Two commenters supported the concept of post-entry representation by another broker who had no connection to the filing of the entry, but they questioned the connection between post-entry representation and national permits. These commenters stated that the purpose behind national permits is to allow the implementation of remote location filing and of the other components under NCAP.

5. Another commenter in support of choice in post-entry representation stated that Customs should require brokers to formally establish their authority to represent an importer on any given matter.

6. One commenter objected to the proposed § 111.2(b)(2)(iv) post-entry representation provision, stating that brokers who file an entry for a client should not be in the position of being replaced.

7. A commenter requested that proposed § 111.2(b)(2)(iv) be eliminated, for the reason that a broker should be allowed to represent an importer in a district for which the broker does not have a permit irrespective of whether the broker has been issued a national permit. This commenter stated that many importers will want their ''primary broker'' to handle post-entry work, even in situations when an outport broker selected by the primary broker filed the entries.

8. Another commenter suggested that since the issuance of national permits will likely be tied to the implementation of the ACE system, the requirement for a national permit for post-entry representations when the broker does not have a district permit should be put on hold or abolished entirely.

9. A commenter stated that proposed § 111.2(b)(2)(iv) should allow the ''actual importer'' to select a broker to make post-entry representations when another broker served as the importer of record on the entry.

Customs response: 1. Customs intends the term ''representations before Customs'' to encompass any post-entry-summary activity that arises out of the entry or that concerns the merchandise covered by the entry, for example, responding to requests for information or preparing and filing protests or meeting with Customs officials to explain the client's position.

2. ''Representing a client before Customs'' and the ''performing of customs business'' are related in that an importer hires a broker to represent its interests before Customs on matters concerning the transaction of customs business. Thus, the ''representations'' made by the broker to Customs will involve issues falling within the definition of ''customs business.'' As regards the second point regarding permit requirements, the general rule is that a broker must have a district permit to conduct customs business in the broker district in which the transaction occurs. Usually this general rule would apply to brokers who perform post-entry-summary customs business activities for clients. However, brokers may conduct post-entry-summary work for clients under a national permit when the provisions of proposed § 111.2(b)(2)(iv) apply, that is, the entry was filed by the owner or purchaser or by another broker, and the owner or purchaser has elected to hire a second broker to handle its post-entry-summary matters.

3. Customs disagrees. Section 111.5 contemplates that the broker making the representations has already been involved in some aspect of the importation or exportation of the merchandise, such as the filing of the consumption or drawback entry, and thus will have the requisite district permit. Proposed § 111.2(b)(2)(iv), on the other hand, allows brokers to represent clients even though they played no part in the original entry. The latter provision was included in the proposed regulations to give importers the choice of engaging one broker to file the entry and entry summary and another to handle any ensuing post-entry matters. It is conceivable that the second broker may be located outside of the broker district in which the entry and entry summary were filed. The proposed § 111.2(b)(2)(iv) exception to the district permit rule simply enables the second broker who has a national permit to represent the client without having to obtain a district permit in the broker district where the entry was filed and where, presumably, the post-entry representations will be made.

This comment has, however, prompted Customs to reevaluate the position reflected in proposed § 111.2(b)(2)(iv) that the post-entry representation provision will only apply if a broker files the entry and entry summary. Upon further reflection, Customs has concluded that the benefits of this provision should also extend to those situations in which the owner or purchaser files the entry and entry summary. Consequently, Customs has amended the regulatory text in this final rule to refer to representation by ''a broker'' (rather than ''another broker'') who did not file the entry, in order to allow post-entry representation by brokers holding a national permit when the entry was filed either by the owner or purchaser or by another broker who was not acting as importer of record. See also the discussion below regarding the reorganization of proposed § 111.2(b)(2).

4. Customs agrees with the assessment that NCAP is a major reason for the establishment of national permits. This opinion is supported by the legislative history discussing national permits. However, it is the position of Customs that their use is by no means restricted to NCAP, and it is noted in this regard that 19 U.S.C. 1641(c)(1)(A) provides for the issuance of national permits to licensed customs brokers ''for the conduct of such customs business as the Secretary (of the Treasury) prescribes by regulation.'' Clearly, there is agency discretion to determine the purposes for which national permits will be used.

5. The broker would still have to have in his files a valid power of attorney from a client as provided in § 141.46 of the Customs Regulations to establish his authority to represent the client. Customs believes that this requirement (rather than also requiring that the broker establish his authority on a case-by-case basis) is sufficient for purposes of post-entry representations.

6. It is the position of Customs that the selection—or replacement—of a broker by an importer is a matter solely between those two private parties.

7. The observation of this commenter regarding the use of a ''primary broker'' may be correct, but an importer's preference to have a particular broker perform post-entry functions does not override the statutory requirement that a broker have a district or national permit, or both, to transact customs business. Accordingly, Customs does not agree that this regulatory provision should be eliminated.

8. Customs disagrees. The issuance of national permits is not contingent upon ACE being operational. Further, as already noted above, current law does not allow Customs to abolish or ignore the permit requirement.

9. Customs does not agree with this suggestion. The proposed regulation was specifically drafted in order to, among other things, preclude the application of this district permit exception in cases where a broker is named as the importer of record on the

entry. This is because being designated as ''importer of record'' automatically imposes obligations on the person acting in that capacity. For example, the importer of record is responsible for the payment of estimated duties (and will also be liable for any increased and additional duties if an actual owner's declaration and superseding bond are not filed). Given this assumption of obligations, the importer of record must be allowed to retain the right to represent himself, or to select his own representative, in post-entry matters.

Reorganization of Proposed § 111.2(b)(2)

Finally, in the light of the various comments on § 111.2(b) as summarized above and as a consequence of the substantive changes Customs has agreed to make to the regulatory texts as indicated above, Customs has concluded that some restructuring of the regulatory text should also be made. The general rule, that a broker is required to have a separate district permit for each broker district in which the broker conducts customs business for clients, remains as § 111.2(b)(1). However, the ''exceptions'' to the statutory district permit rule listed in § 111.2(b)(2) as set forth below have been reorganized into two basic groups, the first consisting of a ''national permit'' exception (which would no longer be limited to NCAP participants and transactions—see also the comment discussion below regarding § 111.19(f)) with subparagraphs covering employee implants, electronic filing of drawback claims outside the designated drawback office, electronic transactions performed under an existing NCAP component, and post-entry-summary representations, and the second consisting of the filing of manual and electronic drawback claims in the designated drawback office.

Section 111.5

Comment: One commenter objected to § 111.5(b), which provides that, in order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it. The basis of the objection was that Customs has no statutory authority to regulate a broker's interactions with other government agencies.

Customs response: Customs disagrees with the rationale presented by this commenter. The statutory authority for the regulatory provision in question is section 641(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(f)), which gives the Secretary of the Treasury broad authority to prescribe rules and regulations relating to the customs business of customs brokers. Many import transactions involve compliance with the laws and regulations of other government agencies. The involvement of regulations of another agency besides Customs in an import transaction does not take away from the fact that the broker is conducting ''customs business.'' Since the regulation is directed only to the actions of brokers while conducting customs business, it is entirely consistent with the authority conferred by section 641(f).

Section 111.11

Comment: Two commenters requested that the process of qualifying for an individual broker's license be made more stringent, to reflect brokers' status as ''experts'' under the Customs Modernization Act's reasonable care standards. One method suggested was to require applicants to possess a college degree, preferably in a business discipline; another was to require a person to have a 3-year employment history in the customs brokerage business prior to submitting the application.

Customs response: While Customs agrees with the expressed aim of these comments, the imposition of the suggested additional standards does not appear to be necessary because the same goal can be reached at least as well, if not more effectively, through the present individual written examination process which is specifically designed to test an applicant's knowledge of customs requirements and procedures.

Comment: One commenter objected to the new requirement in § 111.11(a)(4) ''to pass the written examination within three years of applying for a broker's license.'' A second commenter addressed a related concern, questioning how the new 3-year rule would affect Customs employees who have passed the examination but whose license issuance has been delayed pending their separation from government service.

Customs response: With regard to the first comment, this commenter misinterpreted the new provision. Instead of requiring an applicant to pass the broker's examination within three years of applying for a license, a person will now have three years in which to apply for a license after passing the examination. This arrangement reflects the newly-instituted separation of the examination and license application processes as discussed in the preamble portion of the April 27, 1999, notice of proposed rulemaking. As regards the second comment, that issue is currently under review and will be the subject of a separate policy determination.

Comment: Another commenter stated that the proposed regulation on the basic requirements for a corporate broker license, contained in § 111.11(c), would allow a corporate license to be issued in a district in which the corporation has neither a licensed officer nor a licensed employee resident within the district.

Customs response: Although the comment incorrectly implies that licenses are issued on a district basis (licenses are only issued on a national basis), it has prompted Customs to reevaluate certain aspects of § 111.11. As a result, proposed §§ 111.11(b)(2) and 111.11(c)(3) have been removed because the substance of their intended message—that is, that the holder of a partnership or association or corporate license will establish an office and will employ a licensed individual in the broker district in which the partnership or association or corporation operates as a broker—is adequately addressed in § 111.19 which concerns broker permits. Customs believes that these changes are necessary because it is clear that the proposed §§ 111.11(b)(2) and 111.11(c)(3) relate more logically to the district permit issuance process (which concerns the actual place where a licensee's brokerage activities are carried out) than to the national license issuance process. In addition, §§ 111.11(b) and 111.11(c)(2) have been modified in this final rule to clarify that a partnership, association or corporation must have a licensed member or officer for the partnership, association or corporation to qualify for a broker license. See also the comment discussion below regarding § 111.19 for other related changes made to that section.

Section 111.12

Comment: One commenter suggested that notice of the filing of an application for a broker's license should be posted on the Customs Electronic Bulletin Board or in some other electronic fashion in addition to being posted at the customhouse.

Customs response: Customs agrees. Accordingly, § 111.12(b) has been modified in this final rule by the inclusion of a reference to the posting of this information by appropriate electronic means.

Section 111.13

Comment: One commenter questioned the legality of the provision in § 111.13(c) which authorizes an individual to take a special written examination for the purpose of

continuing the business of a sole proprietorship broker, on the ground that a license issued to an individual is non-transferrable. This same commenter also recommended the inclusion of an appeal process for the denial of a request for a special written examination.

Customs response: Customs agrees with the statement that licenses are non-transferrable. However, Customs notes that the provision in question exists solely to allow the continuation of the business infrastructure, and not of the license, of a sole proprietorship in the event of the proprietor's incapacity or death. The regulation contemplates that the person taking the special examination will place the business in his or her own name upon receipt of the license, or that a corporation, association, or partnership will be formed with the newly-licensed individual serving as the qualifying officer or member. Disruption of jobs and client services will thus be minimized. As regards appeals, Customs does not believe that an appeal procedure would be appropriate in this context. The special examination provisions were put in the regulations as an accommodation to brokers. Allowing a person to take a special examination is purely discretionary on Customs part, as is denying a special examination request and directing the prospective broker to take the next regularly scheduled examination.

Section 111.14

Comment: Several commenters requested that Customs establish a maximum length of time after receipt of an application for a license during which background investigations on applicants will be completed.

Customs response: Customs has for some time been aware of concerns over this issue, and Customs is currently exploring ways to expedite the investigative process. However, this issue is an administrative, operational matter that should be addressed outside the Part 111 regulatory framework.

Section 111.16

Comment: A commenter proposed that Customs, in its investigation of a license applicant, be limited to reviewing derogatory information that occurred within 15 years of the date of the submission of the license application. The use of older convictions or proof of other unacceptable conduct as grounds for denial of a license when the applicant has had an otherwise clean record since that time would be, in this commenter's view, unfair.

Customs response: Customs does not believe that this suggestion should be adopted because Customs must have the most complete information possible on each applicant.

Section 111.19

As a consequence of the comments on proposed § 111.11 as discussed above, Customs also performed a general review of proposed § 111.19 which concerns permits. As a result of that review, some wording changes have been made to the § 111.19 text in this final rule to improve its clarity. These changes involve: (1) In § 111.19(b), removal of the references to an ''additional'' district in the application information provisions in order to clarify that those requirements apply to all permit applications (including an application for an initial permit); (2) in § 111.19(d)(1), changing the first sentence to refer to an applicant for a ''district permit'' to make it clear that the obligation of a broker regarding a place of business and regarding the exercise of responsible supervision and control over the customs business conducted in each broker district extends to all broker districts (rather than just to those broker districts in which the broker has received an additional permit); and (3) in the introductory text of § 111.19(f), inclusion of a specific statement to clarify what was only implied in § 111.19(a), that is, that a broker must have a district permit in order to obtain a national permit (see also the comment discussion below regarding § 111.19(f) for other changes to this introductory text).

Comment: Two commenters addressed § 111.19(b)(6), which requires applicants for additional district permits to include the place of storage of brokerage records and the names of the applicant's recordkeeping officer and back-up recordkeeping officer in the application. One of the commenters questioned the need for brokers to have a recordkeeping officer at all, and both commenters challenged the back-up recordkeeping officer requirement. Finally, one of these commenters asked why the designated recordkeeper has to be an officer of the broker.

Customs response: Customs notes that the proposed text in question was not consistent with the cross-referenced substantive regulatory provision (that is, § 111.21 which, in paragraph (c), contains no mention of a recordkeeping officer and back-up recordkeeping officer but instead simply requires the existence of a knowledgeable company employee recordkeeping contact). Accordingly, § 111.19(b)(6) has been modified in this final rule to more accurately reflect the terms of § 111.21(c) in this regard. As regards the need for a recordkeeping contact, this requirement was adopted in connection with the revision of the Customs recordkeeping regulations (see T.D. 98–56 which was published in the **Federal Register** at 63 FR 32916 on June 16, 1998) and should be retained.

Comment: One commenter raised a specific issue with regard to the national permit requirements of § 111.19(f) and then posed a more general question on the entire permit system, as follows:

1. The commenter first asked why national permits would be issued only to NCAP participants.

2. The commenter then asked why individuals who are licensed brokers and who serve as ''licensed consultants'' need permits at all.

Customs response: 1. Although Customs originally envisioned that applicants for a national permit would have to have NCAP capabilities and therefore included that requirement in proposed § 111.19(f), as indicated in the comment discussion above regarding proposed § 111.2(b)(2), it has since become apparent that the existence of other customs business activities outside of NCAP, for which national permits would be necessary, renders making the application contingent upon NCAP capability impractical. Accordingly, Customs now believes that an applicant for a national permit should simply have to meet certain basic requirements for the permit. Once the national permit has been secured, the national permit holder might then have to separately qualify for a specific program under which the national permit would be used, such as the filing of entries from a remote location, but that would be a function of the specific program at issue rather that a requirement under § 111.19(f). Accordingly, § 111.19(f) has been modified in this final rule by removing all references to NCAP from the introductory text and by removing paragraph (f)(4).

2. A similar question was raised earlier in this document, to which Customs simply responded that permits are required by law. However, ''licensed consultants'' will be able to represent clients on post-entry matters under § 111.2(b)(2) as modified in this final rule without having to obtain numerous district permits, provided they have a national permit secured by one district permit.

Section 111.23

Comment: One commenter noted that the word ''papers'' (rather than

''records'') is used in the last sentence of § 111.23(a)(2).

Customs response: Customs agrees that ''records'' is the proper term to be used in this context. Accordingly, the text in question has been modified in this final rule by replacing the words ''copies of papers'' with ''records.''

Comment: Two commenters addressed the provision in § 111.23(b)(1) which states that ''the option of maintaining records on a consolidated basis is generally available to brokers who have been granted permits to do business in more than one district.'' They stated that the use of the word ''generally'' undermines brokers'' absolute right to consolidate their records.

Customs response: Although in connection with the revision of the Customs recordkeeping regulations (see T.D. 98–56 mentioned above) it was decided to dispense with the requirement that brokers obtain approval from Customs before consolidating records, Customs does not agree with these commenters that the consolidation of broker records is an absolute right. This is because, if the consolidation involves going to an alternative method of storage and any of the records to be consolidated are required to be maintained under 19 U.S.C. 1508, some restrictions on the right to consolidate may apply under 19 CFR 163.5(b). Since use of the word ''generally'' does not adequately clarify this point, § 111.23(b)(1) has been modified in this final rule by removing ''generally'' and adding an exception clause regarding the application of a restriction under § 163.5(b).

Comment: A commenter stated that brokers should be allowed to retain records of their customs transactions at sites that are accessible to the broker business locations that created them, instead of within the broker districts that cover the Customs ports to which they relate. This commenter argued that brokers holding permits in multiple broker districts may prepare the customs documents at different locations than the ports or even the districts in which the transactions occur, and that it would serve no beneficial purpose to create duplicate sets of records.

Customs response: Customs believes that the consolidation provisions of § 111.23 as proposed would afford brokers the necessary flexibility to store their records at locations that are most convenient to their business operations. Therefore, no further amendment to § 111.23 appears necessary.

Section 111.24

Comment: Two commenters expressed general support for the proposed amendment which allows brokers to disclose client information to sureties. One of these commenters, however, expressed concern over the statement in the preamble portion of the April 27, 1999, document that disclosure to a surety ''will not automatically constitute a violation,'' because the statement implied that in some instances disclosure might constitute a violation. Both of these commenters also objected to the fact that disclosure would be discretionary on the part of the broker.

Customs response: As regards the first point, use of the word ''automatically'' was not intended to imply that a broker may be subject to sanction if client records are turned over to a surety. Rather, the intent was simply to point out that, in contrast to the former provision, disclosure would no longer constitute a violation. With regard to the second issue, the Customs position continues to be that, absent a subpoena, the disclosure of client records to a surety is at the option of the broker.

Comment: One commenter urged Customs to publish a ''positive statement encouraging brokers to provide information to sureties, and for Customs to develop guidelines indicating the situations in which disclosure is most clearly appropriate.''

Customs response: Customs has no intention of taking the suggested actions at this time. Customs remains of the view that these are matters to be worked out between sureties and brokers.

Comment: A commenter stated that the term ''or other duly accredited officers or agents of the United States'' should be more clearly defined, or eliminated entirely. This commenter asserted that, in the absence of a subpoena, brokers should only be required to turn over client records to officers under the jurisdiction of the Commissioner of Customs. By way of explanation, the commenter related an incident in which there was confusion when state tax authorities requested importer records from a broker.

Customs response: Customs believes that it is commonly understood that ''an officer or agent of the United States'' refers to employees of the federal government, and not to state or local authorities. Consequently, no change to the regulatory text is necessary in this regard.

Section 111.25

Comment: One commenter stated that part 111 should advise brokers of their right to refuse access to records unless served with an administrative summons. This commenter stated that this right is conferred by the general recordkeeping regulations of 19 CFR part 163.

Customs response: Customs disagrees with the observations of this commenter for two basic reasons. First, part 163 does not give a broker an unconditional right to refuse access to records unless served with an administrative summons. In the case of entry records required to be maintained and made available by a broker under 19 U.S.C. 1508 and 1509 and under part 163, if the broker fails to timely produce any of those records following receipt of a written, oral or electronic demand for the records from Customs pursuant to § 163.6(a), the broker may be subject to monetary penalties as provided in § 163.6(b). In addition, in the case of records of a broker that are not entry records but that are nevertheless subject to the retention and examination requirements of 19 U.S.C. 1508 and 1509 and part 163 (see § 163.6(c)), or if a broker fails to produce demanded entry records but no monetary penalty action is taken under part 163, the broker may be subject to disciplinary action under part 111. In both cases the sanctions that may be applied do not depend on the issuance of a Customs summons which is a separate procedure having its own enforcement mechanism (see §§ 163.7 through 163.10). Second, whereas the provisions of part 163 apply specifically to records (including those of brokers) that relate to activities listed in 19 U.S.C. 1508, there are other records that brokers must maintain outside the part 163 context, that is, records that are unique to the conduct of a brokerage business under 19 U.S.C. 1641 and part 111 (for example, powers of attorney and financial records regarding clients' accounts). This distinction is noted in § 163.2(d), which provides that ''(e)ach customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter,'' and in the last sentence of § 111.25 which states that ''(r)ecords subject to the requirements of part 163 of this chapter shall be made available to Customs in accordance with the provisions of that part.'' Section 111.25, the substance of which relates to records that arise in a part 111 context, provides that the records be made available ''upon reasonable notice'' but does not require the issuance of a summons, and a failure to make those records available to Customs could result in disciplinary action under part 111.

Section 111.28

Comment: The following comments were made regarding the employee information reporting provisions of § 111.28(b):

1. A commenter stated that the lists of current and new employees required by § 111.28(b) should be provided to the port director at the ''lead'' port, and not at every port within the broker district where the broker does business.

2. Several commenters questioned the requirement in proposed § 111.28(b)(1)(i) for an updated list of current employees to be submitted with the triennial status report. If Customs decides to retain the requirement, it was suggested that the list should only contain information on name, current address, date and place of birth, and social security number. One of these commenters argued that it would be administratively burdensome for brokers to have to keep track of their employees' last prior home addresses and of which employees had been employed for 3 years or less. Since that information would have been reported initially to Customs, it was suggested that it would be unnecessary to do so again.

3. A commenter questioned why updated lists should be sent to the port director of the port where the license was issued, instead of to the ports in which the broker is permitted to conduct customs business.

4. Another commenter observed that § 111.28 makes no provision for the reporting of transferred employees of brokers.

Customs response: 1. Customs disagrees. One of the main purposes behind this requirement is for the local customs officers to be familiar with the local brokerage community. This can best be accomplished by notification at the port at which the employee of the broker will be working.

2. Customs agrees in part with the concerns expressed by these commenters. While it remains the position of Customs that updated employee lists are necessary, upon reconsideration Customs now believes that some of the information proposed to be required in the updated reports is superfluous. Accordingly, the last sentence of § 111.28(b)(1)(i) has been modified in this final rule to list the specific information that must be included in the updated employee list (which does not include the last prior home address or the prior employment information on an employee employed by the broker for less than 3 years).

3. Updated employee lists are sent to the port through which the license was delivered simply because they are submitted with the triennial status report (see also the comment discussion regarding § 111.30(d) below). Customs will then route the lists to the various ports identified in the updated lists as being the ports in which the broker employees are working.

4. While there is no specific reference to the reporting of a transfer of an employee, Customs believes that a broker employee who is transferred from one port to another would have to be reported under § 111.28(b)(1)(i) either upon the opening of a new office or as an inclusion in the update list submitted with the triennial report.

Comment: The following comments were submitted regarding § 111.28(d), which requires the reporting of ownership changes in a broker to Customs:

1. Several commenters asked why brokers are required to send a copy of the notice of change in ownership to the directors of each port through which a permit has been granted. They stated that notice to Customs headquarters should suffice.

2. Another commenter stated that § 111.28(d) would require a broker to notify Customs whenever there is a five percent or greater change in ownership of a broker and the ownership shares are not publicly traded. This commenter then went on to say that it would be very difficult for a broker whose shares are not publicly traded and are owned by another publicly traded firm, to keep track of and report changes of ownership in the parent firm. The commenter asked that an exception to the reporting requirement be made if the owner of the not-publicly-traded shares of the brokerage is a large publicly traded company.

3. Another commenter questioned the statutory authority of Customs to force a broker to divest itself of a new principal who does not pass a background investigation. This commenter also claimed that applying this rule only to non-publicly-traded brokers is discriminatory.

Customs response: 1. Customs disagrees. One of the purposes behind this regulation is to enable Customs to better monitor who participates in the customs brokerage industry. Local Customs officials will in some instances have a greater familiarity than their counterparts at Customs headquarters with the reputations of persons acquiring all or part of an established brokerage firm. Therefore, the notification requirement at both the port and headquarters levels must remain in place.

2. Customs would first point out that this comment appears to read the regulatory text as providing that at least a five percent interest must change hands before the reporting requirement is triggered. This reading of the text is incorrect. The proposed regulation states that a broker shall immediately provide written notice to Customs ''(i)f the ownership of a broker changes and ownership shares in the broker are not publicly traded.'' It does not attach a percentage threshold below which an ownership change is not required to be reported. The five percent figure comes into play in identifying whether a change of ownership results in the addition of a new principal. This is because a principal is defined as ''any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in a broker or in the business of a broker.'' The addition of a principal is significant for purposes of § 111.28(d) because Customs reserves the right to conduct background investigations of new principals and to require their removal if the results of the investigation are unsatisfactory. However, the five percent figure does not directly relate to the change of ownership reporting requirement. With respect to the concern expressed that it will be difficult to monitor and report trades in the shares of the parent firm, when such a firm exists, it is Customs intent that only changes in the ownership of the broker, and not of the broker's parent firm, be reported to Customs.

3. The authority to force a broker to divest itself of a new principal who does not pass a background investigation stems from 19 U.S.C. 1641(f), which permits the Secretary of the Treasury to prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary ''considers necessary to protect importers and the revenue of the United States * * *.'' As regards the issue of discrimination, it is not the intent of Customs to discriminate among classes of brokers because of their business structure. Indeed, Customs wants to reserve the right to investigate all new principals, regardless of how they obtained their ownership interest in the broker. The reporting onus falls on non-publicly-traded companies simply because information about publicly-traded corporations is widely available from other sources. However, Customs agrees that the proposed regulation could be read to restrict investigation and removal to new principals of non-publicly-traded companies. Therefore, § 111.28(d) has been modified in this

final rule to ensure that the investigation and removal processes apply equally to new principals of publicly-traded brokers and to new principals of non-publicly-traded brokers.

Section 111.29

Comment: A commenter requested that proposed § 111.29(a) be changed to require the broker to remit overdue payments received from a client within 5 working days from the funds being confirmed as paid by the client's bank, instead of within 5 working days from receipt by the broker. This request was made to protect brokers in situations where there are insufficient funds to cover the client's check.

Customs response: Customs does not believe that an amendment to the regulatory text is required to accommodate this commenter's concern because, under a proper interpretation of § 111.29(a), ''receipt'' by a broker would mean actual receipt of the funds following their clearance from the client's bank.

Comment: One commenter referred to the requirement in § 111.29(b)(2)(i) that importers must be provided with written notification that payment to a broker will not relieve the importer of liability for Customs charges if the charges are not paid by the broker and that the notification must be on, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982. This commenter stated that the ''September 27, 1982'' effective date must be removed and replaced with ''the effective date of these regulations;'' otherwise, any power of attorney issued after September 27, 1982, would be invalid if it did not have the required notification.

Customs response: The commenter's observation about powers of attorney without the notification being invalid is correct. This is because this regulation, and its notification requirement, have been in effect since the effective date of Treasury Decision 82–134 (September 27, 1982). The current revision of part 111 does not nullify the notification requirement that has been in place since that date, nor does it render post-1982 powers of attorney without the requisite notification suddenly valid. Consequently, Customs declines to adopt the change suggested by this commenter.

Section 111.30

Comment: One commenter requested clarification of the requirement in proposed § 111.30(b)(2) that an organization report any other change in the legal nature of the organization, particularly as regards the meaning of ''change in the legal nature.'' Absent clarification, this commenter argued, Customs could be inundated with irrelevant paperwork, and brokers could unwittingly be sanctioned for lack of compliance.

Customs response: Customs agrees that some clarification would be useful. Although it is not possible to come up with an all-inclusive list of potential changes in legal nature, the § 111.30(b)(2) text has been modified in this final rule by the inclusion of several illustrative examples.

Comment: Another commenter referred to the triennial status report of § 111.30(d). This commenter first stated that Customs should devise a specific form to be used as a status report. The commenter then questioned the need in § 111.30(d)(2)(iii) for individual brokers to have to make a statement that they continue to meet the requirements of § 111.11 and § 111.19 and have not engaged in any conduct that could constitute grounds for suspension or revocation.

Customs response: Regarding the first point, Customs already provides a specific form to be used as a status report; Customs sends this form to license holders at their last known address prior to the filing date of the report. With regard to the second issue, Congress has vested Customs with authority to protect importers and the revenue through regulation of customs brokers. Requiring the statement is an exercise of that authority. Customs considers this to be far less onerous on brokers than requiring them to submit to periodic background reinvestigations. Therefore, Customs believes that the requirement is appropriate and should be retained in the regulations.

Comment: One commenter suggested that proposed § 111.30(d)(1) be amended to require submission of the triennial status report to the port director through which the application for the broker's license was made, instead of to the director of the port through which the broker's license was issued. Two reasons were given for this request. First, the actual license, printed on Customs Form 3131, states that licenses are issued in Washington, D.C. Second, there has been confusion when individuals have applied for a license in one port and have received their license at another following a job transfer or move.

Customs response: While a broker's license is always issued out of Customs Headquarters, § 111.15 provides for delivery of the license to the broker through a port director's office (normally the port where the license application was filed and processed). In order to avoid any confusion on the points raised by this commenter, § 111.30(d)(1) has been modified in this final rule to provide that the status report must be addressed to the director of the port ''through which the license was delivered to the licensee (see § 111.15).'' For purposes of consistency, similar language has been included in § 111.19(a) as set forth below regarding concurrent issuance of an initial district permit.

Section 111.36

Comment: The following comments were submitted on § 111.36(a) which concerns obligations of a broker when the broker is employed by an unlicensed person other than the importer:

1. Two commenters stated that the broker should be required to send a copy of the entry to the actual importer in situations where the broker has been hired by another person (the proposed regulatory text requires the broker to send a copy of the entry or of his bill for services rendered but allows the importer to waive transmittal of both in writing). One of these commenters asserted that the importer needs to see the entry to satisfy ''reasonable care'' requirements. This commenter also urged that the provision be structured to require that the ''actual importer'' be notified in advance of the entry being filed of who the broker will be.

2. A commenter stated that the issue of fee sharing remains vague. This commenter asked for clarification regarding how this rule would apply to several specific factual situations.

Customs response: 1. Customs disagrees. Giving the broker the option of sending either a copy of his bill for services rendered or a copy of the entry (rather than specifying only a copy of the entry) is intended to strike an appropriate balance between the important principles of disclosure and confidentiality. As regards reasonable care, if the broker is hired by a party other than the actual importer, no obligation to exercise reasonable care devolves upon the actual importer. Moreover, the entry law allows the nominal consignee to appoint a broker, so Customs has no right to interfere in that choice. The primary function of the regulation is to enable the actual importer to have access to information which can be used to protect the actual importer's rights in the importation process, such as by filing a protest.

2. The questions presented by this commenter raise issues that are not proper for resolution in the regulations but rather would be more appropriately

addressed through the issuance of either a binding ruling or a response to an internal advice request. Consequently, Customs invites the commenter to write in for a binding ruling or to request internal advice on the matters in question in accordance with the requirements and procedures set forth in 19 CFR part 177.

Modification of § 111.36(a)

Upon further internal review of the proposed § 111.36(a) text, Customs has determined that the words ''purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person)'' should be replaced by the words ''purchased on a delivered duty-paid basis,'' to bring the text in line with modern terms of sale phraseology. The text in this final rule has been modified accordingly.

Comment: A commenter questioned the need for the special rules governing a broker's relations with freight forwarders in § 111.36(c). The commenter expressed the view that the prohibition against brokers sharing fees with unlicensed persons should apply to all unlicensed persons, including freight forwarders. This same commenter also stated that the definition of ''freight forwarder'' contained in § 111.1 is out-of-date and should be changed to take into account new entities such as ocean transport intermediaries, consolidators, and freight brokers.

Customs response: While these comments raise some new and interesting points, these issues are not appropriate for this final rule document but rather should be the subject of separate consideration with a view to possible further regulatory changes at a later date.

Section 111.42

Comment: One commenter requested that the term ''notoriously disreputable'' be more clearly defined in the regulations.

Customs response: Customs is of the view that the term is self-explanatory and therefore requires no further elaboration.

Section 111.96

Comment: One commenter objected to the requirement that the permit user fee be collected by Customs on an annual basis, stating that it places an unnecessary administrative burden on brokers and on Customs. A suggested alternative would be to pay the fee in advance every three years, at the same time as the submission of the triennial status report and the status report fee.

Customs response: For two reasons, it would be inappropriate for Customs to adopt this suggestion. First, it would in effect create a triennial fee when the statute (19 U.S.C. 58c(a)(7)) refers to an annual fee and this, in turn, would lead to potential complications in complying with the mandate of the statute (19 U.S.C. 58c(d)(4)(A)) regarding publication of notice of the permit fee 60 days before the due date. Second, even if the permit fee statute were no bar to this suggestion, Customs believes that adoption of this change would create new administrative burdens, such as having to set up a refund system to reimburse brokers who close operations in a particular broker district within the three-year period.

Additional Changes to the Regulations

In addition to the changes to the proposed regulatory texts identified and discussed above in connection with the public comments, Customs has included the following regulatory changes in this document:

1. Some minor, editorial wording or punctuation changes have been made to the Part 111 texts to enhance their clarity, readability and application but without the intention of substantively affecting the texts. In addition, throughout the part 111 texts, an attempt has been made, wherever practicable, to replace legalistic wording with simple or more direct phraseology, consistent with prevailing plain English drafting principles. Thus, for example, the word ''shall'' has been replaced with either ''must'' or ''will'' depending on the context, the word ''such'' has been either removed or replaced, and, except where it forms part of a defined term, the word ''thereof'' has been removed in favor of repeating the actual words to which it relates.

2. In § 24.1(a)(3)(i) of the Customs Regulations (19 CFR 24.1(a)(3)(i)), the third sentence refers to ''* * * a customhouse broker, not licensed in the district (see definition of ''district'' at § 111.1) where an entry is filed * * *.'' This text is outdated in that it uses the old ''customhouse'' (rather than ''customs'') broker terminology and in that it does not reflect the fact that under the present statute and regulations brokers are licensed on a national, rather than district, basis. The regulatory text has been modified as set forth below to address these points.

3. Finally, this document includes an appropriate update of the list of information collection approvals (see the Paperwork Reduction Act portion of this document below) contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes as discussed above and as set forth below.

Executive order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments primarily represent a clarification of existing statutory and regulatory requirements. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1515–0076 and 1515–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collections of information reviewed and approved under control number 1515–0076 are in §§ 111.12, 111.13, 111.17, 111.19, and 111.28. The information to be collected is necessary for the issuance of customs broker licenses and permits and for monitoring the performance of brokers in the conduct of customs business. The collections of information reviewed and approved under control number 1515–0100 are in §§ 111.30, 111.36, 111.60, and 111.76. The information to be collected is necessary for monitoring the performance of brokers in the conduct of customs business and in connection with the institution of disciplinary actions against brokers. The likely respondents to the collections of information in this final rule are individuals, partnerships, associations, and corporations, including individuals and organizations that are licensed brokers.

The estimated average annual burden associated with the collections of information reviewed and approved

under control number 1515–0076 is 1 hour per respondent or recordkeeper. The estimated average annual burden associated with the collections of information reviewed and approved under control number 1515–0100 is 1 hour per respondent or recordkeeper. Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting information. The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, 19 CFR Ch. I is amended, as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

* * * * *

2. In § 24.1(a)(3)(i), the third sentence is amended by removing the words ''a customhouse broker, not licensed in the district (see definition of ''district'' at § 111.1) where an entry is filed,'' and adding, in their place, the words ''a customs broker who does not have a permit for the district (see the definition of ''district'' in § 111.1 of this chapter) where the entry is filed''.

3. Part 111 is revised to read as follows:

PART 111—CUSTOMS BROKERS

Sec.
111.0 Scope.

Subpart A—General Provisions

111.1 Definitions.
111.2 License and district permit required.
111.3 [Reserved]
111.4 Transacting customs business without a license.
111.5 Representation before Government agencies.

Subpart B—Procedure To Obtain License or Permit

111.11 Basic requirements for a license.
111.12 Application for license.
111.13 Written examination for individual license.
111.14 Investigation of the license applicant.
111.15 Issuance of license.
111.16 Denial of license.
111.17 Review of the denial of a license.
111.18 Reapplication for license.
111.19 Permits.

Subpart C—Duties and Responsibilities of Customs Brokers

111.21 Record of transactions.
111.22 [Reserved]
111.23 Retention of records.
111.24 Records confidential.
111.25 Records must be available.
111.26 Interference with examination of records.
111.27 Audit or inspection of records.
111.28 Responsible supervision.
111.29 Diligence in correspondence and paying monies.
111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.
111.31 Conflict of interest.
111.32 False information.
111.33 Government records.
111.34 Undue influence upon Treasury Department employees.
111.35 Acceptance of fees from attorneys.
111.36 Relations with unlicensed persons.
111.37 Misuse of license or permit.
111.38 False representation to procure employment.
111.39 Advice to client.
111.40 Protests.
111.41 Endorsement of checks.
111.42 Relations with person who is notoriously disreputable or whose license is under suspension, canceled ''with prejudice,'' or revoked.
111.43 [Reserved]
111.44 [Reserved]
111.45 Revocation by operation of law.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

111.50 General.
111.51 Cancellation of license or permit.
111.52 Voluntary suspension of license or permit.
111.53 Grounds for suspension or revocation of license or permit.
111.54 [Reserved]
111.55 Investigation of complaints.
111.56 Review of report on investigation.
111.57 Determination by Assistant Commissioner.
111.58 Content of statement of charges.
111.59 Preliminary proceedings.
111.60 Request for additional information.
111.61 Decision on preliminary proceedings.
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Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the

assessment of monetary penalties, and the revocation or suspension of licenses and permits.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms have the meanings indicated:

Assistant Commissioner. ''Assistant Commissioner'' means the Assistant Commissioner, Office of Field Operations, United States Customs Service, Washington, DC.

Broker. ''Broker'' means a customs broker.

Customs broker. ''Customs broker'' means a person who is licensed under this part to transact customs business on behalf of others.

Customs business. ''Customs business'' means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. ''Customs business'' also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, ''customs business'' does not include the mere electronic transmission of data received for transmission to Customs.

District. ''District'' means the geographic area covered by a customs broker permit other than a national permit. A listing of each district, and the ports thereunder, will be published periodically.

Employee. ''Employee'' means a person who meets the common law definition of employee and is in the service of a customs broker.

Freight forwarder. ''Freight forwarder'' means a person engaged in the business of dispatching shipments in foreign commerce between the United States, its territories or possessions, and foreign countries, and handling the formalities incident to such shipments, on behalf of other persons.

Officer. ''Officer'', when used in the context of an association or corporation, means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute and the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

Permit. ''Permit'' means any permit issued to a broker under § 111.19.

Person. ''Person'' includes individuals, partnerships, associations, and corporations.

Records. ''Records'' means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in § 163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

Region. ''Region'' means the geographic area covered by a waiver issued pursuant to § 111.19(d).

Responsible supervision and control. ''Responsible supervision and control'' means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The training required of employees of the broker; the issuance of written instructions and guidelines to employees of the broker; the volume and type of business of the broker; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of an individually licensed broker for necessary consultation with employees of the broker; the frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker; the frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker; the extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

Treasury Department or any representative of the Treasury Department. ''Treasury Department or any representative of the Treasury Department'' means any office, officer, or employee of the U.S. Department of the Treasury, wherever located.

§ 111.2 License and district permit required.

(a) *License*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, a person must obtain the license provided for in this part in order to transact customs business as a broker.

(2) *Transactions for which license is not required*—(i) *For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker*—(A) *General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(*1*) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but must provide proof of its existence to Customs upon request; or

(*2*) *Authorized to transact other business.* The broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

(*B*) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the port director if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.

(v) *Noncommercial shipments.* An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of § 141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *District permit*—(1) *General.* Except as otherwise provided in paragraph (b)(2) of this section, a separate permit (see § 111.19) is required for each district in which a broker conducts customs business.

(2) *Exceptions to district permit rule*—(i) *National permits.* A national permit issued to a broker under § 111.19(f) will constitute sufficient permit authority for the broker to act in any of the following circumstances:

(A) *Employee working in client's facility (employee implant).* When a broker places an employee in the facility of a client for whom the broker is conducting customs business at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but do not involve the filing of entries or other documents with Customs, the broker need not obtain a permit for the district within which the client's facility is located;

(B) *Electronic drawback claims.* A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143 of this chapter even though the broker does not have a permit for the district in which the filing is made;

(C) *NCAP participation.* A broker who is a participant in the National Customs Automation Program (NCAP) may electronically file entries for merchandise from a remote location and may electronically transact other customs business that is provided for and operational under the NCAP even though the entry is filed, or the other customs business is transacted, within a district for which the broker does not have a district permit; and

(D) *Representations after entry summary acceptance.* After the entry summary has been accepted by Customs, and except when a broker filed the entry as importer of record, a broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

(ii) *Filing of drawback claims.* A broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by Customs for the purpose of filing those claims, and may represent his client before that office in matters concerning those claims, even though the broker does not have a permit for the district in which that drawback office is located.

§ 111.3 [Reserved]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of this part.

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative of the Treasury Department on any matter concerning that merchandise.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker must comply with any regulations of that agency governing the appearance of representatives before it.

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual.* In order to obtain a broker's license, an individual must:

(1) Be a citizen of the United States on the date of submission of the application referred to in § 111.12(a) and not an officer or employee of the United States Government;

(2) Attain the age of 21 prior to the date of submission of the application referred to in § 111.12(a);

(3) Be of good moral character; and

(4) Have established, by attaining a passing (75 percent or higher) grade on a written examination taken within the 3-year period before submission of the application referred to in § 111.12(a), that he has sufficient knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters.

(b) *Partnership.* In order to qualify for a broker's license, a partnership must have at least one member of the partnership who is a broker.

(c) *Association or corporation.* In order to qualify for a broker's license, an association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and

(2) Have at least one officer who is a broker.

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license must be submitted in duplicate to the director of the port where the applicant intends to do business. The application must be under oath and executed on Customs Form 3124. The application must be accompanied by the $200 application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the written examination referred to in §§ 111.11(a)(4) and 111.13. The port director may require an individual applicant to provide a copy of the notification that he passed the written examination (see § 111.13(e)) and will require the applicant to submit fingerprints on Standard Form 87 at the time of filing the application. The port director may reject an application as improperly filed if the application, on its face, demonstrates that one or more of the basic requirements set forth in

§ 111.11 have not been met at the time of filing, in which case the application and fee will be returned to the filer without further action.

(b) *Posting notice of application.* Following receipt of the application, the port director will post a notice that the application has been filed. The notice will be posted conspicuously for at least 2 consecutive weeks in the customhouse at the port and similarly at any other port where the applicant also proposes to maintain an office. The notice also will be posted by appropriate electronic means. The notice will give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, will state the names of all members or officers who are licensed as brokers. The notice will invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* An applicant for a broker's license may withdraw the application at any time prior to issuance of the license by providing written notice of the withdrawal to the port director. However, withdrawal of the application does not entitle the applicant to a refund of the $200 application fee.

§ 111.13 Written examination for individual license.

(a) *Scope of examination.* The written examination for an individual broker's license will be designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters. The examination will be prepared and graded at Customs Headquarters, Washington, DC.

(b) *Date and place of examination.* Written examinations will be given on the first Monday in April and October. An individual who intends to take the written examination must so advise the port director in writing at least 30 calendar days prior to the scheduled examination date and must remit the $200 examination fee prescribed in § 111.96(a) at that time. The port director will give notice of the exact time and place for the examination.

(c) *Special examination.* If a partnership, association, or corporation loses the required member or officer having an individual broker's license (see §§ 111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and § 111.45(a) before the next scheduled written examination, Customs may authorize a special written examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. Customs may also authorize a special written examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special written examination for an individual may also be authorized by Customs if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b) before the next scheduled written examination. A request for a special written examination must be submitted to the port director in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted, the port director will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special written examination, the application for the license may be submitted in accordance with § 111.12. The examinee will be responsible for all additional costs incurred by Customs in preparing and administering the special examination that exceed the $200 examination fee prescribed in § 111.96(a), and those additional costs must be reimbursed to Customs before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the port director at least 2 working days prior to the date of a regularly scheduled written examination that he will not appear for the examination, the port director will refund the $200 examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(e) *Notice of examination result.* Customs will provide to each examinee written notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination will preclude the submission of an application under § 111.12 but will not preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, DC 20229 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. Customs will provide to the examinee written notice of the decision on the appeal. If the Customs decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Secretary of the Treasury within 60 calendar days after the date of the notice of that decision.

§ 111.14 Investigation of the license applicant.

(a) *Referral of application for investigation.* The port director will immediately refer an application for an individual, partnership, association, or corporation license to the special agent in charge or other entity designated by Headquarters for investigation and report.

(b) *Scope of investigation.* An investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(c) *Referral to Headquarters.* The port director will forward the originals of the application and the report of investigation to the Assistant Commissioner. The port director will also submit his recommendation for action on the application.

(d) *Additional investigation or inquiry.* The Assistant Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Assistant Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Assistant Commissioner for the purpose of undergoing further written or oral inquiry into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Assistant Commissioner finds that the applicant is qualified and has

paid all applicable fees prescribed in § 111.96(a), he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license will be forwarded to the port director, who will deliver it to the licensee.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Assistant Commissioner determines that the application for a license should be denied for any reason, notice of denial will be given by him to the applicant and to the director of the port at which the application was filed. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application for the license;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards; or

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Assistant Commissioner.* Upon the denial of an application for a license, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(b) *By the Secretary.* Upon the decision of the Assistant Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for any additional review that the Secretary deems appropriate. This request must be received by the Secretary within 60 calendar days of the Assistant Commissioner's affirmation of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Secretary's decision.

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12.

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part will be concurrently issued a permit for the district in which the port through which the license was delivered to the licensee (see § 111.15) is located and without the payment of the $100 fee required by § 111.96(b), if it is shown to the satisfaction of the port director that the person intends to transact customs business within that district and the person otherwise complies with the requirements of this part.

(b) *Submission of application for initial or additional district permit.* A broker who intends to conduct customs business at a port within another district for which he does not have a permit, or a broker who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, and except as otherwise provided in paragraph (f) of this section, must submit an application for a permit in a letter to the director of the port at which he intends to conduct customs business. Each application for a permit must set forth or attach the following:

(1) The applicant's broker license number and date of issuance;

(2) The address where the applicant's office will be located within the district and the telephone number of that office;

(3) A copy of a document which reserves the applicant's business name with the state or local government;

(4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;

(5) A list of all other districts for which the applicant has a permit to transact customs business;

(6) The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact (see §§ 111.21 and 111.23); and

(7) A list of all persons who the applicant knows will be employed in the district, together with the specific employee information prescribed in § 111.28(b)(1)(i) for each of those prospective employees.

(c) *Fees.* Each application for a permit under paragraph (b) or (f) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial permit concurrently with a license under paragraph (a) of this section.

(d) *Responsible supervision and control*—(1) *General.* The applicant for a district permit must have a place of business at the port where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control over that place of business once the permit is granted. Except as otherwise provided in paragraph (d)(2) of this section, the applicant must employ in each district for which a permit is granted at least one individual broker to exercise responsible supervision and control over the customs business conducted in the district.

(2) *Exception to district rule.* If the applicant can demonstrate to the satisfaction of Customs that he regularly employs at least one individual broker in a larger geographical area in which the district is located and that adequate procedures exist for that individual broker to exercise responsible supervision and control over the customs business conducted in the district, Customs may waive the requirement for an individual broker in that district. A request for a waiver under this paragraph, supported by information on the volume and type of customs business conducted, or planned to be conducted, and supported by evidence demonstrating that the applicant is able to exercise responsible supervision and control through the individual broker employed in the larger geographical area, must be sent to the port director in the district in which the waiver is sought. The port director will review the request for a waiver and make recommendations which will be sent to the Office of Field Operations, Customs Headquarters, for review and decision. A written decision on the waiver request will be issued by the Office of Field Operations and, if the waiver is granted, the decision letter will specify the region covered by the waiver.

(e) *Action on application; list of permitted brokers.* The port director who receives the application will issue a written decision on the permit

application and will issue the permit if the applicant meets the requirements of paragraphs (b), (c), and (d) of this section. If the port director is of the opinion that the permit should not be issued, he will submit his written reasons for that opinion to the Office of Field Operations, Customs Headquarters, for appropriate instructions on whether to grant or deny the permit. Each port director will maintain and make available to the public an alphabetical list of brokers permitted through his port.

(f) *National permit.* A broker who has a district permit issued under paragraph (a) or paragraph (e) of this section may apply for a national permit for the purpose of transacting customs business in any circumstance described in § 111.2(b)(2)(i). An application for a national permit under this paragraph must be in the form of a letter addressed to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, and must:

(1) Identify the applicant's broker license number and date of issuance;

(2) Set forth the address and telephone number of the office designated by the applicant as the office of record for purposes of administration of the provisions of this part regarding all activities of the applicant conducted under the national permit. That office will be noted in the national permit when issued;

(3) Set forth the name, broker license number, office address, and telephone number of the individual broker who will exercise responsible supervision and control over the activities of the applicant conducted under the national permit; and

(4) Attach a receipt or other evidence showing that the fees specified in §§ 111.96(b) and (c) have been paid at the port through which the applicant's broker license was delivered (see § 111.15).

(g) *Review of the denial of a permit*—(1) *By the Assistant Commissioner.* Upon the denial of an application for a permit under this section, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(2) *By the Court of International Trade.* Upon a decision of the Assistant Commissioner affirming the denial of an application for a permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Assistant Commissioner's decision.

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

(a) Each broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He must keep and maintain on file copies of all his correspondence and other records relating to his customs business.

(b) Each broker must comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.

(c) Each broker must designate a knowledgeable company employee to be the contact for Customs for broker-wide customs business and financial recordkeeping requirements.

§ 111.22 [Reserved]

§ 111.23 Retention of records.

(a) *Place and period of retention*—(1) *Place.* Records must be retained by a broker in accordance with the provisions of this part and part 163 of this chapter within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of that consolidation to Customs, in accordance with paragraph (b) of this section.

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an ''active client'' as defined in § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

(b) *Notification of consolidated records*—(1) *Applicability.* Subject to the requirements of paragraph (b)(2) of this section and except when a restriction applies under § 163.5(b) of this chapter, the option of maintaining records on a consolidated system basis is available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content of notice.* If consolidated storage is desired by the broker, he must submit a written notice addressed to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The written notice must include:

(i) Each address at which the broker intends to maintain the consolidated records. Each such location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records to be maintained at each consolidated location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations; and

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless the Director, Regulatory Audit Division, in Miami is first notified.

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and the Field Director, Regulatory Audit Division, the special agent in charge, the port director, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.

§ 111.25 Records must be available.

During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be made or maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents or other authorized Customs officers within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker. Records subject to the requirements of part 163 of this chapter must be made available to Customs in accordance with the provisions of that part.

§ 111.26 Interference with examination of records.

Except in accordance with the provisions of part 163 of this chapter, a broker must not refuse access to, conceal, remove, or destroy the whole or

any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative of the Treasury Department, nor may he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

§ 111.27 Audit or inspection of records.

The Field Director, Regulatory Audit Division, will make any audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable the port director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part.

§ 111.28 Responsible supervision.

(a) *General.* Every individual broker operating as a sole proprietor and every licensed member of a partnership that is a broker and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see § 111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

(b) *Employee information.*

(1) *Current employees*—(i) *General.* Each broker must submit, in writing, to the director of each port at which the broker intends to transact customs business, a list of the names of persons currently employed by the broker at that port. The list of employees must be submitted upon issuance of a permit for an additional district under § 111.19, or upon the opening of an office at a port within a district for which the broker already has a permit, and before the broker begins to transact customs business as a broker at the port. For each employee, the broker also must provide the social security number, date and place of birth, current home address, last prior home address, and, if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker. After the initial submission, an updated list, setting forth the name, social security number, date and place of birth, and current home address of each current employee, must be submitted with the status report required by § 111.30(d).

(ii) *New employees.* In the case of a new employee, the broker must submit to the port director the written information required under paragraph (b)(1)(i) of this section within 10 calendar days after the new employee has been employed by the broker for 30 consecutive days.

(2) *Terminated employees.* Within 30 calendar days after the termination of employment of any person employed longer than 30 consecutive days, the broker must submit the name of the terminated employee, in writing, to the director of the port at which the person was employed.

(3) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b)(1) of this section, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of any information that is provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* In the case of an individual broker who is a qualifying member of a partnership for purposes of § 111.11(b) or who is a qualifying officer of an association or corporation for purposes of § 111.11(c)(2), that individual broker must immediately provide written notice to the Assistant Commissioner when his employment as a qualifying member or officer terminates and must send a copy of the written notice to the director of each port through which a permit has been granted to the partnership, association, or corporation.

(d) *Change in ownership.* If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the Assistant Commissioner and must send a copy of the written notice to the director of each port through which a permit has been granted to the broker. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, Customs reserves the right to conduct a background investigation on the new principal. The port director will notify the broker if Customs objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the port director, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a ''principal'' means any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in the business of a broker.

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker must exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, must be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date must be transmitted to the Government within 5 working days from receipt by the broker. Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt. No written statement is required if there is actual payment of the funds by a broker.

(b) *Notice to client of method of payment*—(1) All brokers must provide their clients with the following written notification:

> If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the ''U.S. Customs Service'' which will be delivered to Customs by the broker.

(2) The written notification set forth in paragraph (b)(1) of this section must be provided by brokers as follows:

(i) On, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each 12-month period after that date. An active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at least two occasions within the 12-month period preceding notification.

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* When a broker changes his business address, he must immediately give written notice of his new address to each director of a port that is affected by the change of address. In addition, if an individual broker is not actively engaged in transacting business as a broker and changes his non-business mailing address, he must give written notice of the new address in the status report required by paragraph (d) of this section.

(b) *Change in an organization.* A partnership, association, or corporation broker must immediately provide written notice of any of the following to the director of each port through which it has been granted a permit:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

(c) *Change in name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, must submit to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, evidence of his authority to use that name. The name must not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

(d) *Status report*—(1) *General.* Each broker must file a written status report with Customs on February 1, 1985, and on February 1 of each third year after that date. The report must be accompanied by the fee prescribed in § 111.96(d) and must be addressed to the director of the port through which the license was delivered to the licensee (see § 111.15). A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual.* Each individual broker must state in the report required under paragraph (d)(1) of this section whether he is actively engaged in transacting business as a broker. If he is so actively engaged, he must also:

(i) State the name under which, and the address at which, his business is conducted if he is a sole proprietor;

(ii) State the name and address of his employer if he is employed by another broker, unless his employer is a partnership, association or corporation broker for which he is a qualifying member or officer for purposes of § 111.11(b) or (c)(2); and

(iii) State whether or not he still meets the applicable requirements of § 111.11 and § 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53.

(3) *Partnership, association or corporation.* Each corporation, partnership or association broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, its business address, the name and address of each licensed member of the partnership or licensed officer of the association or corporation who qualifies it for a license under § 111.11(b) or (c)(2), and whether it is actively engaged in transacting business as a broker, and the report must be signed by a licensed member or officer.

(4) *Failure to file timely.* If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March 31 of the reporting year, the port director will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in Customs records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license will be reinstated. If the broker does not file the required report within that 60-day period, the broker's license is revoked by operation of law without prejudice to the filing of an application for a new license. Notice of the revocation will be published in the Customs Bulletin.

(e) *Custody of records.* Upon the permanent termination of a brokerage business, written notification of the name and address of the party having legal custody of the brokerage business records must be provided to the director of each port where the broker was transacting business within each district for which a permit has been issued to the broker. That notification will be the responsibility of:

(1) The individual broker, upon the permanent termination of his brokerage business;

(2) Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or

(3) Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in U.S. Government service must not represent a client before the Treasury Department or any representative of the Treasury Department in any matter to which the broker gave personal consideration or gained knowledge of the facts while in U.S. Government service, except as provided in 18 U.S.C. 207.

(b) *Relations with former officer or employee of U.S. Government.* A broker must not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative of the Treasury Department to which matter that person gave personal consideration or gained personal knowledge of the facts or issues of the matter while in U.S. Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself must not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction will apply if a broker's employee is an importer.

§ 111.32 False information.

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative of the Treasury Department.

§ 111.33 Government records.

A broker must not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Treasury Department employees.

A broker must not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative of the Treasury Department by the use of duress or a threat or false accusation, or by the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker must not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Employment by unlicensed person other than importer.* When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer either a copy of his bill for services rendered or a copy of the entry, unless the merchandise was purchased on a delivered duty-paid basis or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, a broker must not enter into any agreement with an unlicensed person to transact customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person.

(c) *Relations with a freight forwarder.* A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:

(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer or other party in interest:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is waived in writing by the importer or other party in interest; or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, forbids or prevents direct communication between the importer or other party in interest and the broker; and

(4) In making the agreement and in all actions taken pursuant to the agreement, the broker remains subject to all other provisions of this part.

§ 111.37 Misuse of license or permit.

A broker must not allow his license, permit or name to be used by or for any unlicensed person (including a broker whose license or permit is under suspension), other than his own employees authorized to act for him, in the solicitation, promotion or performance of any customs business or transaction.

§ 111.38 False representation to procure employment.

A broker must not knowingly use false or misleading representations to procure employment in any customs matter. In addition, a broker must not represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative of the Treasury Department.

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker must not withhold information relative to any customs business from a client who is entitled to the information. Moreover, a broker must exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he must not knowingly impart to a client false information relative to any customs business.

(b) *Error or omission by client.* If a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires the client to execute, he must advise the client promptly of that noncompliance, error, or omission.

(c) *Illegal plans.* A broker must not knowingly suggest to a client or prospective client any illegal plan for evading payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

§ 111.40 Protests.

A broker must not act on behalf of any person, or attempt to represent any person, regarding any protest unless he is authorized to do so in accordance with part 174 of this chapter.

§ 111.41 Endorsement of checks.

A broker must not endorse or accept, without authority of his client, any U.S. Government draft, check, or warrant drawn to the order of the client.

§ 111.42 Relations with person who is notoriously disreputable or whose license is under suspension, canceled ''with prejudice,'' or revoked.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a broker must not knowingly and directly or indirectly:

(1) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose broker license was revoked for any cause or is under suspension or was cancelled ''with prejudice;''

(2) Assist in the furtherance of any customs business or transactions of any person described in paragraph (a)(1) of this section;

(3) Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described in paragraph (a)(1) of this section, without the approval of the Assistant Commissioner (see § 111.79);

(4) Share fees with any person described in paragraph (a)(1) of this section; or

(5) Permit any person described in paragraph (a)(1) of this section to participate, directly or indirectly and whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

(b) *Client exception.* Nothing in this section will prohibit a broker from transacting customs business on behalf of a bona fide importer or exporter who may be notoriously disreputable or whose broker license is under suspension or was cancelled ''with prejudice'' or revoked.

§ 111.43 [Reserved]

§ 111.44 [Reserved]

§ 111.45 Revocation by operation of law.

(a) *License.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who

holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner or his designee will notify the broker in writing of an impending revocation by operation of law under this section 30 calendar days before the revocation is due to occur.

(b) *Permit.* If a broker who has been granted a permit for an additional district fails, for any continuous period of 180 days, to employ within that district (or region, as defined in § 111.1, if an exception has been granted pursuant to § 111.19(d)) at least one person who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or an additional permit of a partnership, association, or corporation is revoked by operation of law under paragraph (a) or (b) of this section, the Assistant Commissioner or his designee will notify the organization of the revocation. If an additional permit of an individual broker is revoked by operation of law under paragraph (b) of this section, the Assistant Commissioner or his designee will notify the broker. Notice of any revocation under this section will be published in the Customs Bulletin.

(d) *Applicability of other sanctions.* Notwithstanding the operation of paragraph (a) or (b) of this section, each broker still has a continuing obligation to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with the provisions of this part. Any failure on the part of a broker to meet that continuing obligation during the 120 or 180-day period referred to in paragraph (a) or (b) of this section, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment of a monetary penalty under subpart D or subpart E of this part.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

§ 111.50 General.

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu of suspension or revocation, under section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions relating to assessment of a monetary penalty under sections 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in subpart E of this part.

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The Assistant Commissioner may cancel a broker's license or permit ''without prejudice'' upon written application by the broker if the Assistant Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the Assistant Commissioner determines that the application for cancellation was made in order to avoid those proceedings, he may cancel the license or permit ''without prejudice'' only with authorization from the Secretary of the Treasury.

(b) *With prejudice.* The Assistant Commissioner may cancel a broker's license or permit ''with prejudice'' when specifically requested to do so by the broker. The effect of a cancellation ''with prejudice'' is in all respects the same as if the license or permit had been revoked for cause by the Secretary except that it will not give rise to a right of appeal.

§ 111.52 Voluntary suspension of license or permit.

The Assistant Commissioner may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree.

§ 111.53 Grounds for suspension or revocation of license or permit.

The appropriate Customs officer may initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any of the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required;

(b) The broker has been convicted, at any time after the filing of an application for a license under § 111.12, of any felony or misdemeanor which:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the Assistant Commissioner;

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or

(g) The broker no longer meets the applicable requirements of § 111.11 and § 111.19.

§ 111.54 [Reserved]

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action will be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge will submit a report on the investigation to the director of the port and send a copy of it to the Assistant Commissioner.

§ 111.56 Review of report on investigation.

The port director will review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He will then submit his recommendation with supporting reasons to the Assistant Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Assistant Commissioner.

The Assistant Commissioner will make a determination on whether or not

charges should be preferred, and he will notify the port director of his decision.

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart must give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license or permit. The statement of charges also must specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response will be deemed sufficient. Different means by which a purpose might have been accomplished, or different intents with which acts might have been done, so as to constitute grounds for suspension or revocation of the license may be alleged in the alternative under a single count in the statement of charges.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The port director will advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

(b) *Notice of preliminary proceedings.* The port director will serve upon the broker, in the manner set forth in § 111.63, written notice that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs the broker that formal proceedings are available to him;

(3) Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;

(4) Invites the broker to show cause why formal proceedings should not be instituted;

(5) Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises the broker of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 calendar days of the date of the notice.

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request that information in writing. The broker's request must set forth in what respect the proposed statement of charges leaves him in doubt and must describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the port director that information is reasonably necessary to enable the broker to prepare his response, he will furnish the broker with that information.

§ 111.61 Decision on preliminary proceedings.

The port director will prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Assistant Commissioner together with a copy of each paper filed by the broker. The port director will also give to the Assistant Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Assistant Commissioner determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he will so inform the port director who will notify the broker. If no response is filed by the broker or if the Assistant Commissioner determines that the broker has not satisfactorily responded to all of the proposed charges, he will advise the port director of that fact and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the Assistant Commissioner will instruct the port director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges must inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) The broker may be represented by counsel;

(c) The broker will have the right to cross-examine witnesses;

(d) Within 10 calendar days after service of this notice, the broker will be notified of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, the broker may file, in duplicate with the port director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual.* The port director will serve the notice of charges and the statement of charges against an individual broker as follows:

(1) By delivery to the broker personally;

(2) By certified mail addressed to the broker, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director will serve the notice of charges and the statement of charges against a partnership, association, or corporation broker as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service under this section is by certified mail, the receipt of the return card duly signed will be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the port director will serve upon the broker and his attorney if known, by one of the methods set forth in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by one of the methods set forth in § 111.63 or by ordinary mail or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing and in that case will notify the broker or his attorney in writing of the extension and the new time for the hearing.

§ 111.66 Failure to appear.

If the broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) will proceed with the hearing as scheduled and will hear evidence submitted by the parties. The provisions of this part will apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension of the license or permit for a specified period of time or revocation of the license or permit, or assessment of a monetary penalty in lieu of suspension or revocation, in accordance with § 111.74 if he finds that action to be in order.

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer must be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the broker.* The broker or his attorney will have the right to examine all exhibits offered at the hearing and will have the right to cross-examine witnesses and to present witnesses who will be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine the witness. The deposition will become part of the hearing record.

(d) *Transcript of record.* The port director will provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the port director will deliver a copy of the transcript of record to the hearing officer, the broker and the Government representative without charge.

(e) *Government representatives.* The Assistant Commissioner will designate one or more persons to represent the Government at the hearing.

§ 111.68 Proposed findings and conclusions.

The hearing officer will allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons for the findings as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer will make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision must conform to the requirements of 5 U.S.C. 557.

§ 111.70 Additional submissions.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make any additional submissions that are permitted under 5 U.S.C. 557(c) or otherwise required by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or ownership of any property, any other immaterial mistake in the statement of charges, or a failure to prove immaterial allegations in the description of the broker's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the port director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

§ 111.73 [Reserved]

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension, revocation, or monetary penalty action on any remaining charges if the facts alleged in the charges are established by the evidence. If the Secretary of the Treasury, in the exercise of his discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the Assistant Commissioner will promptly provide written notification of the order to the broker and, unless an appeal from the Secretary's order is filed by the broker (see § 111.75), the Assistant Commissioner will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the **Federal Register** and in the Customs Bulletin. If no appeal from the Secretary's order is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective 60 calendar days after issuance of written notification of the order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the Secretary's order is filed, payment of the penalty must be tendered within 60 calendar days after the effective date of the order, and, if payment is not tendered within that 60-day period, the license or permit of the broker will immediately be suspended until payment is made.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit, or assessing a monetary penalty, may be filed by the broker in the Court of International Trade as provided in section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of those proceedings will, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Provided that no appeal is filed in accordance with § 111.75, a person whose license or permit has been suspended or revoked, or against whom a monetary penalty has been assessed in lieu of suspension or revocation, may make written application in duplicate to the Assistant Commissioner to reopen the case and have the order of suspension or revocation or monetary penalty assessment set aside or modified on the ground that new evidence has been discovered or on the ground that

important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth the precise character of the evidence to be relied upon and must state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The Assistant Commissioner will forward the application, together with his recommendation for action thereon, to the Secretary of the Treasury. The Secretary may grant or deny the application to reopen the case and may order the taking of additional testimony before the Assistant Commissioner. The Assistant Commissioner will notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Assistant Commissioner will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Secretary will remain in effect pending conclusion of the new proceedings and issuance of a new order under § 111.77.

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Secretary of the Treasury issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the Assistant Commissioner will notify the broker in writing and will publish a notice of the new order in the **Federal Register** and in the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but that failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings, Headquarters, or the port director with the approval of Headquarters, may serve the broker with a written reprimand. The reprimand, and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted against the broker in question.

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation ''with prejudice'' of a license, the ex-broker may petition the Assistant Commissioner for authorization to assist, or accept employment with, a broker. The petition will not be approved unless the Assistant Commissioner is satisfied that the petitioner has refrained from all activities described in § 111.42 and that the petitioner's conduct has been exemplary during the period of disability. The Assistant Commissioner will also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which the misconduct led to pecuniary loss to the Government or to any person, the Assistant Commissioner will also take into account whether the petitioner has made restitution of that loss.

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

The Assistant Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

Subpart E—Monetary Penalty and Payment of Fees

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

Customs may assess a monetary penalty or penalties as follows:

(a) In the case of a broker, in an amount not to exceed an aggregate of $30,000 for one or more of the reasons set forth in §§ 111.53 (a) through (f) other than those listed in § 111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or

(b) In the case of a person who is not a broker, in an amount not to exceed $10,000 for each transaction or violation referred to in § 111.4 and in an amount not to exceed an aggregate of $30,000 for all those transactions or violations.

§ 111.92 Notice of monetary penalty.

If assessment of a monetary penalty under § 111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 calendar days of the date of mailing of the notice. The port director has discretion to provide additional time for good cause.

§ 111.93 Petition for relief from monetary penalty.

A broker or other person who receives a notice issued under § 111.92 may file a petition for relief from the monetary penalty in accordance with the procedures set forth in part 171 of this chapter.

§ 111.94 Decision on monetary penalty.

Customs will follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under § 111.93. After Customs has considered the allegations or complaints set forth in the notice issued under § 111.92 and any timely response made to the notice by the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a written decision to the broker or other person setting forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the broker or other person is liable for a monetary penalty, the broker or other person must pay the monetary penalty, or make arrangements for payment of the monetary penalty, within 60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, Customs will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief from monetary penalty.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 must pay a fee of $200 to defray the costs to Customs in processing the application. Each individual who intends to take the written examination provided for in § 111.13 must pay a $200 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the port director will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the Customs fingerprint processing fee, the total of which must be paid to Customs

before further processing of the application will occur.

(b) *Permit fee.* Each application for a permit pursuant to § 111.19, including an application for reinstatement of a permit that was revoked by operation of law or otherwise, must be accompanied by a fee of $100 to defray the costs of processing the application.

(c) *User fee.* Payment of an annual user fee of $125 is required for each permit, including a national permit under § 111.19(f), granted to an individual, partnership, association, or corporate broker. The user fee is payable when an initial district permit is issued concurrently with a license under § 111.19(a), or upon filing the application for the permit under § 111.19 (b) or (f), and for each subsequent calendar year at the port through which the broker was granted the permit or at the port referred to in § 111.19(f)(4) in the case of a national permit. The user fee must be paid by the due date as published annually in the **Federal Register**, and must be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit or is issued an initial district permit under § 111.19, the full $125 user fee must be remitted with the application or when the initial district permit is issued, regardless of the point during the calendar year at which the application is submitted or the initial district permit is issued. If a broker fails to pay the annual user fee by the published due date, the appropriate port director will notify the broker in writing of the failure to pay and will revoke the permit to operate. The notice will constitute revocation of the permit.

(d) *Status report fee.* The status report required under § 111.30(d) must be accompanied by a fee of $100 to defray the costs of administering the reporting requirement.

(e) *Method of payment.* All fees prescribed under this section must be paid by check or money order payable to the United States Customs Service.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

4. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

5. In § 178.2, the table is amended by revising the listing for Part 111 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	* * * * *	* *
Part 111	Issuance of customs broker licenses and permits, monitoring performance of brokers in conducting customs business, and institution of disciplinary action against brokers.	1515–0076 and 1515–0100.
*	* * * * *	* *

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 6, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–6175 Filed 3–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Milbemycin Oxime Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for veterinary prescription use of milbemycin oxime solution to treat ear mite infestations in cats and kittens 8 weeks of age and older.

DATES: This rule is effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300, filed NADA 141–163 that provides for veterinary prescription use of MILBEMITE™ Otic Solution (0.1 percent milbemycin oxime) for the treatment of ear mite (*Otodectes cynotis*) infestations in cats and kittens 8 weeks of age and older. Effectiveness is maintained throughout the life cycle of the ear mite. The NADA provides for use of one 0.25-milliliter tube per ear as a single treatment. NADA 141–163 is approved as of February 2, 2000, and the regulations are amended in 21 CFR part 524 by adding new § 524.1446 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for non-food-producing animals qualifies for 3 years of marketing exclusivity beginning February 2, 2000, because the application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1446 is added to read as follows:

§ 524.1446 Milbemycin oxime solution.

(a) *Specifications.* Each tube contains 0.25 milliliter of a 0.1 percent solution of milbemycin oxime.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* One tube administered topically into each external ear canal as a single treatment.

(2) *Indications for use.* For the treatment of ear mite (*Otodectes cynotis*) infestations in cats and kittens 8 weeks of age and older. Effectiveness is maintained throughout the life cycle of the ear mite.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: March 2, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–6284 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in April 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: April 1, 2000.

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

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during April 2000.

For annuity benefits, the interest assumptions will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for March 2000.

For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for March 2000.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during April 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

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

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

2. In appendix B, a new entry is added to Table I, and Rate Set 78 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * * , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * * * * *						
April 2000	.0710	1–25	.0625	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of y—n_1 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of y—n_1—n_2 years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * * *								
78	4–1–00	5–1–00	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 3rd day of March 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6312 Filed 3–14–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities to Provide Services to Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology, Department of the Army, DoD.

ACTION: Interim rule.

SUMMARY: The Department of the Army requests agency and public comments on its implementation of the recently enacted Section 343 of the FY 2000 Department of Defense Authorization Act. Section 343 directs the Department of Defense to provide to Congress not later than March 1, 2001, a report summarizing the number of direct labor and indirect labor work year equivalents performed by contractors providing services to the Department of Defense in the prior fiscal year (FY 2000), categorized by federal supply class or service code, appropriation supporting the services and major organizational element of the Department procuring the services. Since the Fiscal Year to be reported upon to Congress has already commenced, it is critical that this guidance be issued effective immediately to avoid extraordinary efforts by Government and contractor personnel attempting to collect significant reliable data retroactively.

Section 2461(g) of title 10, United States Code, requires DoD to provide an annual report to Congress on the percentage of commercial functions performed by contractors as compared to in-house employees. Section 343 provides the data collection framework for the Army to improve the accuracy and credibility of its reporting under section 2461(g) of title 10.

DATES: The effective date for this interim rule is March 15, 2000. Written comments on this interim rule must be submitted not later than May 15, 2000 to ensure consideration.

ADDRESSES: Comments concerning this interim rule should be submitted to the Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA), Attention SAMR–FMMR, Rm. 2A672, Washington, DC 20310, or contact the following persons by e-mail or phone as indicated below.

FOR FURTHER INFORMATION CONTACT: Dr. John Anderson, SAMR-FMMR, Phone 703–614–8247, email: *John.Anderson@hqda.army.mil;* or John R. Conklin, SAAL–ZP, e-mail: John.Conklin@sarda.army.mil.

SUPPLEMENTARY INFORMATION:

1. Background: This interim rule implements section 343 of the FY 2000 Department of Defense Authorization Act, Public Law 106–65 and 10 U.S.C. 2461(g). In February 1997, the Assistant Secretary of the Army (Manpower and Reserve Affairs) included the reporting of contractor manpower as a milestone required to remedy a finding by the Secretary of Defense of material weakness in manpower requirements determination within the Army under the Federal Manager's Financial Integrity Act.

2. From May to December, 1997, the Assistant Secretary of the Army (Manpower and Reserve Affairs) and the Assistant Secretary of the Army (Research, Development, and Acquisition) participated in a joint study to identify and estimate the work-year equivalents performed by contractors providing services to the Department of the Army during fiscal year 1996. The study used existing contract reporting systems, manually accessible data, and some queries to contractors, to identify expenditures on service contracts by Federal Supply Class (FSC) Service code function, organizational name and unit identification code of the Army element contracting for the services, and the

appropriations from which the contracted services were funded.

3. The study sampled approximately 12.8 percent of the service contracts awarded in fiscal year 1996 for the purposes of obtaining direct and indirect man-hours, which were used to develop a planning factor for converting contract expenditures for specific groupings of FSC Service code functions into work-year equivalents for those functions. A commitment was made to not release the information provided by contractors for use in any governmental audits of the contractor or any other governmental purpose, since the information was being used solely for the purposes of improving Army manpower requirements planning and the accuracy of the report required by section 2461(g) of title 10. (i.e., the information provided by contractors on a voluntary basis was treated as proprietary information).

4. The contractor manpower equivalent model developed from this study was presented to the Chief of Staff of the Army in July 1998, and a decision was made to use this information in the Total Army Analysis, the Army's planning process for determining and prioritizing its manpower requirements for its force structure and infrastructure. The estimated level of contract support of an Army organization within a function was used as an offset for purposes of allocating in-house resources to meet that organization's requirements. The estimated level of contract support of an Army organization also provided, for planning purposes, a gross estimate of the organization's total capabilities in various war-fighting and non-war-fighting scenarios.

5. The contractor work year equivalents estimated from this model were also used to assist in establishing equitable competition targets among different Army organizations for purposes of implementing Defense Reform Initiative Directive 20, ''Review of Inherently Governmental Functions''. Army organizations were credited with the estimated contractor support work-year equivalents for purposes of determining the percentage of the in-house workforce in that organization that would be potentially subject to competition relative to the same function in other Army organizations.

In January 1998 the Army compared Army contractor expenditures reflected in the Defense budget with the level of contract manpower used as the basis for estimating the contractor percentage required by section 2461(g) of title 10. The fiscal year 1997 section 2461(g) report for the Army reported 44,000 contract manpower equivalents (CMEs), as compared with over $21 billion in service contracts awarded by Army contracting offices during the same period. While recognizing that a small percentage of those services may not have been reportable under the CME report, the Army leadership determined to use the more comprehensive and credible Contractor Manpower Equivalent model developed for its Total Army Analysis as a basis for the FY 1998 2461(g) report as an interim measure until a more accurate data collection methodology was established. (As a result, the Army reported 269,000 CMEs in its fiscal year 1998 report, as compared to $24 billion service contract expenditures, thereby reducing the questionable disparity between contract expenditures and CMEs reported in the fiscal year 1997 report.)

6. Implementation: It has been determined, after a review of numerous alternatives and Army lessons-learned, that the only way to collect the required information economically, in a timely way, accurately and credibly, with the least burden on the public and expense to the Government, is to request contemporaneous submission directly from affected contractors. Accordingly, the Army will direct Army contracting officers to include in new solicitations and contracts, and any existing contract bilaterally modified, a requirement that contractors providing services to the Army identify, itemize and report their direct labor hours of support and provide a related composite indirect labor rate so that we might estimate the relevant indirect hours. This submission is expected to be coincident with requests for payment (e.g., contract vouchers, invoices, or requests for progress payments). The information obtained will be transmitted directly to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs). For security and convenience, a secure web site will be established for this purpose. This reporting requirement is not viewed as violating the objectives of performance based contracting since the reported labor hours are neither being requested for, nor viewed as a basis for, payment under the contract, but rather, are to be provided to meet Congressional reporting requirements and for internal Governmental manpower planning and management uses only.

7. The reporting requirement has been tailored as narrowly as possible to comply with the law, allow the acquisition of useful data, and minimize any undue workload on respondents. It will be applied prospectively (i.e., to solicitations issued and contracts awarded (or modified, in the case of existing contracts) after the effective date of this interim rule); for reporting contemporaneous with normal billings by the contractor (and consistent with contractor accrual and allocation practices and systems), so as to minimize the impact on contractor operations and administrative costs, and to allow uniform reporting. However respondents under preexisting contracts modified during this period, will be asked to report from October 1, 1999, or the date the contract action began, whichever is later.

8. Reporting will not be required if a contractor does not have an internal system for aggregating billable hours in the direct and indirect pools and does not otherwise have to provide this information to the Government. We believe that a global requirement to identify, collect, validate and report this information after the fact (e.g., at the end of the fiscal year) would necessitate burdensome additional record keeping and administrative efforts by contractors and Government personnel and would significantly degrade the quality and usefulness of the information collected. On the other hand, it is reasonable and not an undue burden on a contractor to provide labor hour information at the time that the contractor has readily available the labor hour records used, as a basis for meeting its payroll or charging the government for its services (or for tax purposes, or cost allocation in accordance with Generally Accepted Accounting Principles and practices).

9. Consistent with the above, the reporting requirement will not be mandated under the following categories of contracts and situations:

a. Contracts awarded under the authority of Part 12 of the Federal Acquisition Regulations (FAR).

b. Contracts valued at $100,000 or below.

c. When a contractor does not have an internal system for aggregating billable hours in the direct and indirect pools, or an internal payroll accounting system, and does not otherwise have to provide this information to the Government.

d. Contracts awarded by the Army contracting office solely as a contracting agent in support of non-Army customer(s). (We are interested in labor hour data in support of Army at this time. (If the name and address of the organization receiving the benefit of the services is an Army organization, then the labor hour data is reportable as an Army requirement, even though the appropriations funding all or part of the requirement are not Army appropriations).

10. The intent of the reporting requirement is to obtain direct and indirect labor hour data for services in support of the Army under contracts not covered by the above exclusions.

11. The labor hour information provided will be protected as company proprietary data (when associated with contract number and contractor name) and will be required at a level of detail not greater than required for the intended use. The reports will include: the Federal Supply Class or Service Code pertinent to the services reported (this can be identified by the respondent from the lists found in the Procurement Coding Manual on the internet at *http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm*); the complete appropriations data for the appropriations funding the line item(s)/contract/order; the name, complete address and location of the Army contracting office; the name and address of the Army organization receiving the benefit of the services (*i.e.,* the most proximate Army customer reviewing and receiving work); the time period covered by the report; and the contract/order number and the associated (estimated) value. Information provided should be consistent with the contract terms and requirements and with other data provided to the Government by the reporting contractor (*e.g.,* vouchers, invoices, requests for progress payment, or other reports to the Army).

Procedural Requirements

A. Information Collection Requirements

This interim rule contains collection of information requirements. Information collection is required to provide documentation of various support services from contractors in compliance with Section 343 of Public Law 106–65 (FY 2000 National Defense Authorization Act), and Section 2461(g) of Title 10 United States Code (10 U.S.C. 2461(g)). The Paperwork Reduction Act of 1995, 44 U.S.C. 3507 (d) and 5 CFR 1320.11, require Federal agencies to submit collections of information contained in rules to the Office of Management and Budget (OMB) for review. To request more details pertaining to the collection of information requirements or to obtain a copy of the associated collection instruments, please write to the above address or call Department of the Army Reports Clearance Officer at (703) 614–0454.

Title: Report required by National Defense Authorization Act for Fiscal Year 2000, Section 343; and to comply fully with the reporting requirements at 10 U.S.C. 2461(g).

Needs and Uses: Section 343 of the FY2000 National Defense Authorization Act; Section 2461(g) of Title 10; and the Total Army Analysis. Army requires contract manpower data to remedy its declared material weakness in manpower requirements determinations and to improve the accuracy of related reports to Congress. Data will be used in the Total Army Analysis force structure planning, Functional Area Assessments, and to support HQDA decision-making. Data will also provide a more complete picture of organizations, functions and capabilities in war fighting and non-war fighting scenarios.

Affected Public: Primarily business or other for profit.

Annual Burden Hours: 33,928.

Number of Respondents: 7,400.

Responses Per Respondent: 55.24.

Average Per Respondent: .083 hours.

Frequency: Contemporaneous with submission of requests for payment (vouchers, invoices or requests for progress payment), usually monthly (dependent on contractor's internal systems for allocating costs and contract requirements).

B. Regulatory Flexibility Act

The rule does not require the preparation of a regulatory flexibility analysis since it is not expected to have a significant economic impact on a substantial number of small entities (i.e. small and small disadvantaged businesses).

C. Unfunded Mandates Act

The rule does not impose an enforceable duty among small governments (i.e. States and local governments).

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control Number 0702–0112, with an expiration date of August 31, 2000.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act, the Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA)) announces a public information collection requirement as described in this rule and seeks public comment on the provisions thereof. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimates of burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments on these requirements should be submitted to the Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA)), Attention: SAMR–FMMR, Rm. 2A672, Washington, DC 20310–0111. When the Department of the Army promulgates the Final Rule, the Department will also respond to comments or the public regarding the information collection provision requirements of the rule.

E. Executive Order 12866 (Regulatory Planning and Review

This is not a significant regulatory action in that it is not likely to result in a rule that will have an annual effect on the economy of $100 million or more or adversely affect productivity, the environment, public health or safety.

F. Executive Order 13132 (Federalism)

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

G. Submission to Congress and the General Accounting Office (GAO)

Pursuant to 5 U.S.C., Chapter 8, the rule will be forwarded to both Houses of Congress and the GAO in the final rule announcement together with the GAO prescribed special reporting form for this purpose.

List of Subjects in 32 CFR Part 668

Government contracts, Reporting and recordkeeping requirements.

Accordingly, Subchapter L consisting of part 668 is added to 32 CFR chapter V to read as follows:

SUBCHAPTER L—ARMY CONTRACTING

PART 668—CONTRACTOR MANHOUR REPORTING REQUIREMENT

Sec.

668.1 General.
668.2 Contract administration data.

Authority: Sec. 343 of Pub. L. 106–65, 113 Stat. 569 (10 U.S.C. 2461(g)).

§ 668.1 General.

(a) *Purpose.* This part sets forth policies and procedures for reporting

requirements on labor work year equivalents performed by contractors in support of the Army.

(b) *Applicability.* This requirement applies to all Department of the Army agencies, commands, and activities.

(1) The following applies to all Army solicitations issued and contracts awarded, and to all bilateral modifications of existing Army contracts, after March 15, 2000 except the following:

(i) Contracts awarded under the authority of Part 12 of the Federal Acquisition Regulation (48 CFR part 12).

(ii) Contracts valued at $100,000 or below.

(iii) When the contractor does not have an internal system for aggregating billable hours in the direct and indirect pools, or an internal payroll accounting system, and does not otherwise have to provide this information to the Government.

(iv) Contracts awarded by the Army contracting office solely as a contracting agent in support of non-Army customer(s).

(2) We are interested in labor hour data in support of Army at this time. For this purpose, if the name and address of the organization receiving the benefit of the services is an Army organization, then the labor hour data is reportable as an Army requirement, even though the appropriations funding all or part of the requirement are not Army appropriations.

§ 668.2 Contract administration data.

The requirement in this section will be cited in Part I—The Schedule, in Section G, Contract Administration Data, or its equivalent, in solicitations or contracts not employing the standard contract format:

(a) Report on Use of Employees of Non-Federal Entities to Provide Services to Department of the Army. The contractor is required to submit direct labor hours and a relevant composite indirect labor rate associated with the reporting period (generally contemporaneous with submission of a request for payment (e.g., voucher, invoice or request for progress payment)). The composite indirect labor rate will be used to grossly calculate the number of indirect hours associated with services reported in each period.

(b) The information submitted will be treated as contractor proprietary information when associated with a contractor name or contract number. The Assistant Secretary of the Army (Manpower and Reserve Affairs) will oversee the aggregation of this information and will exclude contract number and contractor name from any use of this data. The planning factor(s) derived from this data by ASA (M&RA) and its contract support (if any) will be used solely for manpower planning purposes and will not be applied to specific acquisitions. Detailed data by contract number and name will not be released to any other governmental entity other than ASA (M&RA) and will only be used for the stated purposes (reporting and planning).

(c) Reporting format: The information required should be reported electronically to the M&RA data collection point. The following information, per contract and/or task/delivery order, will be needed to complete all of the data fields under this data collection program:

BILLING CODE 3710–08–P

CONTRACTOR NAME AND ADDRESS _____.
CONTRACT NUMBER (INCLUDE TASK/DELIVERY ORDER NUMBER) _____.
TOTAL ESTIMATED CONTRACT OR TASK/DELIVERY ORDER VALUE _____.
DIRECT LABOR HOURS EXPENDED DURING REPORTING PERIOD: (ALSO INCLUDE ESTIMATED VALUE, INCLUDING ALL LOADINGS (needed for final data reconciliation by Army)) _____ Est'd. Value _____.
CONTRACT LINE ITEM NUMBER (S) (CLIN) (S) _____ (as applicable).
FEDERAL SUPPLY CLASS OR SERVICE CODE relevant to the services reported (if you do not have this information, it can be found at: http://web1.whs.osd.mil/peidhome/guide/mn02/SECT1.HTM; The entire Procurement Coding Manual is at: http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm; select the most appropriate code for the predominant services reported per contract or order, and CLIN when applicable). If you are supporting an R&D organization, as opposed to performing R&D, please use the "Other Services and Construction Codes". Please do not use the "Supplies and Equipment Codes" but find the closest fit in Part B, "Other Services and Construction".
ARMY/DOD/PURCHASE REQUEST/PROCUREMENT REQUISITION NUMBER/PROCUREMENT WORK DIRECTIVE NUMBER (PR&C, PWD, etc.) (from Contract or Task/Delivery Order award document _____.
APPROPRIATION DATA PERTAINING TO THE SPECIFIC CONTRACT OR TASK/DELIVERY ORDER (if multiple appropriation, by CLIN, when applicable) _____ and ESTIMATED VALUE FOR EACH APPROPRIATION _____ (needed for final data reconciliation with Defense Finance and Accounting System data).
PERIOD FOR WHICH THIS DATA PERTAINS (e.g., from 01 Nov 1999 to 30 Nov 1999).
FROM: Mo/Day/Year
TO: Mo/Day/Year
[NOTE: For preexisting contracts, the first report should start 01 Oct 1999, or start of the contract, whichever is later]
RELEVANT COMPOSITE INDIRECT LABOR RATES FOR THE SERVICES AND PERIOD REPORTED (One composite indirect labor rate will be used to estimate the number of indirect hours and a second composite indirect labor rate will be used to estimate the value of indirect hours (needed for data quality control and rationalization)
NAME AND ADDRESS OF ARMY ORGANIZATION SUPPORTED (immediate Army customer receiving/reviewing work).
NAME AND ADDRESS OF CONTRACTING OFFICE (office that issued the Contract or Task/Delivery Order) _____.
CONTRACTOR POC, PHONE NUMBER, E-MAIL ADDRESS (will only be used to contact the respondent for clarification regarding data submission) _____.

BILLING CODE 3710–08–C

(d) The information required shall be reported electronically to the ASA (M&RA) data collection point at the following secure web site drawing on the relevant data elements cited in paragraph (c) of this section: http://contractormanpower.us.army.mil

Robert Bartholomew III,

Acting Deputy Assistant Secretary (Force Management, Manpower and Resources).

Kenneth J. Oscar,

Deputy Assistant Secretary of the Army (Procurement).

[FR Doc. 00–6336 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 410

[HCFA–1813–F]

RIN 0938–AJ87

Medicare Program; Coverage of, and Payment for, Paramedic Intercept Ambulance Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments received on a final rule with comment period published on January 25, 1999 that implemented section 4531(c) of the Balanced Budget Act of 1997 concerning Medicare coverage of, and payment for, paramedic intercept ambulance services in rural communities. It also implements section 412 of the Medicare, Medicaid, and State Children's Health Insurance Programs Balanced Budget Refinement Act of 1999 by adding a new definition of a rural area.

EFFECTIVE DATE: These regulations are effective on April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Niemann, (410) 786–4569.

SUPPLEMENTARY INFORMATION:

I. Background

In general, Medicare payment for ambulance services provided in accordance with section 1861(s)(7) of the Social Security Act (the Act) may be made only to the ambulance supplier furnishing the ambulance transport. Paramedic intercept services are advanced life support (ALS) services delivered by paramedics who furnish services separately from the agency that furnishes the ambulance transport. Except in the very limited circumstances described below, Medicare program payment for these services may be made only to the ambulance company furnishing the ambulance transport. Paramedic intercept services are most often furnished for an emergency ambulance transport in which a local volunteer ambulance that can furnish only basic life support (BLS) services is dispatched to transport a beneficiary. If the beneficiary needs ALS services (such as EKG monitoring, chest decompression, or IV therapy), another agency (typically a hospital or proprietary emergency medical service) dispatches a paramedic to meet the BLS ambulance at the scene or enroute to the hospital. The ALS paramedics then furnish the ALS services to the beneficiary. This tiered approach to life-saving may be cost effective in some areas because most volunteer ambulances do not charge for their services, and one paramedic service can cover many communities.

A. Balanced Budget Act of 1997

Section 4531(c) of the Balanced Budget Act of 1997 (BBA) provided that the Secretary could include limited coverage of these intercept services furnished in a rural area: that is, payment may be made directly to the agency furnishing the paramedic service in a rural area. The services, however, are covered only if they are furnished under contract with one or more volunteer ambulance services and they are medically necessary based on the condition of the beneficiary receiving the ambulance service. In addition, by law, the volunteer ambulance service involved must meet all of the following requirements:

- Furnish only BLS services at the time of the intercept.
- Be prohibited by State law from billing for any service.

Finally, the entity furnishing the ALS paramedic intercept service must meet the following requirements:

- Be certified as qualified to furnish the ambulance services under the Medicare program (including compliance with State laws and regulations).
- Bill all recipients who receive ALS paramedic intercept services from the entity, regardless of whether or not those recipients are Medicare beneficiaries.

B. The Final Rule with Comment Period

On January 25, 1999, we published a final rule with comment period in the **Federal Register** (64 FR 3637), which, in part, revised 42 CFR 410.40 to implement section 4531(c) of the BBA. In implementing the law, we defined ''rural area'' in the same way it is defined for purposes of the Medicare hospital inpatient prospective payment system under section 1886(d)(2)(D) of the Act and in regulations at § 412.62(f). That is, a rural area is any area outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area as defined by the Office of Management and Budget.

Although it provided the Secretary with the authority to cover paramedic intercept services under certain conditions, section 4531(c) of the BBA did not specify what the payment should be for those services. After considering several options, we decided to pay for paramedic intercept services based on the difference between the ALS payment rate and the BLS payment rate for each carrier's geographic pricing locality. We believed that this option balanced considerations for access to care and consistency with current ambulance payment policy. We would be providing the intercept company with a reasonable payment while not providing the same amount of payment that we generally would provide to an ambulance company that furnishes both the transport and the paramedic service. We reasoned that if we paid the difference between the ALS and BLS rates to the intercept company, we would be acknowledging the BLS rate that would have been paid to the volunteer company had it been permitted by the State to bill the program for the transport.

C. Balanced Budget Refinement Act of 1999

Section 412 of the Medicare, Medicaid, and State Children's Health Insurance Programs Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999, amends section 4531(c) of the BBA. Section 412 states ''* * * an area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on February 27, 1992, (57 FR 6725)).'' (The Goldsmith Modification is a methodology to identify small towns and rural areas within large metropolitan counties that are isolated from central areas by distance or other features. This Modification has been useful for expanding the eligibility for Federal programs that assist rural populations to include isolated rural populations of large metropolitan counties).

II. Discussion of Public Comments

In response to the final rule with comment period published on January 25, 1999, we received approximately 175 comments from ambulance suppliers and their employees, Medicare beneficiaries, and two members of the Congress. The majority of the comments were identical or nearly identical. The comments and responses are set forth below:

A. Definition of Rural Area

Comment: Commenters stated that using a rural definition based on MSAs and non-MSAs was not appropriate in the context of ambulance services. The commenters pointed out that, in large urban counties, many areas are very rural in nature. Because of the distance between these ''rural'' areas in an MSA and the nearest appropriate hospital, paramedic intercept services delivered in these rural areas are just as worthy of being recognized as those delivered in a rural county.

The commenters suggested alternatives that included: (1) the area where services are furnished meets either the non-MSA criterion or is located in a rural area as defined by the Census Bureau; (2) setting some other population density criterion; or (3) considering driving distance.

Some commenters stated that the paramedic intercept provision should not be limited to rural areas because this service is needed everywhere, not just in rural areas.

Response: Section 4531(c) of the BBA, as amended by section 412 of the BBRA, specifically limits coverage of this service to rural areas; therefore, we cannot extend the paramedic intercept provision to all areas. In accordance with the provisions of section 412 of the BBRA, we are revising the definition of ''rural area'' in § 410.40(c)(1). For this purpose, an area will be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on February 27, 1992 (57 FR 6725)).

Comment: Some commenters inquired whether the rural criteria would be applied to the location from which the beneficiary is transported (that is, pick-up point) or the location of the garage for the intercept services vehicle. One commenter suggested that coverage be limited to a service furnished in whole or in part in a rural area regardless of the location of the garage housing the vehicle used by the paramedic.

Response: We are applying the rural area criteria to the location from which the beneficiary is transported, that is, the location of the beneficiary at the time the ambulance or the paramedic intercept encounters the beneficiary, whichever occurs first.

Comment: Some commenters stated that the paramedic intercept provision in the BBA is not fair because it requires that the volunteer BLS ambulance be prohibited by State law from billing anyone for its services and that the only State with such a law is New York. Therefore, no suppliers in States other than New York can qualify for this benefit. The commenters stated that we should implement this provision everywhere in the country equitably or not implement it at all.

Response: The statute clearly defines the conditions under which Medicare may cover paramedic intercept services. Section 4531(c) of the BBA states that the volunteer ambulance service involved in the intercept service must be prohibited by State law from billing for any services. Therefore, we have no discretion to broaden its application. The Congress gave the Secretary authority to implement the paramedic intercept provision only under the conditions set forth in the law. Thus, we believe our implementation of the provision is appropriate.

B. Payment for Paramedic Intercept Services

Comment: We received numerous comments on the payment rate that we established for paramedic intercept services. Some commenters believed that we should pay the cost or reasonable charge of the service. Others suggested we pay the full ALS rate. In addition, commenters suggested we pay for paramedic intercept mileage. Finally, one commenter believed that we should pay on a State-wide basis rather than on an individual carrier locality basis.

Response: Based on the comments, we are revising the payment methodology for paramedic intercept services (§ 405.502). Rather than basing the payment on the ALS rate minus the BLS rate, we will use the ALS rate minus 40 percent of the BLS rate. In the case of ALS intercept services, a full ALS service is being furnished except that the BLS ambulance cannot charge for the portion of the service it furnishes. In particular, the paramedic drives a ''flycar'' to the scene where the BLS crew is waiting with the beneficiary. (A ''flycar'' is the special vehicle that a paramedic drives to the BLS ambulance and that contains necessary medical supplies with which a BLS ambulance is not equipped.) The paramedic transfers supplies and equipment from the flycar to the BLS ambulance and treats the beneficiary while the BLS ambulance crew drives the ambulance to the hospital. Because the BLS ambulance service is volunteer and cannot charge, we need to estimate the percentage of the service that is nonreimbursable. We estimate that the amount of the service that is furnished by the BLS volunteer ambulance is the nonlabor portion of the BLS ambulance service, which is about 40 percent of the total BLS payment allowance. The difference between the ALS payment rate and the BLS payment rate that we are paying is our estimate of the reimbursable costs of the equipment and supplies furnished by the paramedic as well as the labor portion that we are attributing to the paramedic intercept services. In addition, for administrative simplicity and equity of payment, we are establishing the rate on a carrier-wide basis, by using the median allowance from all localities within the individual carrier's jurisdiction. We are not paying mileage for the paramedic intercept because the intercept vehicle is not used to transport the beneficiary and Medicare covers only the mileage incurred to transport the beneficiary.

Comment: A commenter stated that the statute requires mandatory assignment of benefits for ambulance services effective January 1, 2000. This mandatory assignment would not allow the ALS intercept provider to recoup its cost from the beneficiary if the payment allowance remained less than the cost of furnishing the service.

Response: The mandatory assignment provision in the statute coincides with implementation of the ambulance fee schedule, which is currently being developed by a negotiated rulemaking committee. Mandatory assignment will not be implemented until payment under the fee schedule is implemented.

We note that, while this final rule sets forth a payment rate for paramedic intercept services in accordance with the authority in section 4531(c) of the BBA, section 4531(b) of the BBA requires the establishment of a fee schedule for Medicare ambulance services by negotiated rulemaking. This negotiated rulemaking process is currently underway and may result in a different payment rate from that provided in this final rule. We will set forth any new payment rate in the proposed rule that includes other provisions for the ambulance fee schedule. The subsequent final rule would supercede the provisions of this paramedic intercept final rule.

Finally, this rule affects only those paramedic intercept services that may be billed, and paid, by Medicare directly to the intercept provider. This rule will not affect any private arrangements between any BLS ambulance suppliers and providers of ALS services.

III. Provisions of the Final Rule for Paramedic Intercept Ambulance Services

Currently, under § 410.40(c), Medicare covers paramedic intercept services if they are furnished in a rural area as defined in § 412.62(f). We are revising § 410.40(c) to state that to qualify for Medicare coverage, paramedic intercept services must be furnished in an area that is designated as a rural area by any law or regulation of the State or that is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on Friday, February 27, 1992 (57 FR 6725)).

Additionally, we are revising the methodology for determining the payment rate. We are establishing the payment allowance on a carrier-wide basis, by using the median allowance from all localities within the individual carrier's jurisdiction. We chose the median because it is the most accurate statistical measure of central tendency of an array of numbers. We are also changing the formula. Rather than using the ALS rate minus the BLS rate, we are using the ALS rate minus 40 percent of the BLS rate. We will base Medicare payment for paramedic intercept services on the lower of the actual charge or the ALS rate minus 40 percent of the BLS rate. We are adding these payment rules as new paragraph (i) in § 405.502.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all suppliers of ambulance services are considered to be small entities. Individuals, carriers, and States are not considered to be ''small entities.''

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As illustrated below, the impact of this regulation does not meet the criteria under Executive Order 12866 to require a regulatory impact analysis; however, the following information, together with information provided elsewhere in this preamble, constitutes a voluntary analysis and meets the requirements of the RFA.

Effective with services furnished on February 24, 1999, Medicare began paying for paramedic intercept services that meet the conditions for coverage. When these services have been furnished to a Medicare beneficiary, the ALS paramedic intercept company has had an incentive to bill the beneficiary for the difference between its full charge for the intercept service and 80 percent of the Medicare payment rate if it believed that the Medicare payment rate was inadequate to cover the cost of the service. Now that the payment rate will be increased, we anticipate that the paramedic intercept suppliers will accept Medicare's rate and bill the beneficiary for only the applicable deductible and coinsurance amounts. This will benefit both the company and the beneficiary.

As we stated in the January 25, 1999 final rule with comment period, we believe that the only State in which the conditions described in section 4531(c) of the BBA exist is New York. After consultations with the ambulance industry in New York and examination of the Medicare program data, we estimate the volume of services that will be covered under this provision in a year will be between 2,000 and 4,000. The current payment rates for these services range from about $88 to about $162 depending upon the location of the service. A payment allowance of approximately $262 per service (the difference between the carrier-wide payment allowance for ALS and 40 percent of the carrier-wide allowance for BLS) in western New York State, and approximately $223 for the rest of the State yields a negligible cost compared to the current rates paid for these services. For paramedic intercept services that meet the conditions for Medicare coverage, we estimate the total cost for the first year of implementation of this rule to be between $200,000 to $400,000. Because the Medicare Part B coinsurance and deductible provisions apply, the program portion of this cost is estimated to be between $160,000 and $320,000. The remainder of the cost will be the responsibility of beneficiaries.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any final rule that may result in an expenditure in any one year by State, local or tribal government, in the aggregate, or by the private sector of $100 million. This final rule will not have an effect on the governments mentioned, and private sector costs will be less than the $100 million threshold.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart E is amended as follows:

1. The authority citation for part 405, subpart E continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 405.502, we are adding a new paragraph (i) to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(i) Paramedic intercept ambulance services. (1) HCFA establishes its

payment allowance on a carrier-wide basis by using the median allowance from all localities within an individual carrier's jurisdiction.

(2) HCFA's payment allowance is equal to the advanced life support rate minus 40 percent of the basic life support rate.

(3) HCFA bases payment on the lower of the actual charge or the amount described in paragraph (i)(1) and (i)(2) of this section.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Part 410 is amended to read as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.40, the introductory text to paragraph (c) is republished, and paragraph (c)(1) is revised to read as follows:

§ 410.40 Coverage of ambulance services.

* * * * *

(c) Paramedic ALS intercept services. Paramedic ALS intercept services must meet the following requirements:

(1) Be furnished in an area that is designated as a rural area by any law or regulation of the State or that is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification). (The Goldsmith Modification is a methodology to identify small towns and rural areas within large metropolitan counties that are isolated from central areas by distance or other features.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 31, 2000.

Nancy Ann-Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 9, 2000.

Donna E. Shalala

Secretary.

[FR Doc. 00–6420 Filed 3–14–00; 8:45 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 65, No. 51
Wednesday, March 15, 2000

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–99–02]

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision would add a new provision to the official grade standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses. To take into account the marketing of bales, a revision would also be necessary in the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco.

DATES: Comments are due on or before May 15, 2000.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Comments will be made available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456; Telephone (202) 205–0567; Fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend regulations under Subpart B, Regulations; Subpart C, Standards, and Subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

This proposal was based on a research project conducted by AMS and recommendations made by the industry to revise the regulations to better adapt flue-cured bale inspection into the current marketing system. On January 20, 2000, the Flue-Cured Tobacco Advisory Committee (FCTAC) met and reviewed recommendations from the tobacco industry on the flue-cured bale as an alternative packaging method. The recommendations made by the FCTAC have been included in this proposal for regulatory action. The proposed revision would add a new provision to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only, establish dimension and spacing requirements for marketing display of bales, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule. An earlier proposed rule concerning bale inspection was issued on May 12, 1999 (64 FR 25462) and was withdrawn on July 22, 1999 (64 FR 39432). The notice of the withdrawal stated that we intended to publish an advance notice of proposed rulemaking to solicit additional input. However, the FCTAC advised that the proposal be published promptly, and we agree that the issues have already been considered within the industry. Therefore, an advance notice of proposed rulemaking would no longer be necessary.

Flue-cured tobacco has been traditionally marketed in a sheet with a maximum weight of 275 pounds. The dimensions of the sheet is 8 feet x 8 feet and is composed of burlap or other synthetic materials. The tobacco is arranged in a circular pattern on the sheet and the corners are tied diagonally for handling purposes. The lot of sheeted tobacco is approximately 4 feet in diameter.

The tobacco industry has experimented with the bale as an alternative packaging method for marketing flue-cured tobacco during the past 4 years. This alternative package is a 42-inch wide x 42-inch high x 40-inch long bale weighing approximately 750 pounds. The bale is compressed together and bound by metal wires. The FCTAC recommended bale dimensions of 42 inches x 42 inches x 40 inches. Because uniformity in the size of bales is an important aspect of the acceptability of baled tobacco, bales which are not approximately these dimensions would be designated ''No-G.''

The current regulations under the Tobacco Inspection Act do not specifically restrict baling as a packaging method for flue-cured tobacco. However, the current regulations do require that an official grade determination be based on a thorough examination of a lot of tobacco. A minimum of three locations within a lot is required to be sampled to show the range of the entire lot. However, the buying segment of the tobacco industry has opposed opening bales citing integrity issues.

During the 1998 flue-cured marketing season, Tobacco Programs conducted a research project on marketing flue-cured tobacco in bales. The research focused on the grade and condition of flue-cured baled tobacco from the beginning to the end of the marketing process. Research data was collected at the farm level as the tobacco was compressed into a bale, at the auction warehouse before and during the day of sale, and at the processing facility as the bale was disassembled.

The purpose of the research project was to determine if significant variations existed between the exterior and interior of the flue-cured bale that would impact the official grade standards. The findings indicated there was no significant variation in grade and condition observed.

Accordingly, this proposal would revise the current tobacco regulations to allow the inspection of bales of flue-cured tobacco without the bale being opened for inspection. All lots of tobacco that are subject to mandatory inspection on a designated market should be made accessible to perform grading activities. The recommendation was made that each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors be placed in rows end to end so the open side of the

bales are facing the aisles. Also, a minimum space of 30 inches between the rows with the distance between lots of tobacco within the row shall be no less than 18 inches between immediately adjacent lots was recommended. These two spacing proposals would promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This would also provide accessibility for inspection of the bales.

An additional proposed revision would increase the poundage adjustment of 2,500 pounds by doubling the poundage amount for a warehouse selling in excess of the daily sales schedule. For example, 2,500 pounds would become 5,000 pounds and 5,000 pounds would become 10,000 pounds. The same would be applicable to undesignated producer tobacco, with 500 pounds becoming 1,000 pounds and 1,000 pounds becoming 2,000 pounds. This action is being proposed because the bale weight is approximately three times as much as tobacco marketed in sheets. This would give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This proposal should meet industry needs for marketing tobacco in bales.

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of ''small business'' which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers. The Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposal would add a new rule to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only. Accordingly, this change would allow grading of a closed package from the exterior only, and would assist in maintaining program integrity. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses and would provide accessibility for inspection of the bales. A revision would also be made to the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco in order to take into account the marketing of bales. These changes would apply equally to both small and large entities and they would take into account the marketing of flue-cured tobacco as it presently appears in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P. O. Box 96456, Washington, DC 20090–6456. A 60 day comment period is provided for comments.

List of Subjects 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that the regulations at 7 CFR Part 29 be amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for Part 29, Subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. A new § 29.75b is added to read as follows:

§ 29.75b Display of baled flue-cured tobacco on auction warehouse floors in designated markets.

Each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors shall have a minimum of 30 inches from side to side between the rows with open side of the bale facing the aisles. Distance between lots of baled tobacco within the row shall be no less than 18 inches between immediately adjacent lots.

Subpart C—Standards

3. The authority citation for Part 29, Subpart C continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

§ 29.1059 [Amended]

4. Section 29.1059 is amended by removing the words ''and 29.)'' and add in the place thereof the words ''29, and 30.)''

5. Section 29.1109 is revised to read as follows:

§ 29.1109 Rule 3.

In drawing an official sample from a hogshead or other package of tobacco, three or more breaks shall be made at such points and in such manner as the inspector or sampler may find necessary to determine the kinds of tobacco and the percentage of each kind contained in the lot. All breaks shall be made so that the tobacco contained in the center of the package is visible to the sampler, except for baled tobacco that is not opened for inspection (see Rule 30). Tobacco shall be drawn from at least three breaks from which a representative sample shall be selected. The sample shall include tobacco of each different group, quality, color, length, and kind found in the lot in proportion to the quantities of each contained in the lot.

6. Section 29.1129 is revised to read as follows:

§ 29.1129 Rule 23.

Tobacco shall be designated by the grademark ''No-G,'' when it is offtype, semicured, fire-killed, smoked, oxidized over 10 percent, has an odor foreign to the type, or is packed in bales which are not approximately 42 inches wide x 42 inches high x 40 inches long .

7. A new § 29.1136 is added to read as follows:

§ 29.1136 Rule 30.

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be graded by the exterior only.

Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

8. The authority citation for part 29, subpart G continues to read as follows:

Authority: Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98–180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

9. Section 29.9406 is amended by revising paragraphs (c)(1), (c)(2), (c)(3) and (d) to read as follows:

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

* * * * *

(c) * * *

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 15,000 pounds; and for the third and subsequent violations, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: March 8, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–6318 Filed 3–14–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 97

[Docket Number: ST 99–006]

RIN 0581–AB71

Revision of Plant Variety Protection Office Fees

AGENCY: Agricultural Marketing Agency, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase Plant Variety Protection Office application, search, and certificate issuance fees by approximately 10 percent. Due to operating cost increases, the last fee increase in 1995 is no longer adequate to cover costs for this fully user-fee funded program. Also, the information symbol used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection is added to the USDA/AMS inventory of symbols and would appear in the regulations.

DATES: Comments must be received on or before April 14, 2000.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to Commissioner, Plant Variety Protection Office (PVPO), Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1–301–504–7475; fax 1–301–504–5291, and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection at the same location, between the hours of 10 am and 4 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie Thro, Commissioner, PVPO; telephone 1–301–504–7475 or fax 1–301–504–5291.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866 and the Regulatory Flexibility Act

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this action on small entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small entities.

This rule has also been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

The Plant Variety Protection Office (PVPO) administers the Plant Variety Protection Act by issuing Certificates of Protection which provide legal intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover programs costs while maintain an adequate reserve balance. Without a fee increase, fiscal year (FY) 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. With the increase in revenue, the trust fund balance would be maintained at $1,600,000, its level at the end of FY1999.

This action would raise the fee charged to users of plant variety protection. The AMS estimates that this proposed rule would yield an additional $100,000 during FY 2000. The fee for plant variety protection would increase by approximately 10 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual users would be approximately $275.00 per Plant Variety Protection Certificate issued. Plant Variety Protection is

sought on a voluntary basis. Any decision on their part to discontinue the use of plant variety protection would not hinder these entities from marketing their varieties. Finally, the addition of the information symbol to the USDA/AMS inventory of symbols and its inclusion in the regulations would not add further costs to users of the variety protection services.

III. Paperwork Reduction Act

This proposed rule does not contain any information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

IV. Background information

The Plant Variety Protection Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*) (PVPA) of 1970, as amended. The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and potatoes. The act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On April 4, 1995, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees pursuant to amendments to the Plant Variety Protection Act that became effective April 4, 1995. In its analysis of projected costs for fiscal year 2000, AMS has identified increases in the costs of providing plant variety protection. Anticipated revenue will not cover increased program costs. Without a fee increase, FY 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. Due to the increase in revenue, the trust fund balance would be maintained at $1,600,000, its value at the end of FY 1999. The AMS estimates that this proposed rule would yield an additional $100,000 during FY 2000.

Program operating costs include salaries and benefits of examining staff, supervision, training, and all administrative costs of operating the program. Cost increases are attributed mainly (80 percent of total operating budget) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, totaling approximately 4.4 percent for the Washington, D.C. area, will materially affect the costs of plant variety protection. Increases are expected to continue in following years. Administrative costs, including salary increases, increases in rent, increases in costs of supplies and replacement equipment, and training have increased, in amounts ranging from 3.1 to 22 percent per item. Due to these operating cost increases, the last fee increase in 1995 is no longer adequate to cover obligations and maintain an adequate reserve balance.

The fees set forth in § 97.175 would be increased. The application fee will be increased from $300 to $320, the search fee from $2,150 to $2,385, and the issuance fee from $300 to $320. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from $300 to $320. The charge for granting an extension for responding to a request is increased from $50 to $55. The hourly charge for any other service not specified is increased from $60 to $66. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $2,750 to $3,050. These fee increases are necessary to cover costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase on March 24, 1999. The Board recommended that fees be increased. This proposed rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

The form of the official identification symbol, an umbrella over plant reproductive organs (a pistil with four stamens) illustrates the concept of intellectual property rights protection for sexually-reproduced crops.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small businesses. Thirty days is deemed appropriate because present fees are inadequate to properly cover program costs and additional revenues need to be generated to effectively operate the program.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, it is proposed that 7 CFR part 97 be amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

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

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing: $320.00
(b) Search or examination: $2,385.00
(c) Allowance and issuance of certificate and notifying public of issuance: $320.00
(d) Revive an abandoned application: $320.00
(e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material): $1.10
(f) Authentication (each page): $1.10
(g) Correcting or re-issuance of a certificate: $320.00
(h) Recording assignments (per certificate/application): $28.00
(i) Copies of 8 x 10 photographs in color: $28.00
(j) Additional fee for reconsideration: $320.00
(k) Additional fee for late payment: $28.00
(l) Additional fee for late replenishment of seed: $28.00
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision): $3,050.00
(n) Granting of extensions for responding to a request: $55.00
(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.

3. Section 97.900 is added to read as follows:

§ 97.900 Form of official identification symbol.

The symbol set forth in Figure 1, containing the words ''Plant Variety Protection Office'' and ''U.S. Department of Agriculture'', shall be the official identification symbol of the Plant Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.

Figure 1. Official identification symbol of the Plant Variety Protection Office.

Dated: March 8, 2000.

William J. Franks, Jr.,

Deputy Administrator, Science and Technology.

[FR Doc. 00—6317 Filed 3–14–0; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–320–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and–200 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 certain Boeing Model 737–100 and –200 series airplanes, that currently requires inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That AD also provides for an optional terminating modification that constitutes terminating action for the repetitive inspections. This action would mandate accomplishment of the previously optional terminating action. This proposal is prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The actions specified by the proposed AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2028; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–320–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–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 6, 1996, the FAA issued AD 96–17–04, amendment 39–9712 (61 FR 41957, August 13, 1996), applicable to certain Boeing Model 737–100 and –200 series airplanes, to require inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That action was prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The requirements of that AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

When AD 96–17–04 was issued, it contained a provision for an optional replacement of the aluminum support fitting of the Krueger flap actuator with a steel fitting, and modification of the actuator aft attachment, which, if accomplished, would constitute terminating action for the required repetitive inspections. That optional modification was to be accomplished in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981, as revised by Notices of Status Change 737–57–1129NSC1, dated July 23, 1982; 737–57–1129 NSC2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995. Revision 1 of the service bulletin contained a provision for operators to replace the existing aluminum support fitting of the Krueger flap actuator with a new aluminum support fitting. This action would mandate replacement of the aluminum support fitting with a steel fitting in accordance with Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998. Revision 2 of the service bulletin specifies replacement of the aluminum support fitting with a steel fitting only, all references to replacement with an aluminum support fitting have been removed from the service bulletin.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–17–04 to continue to require inspections to detect cracking of the support fittings of the Krueger flap actuator on each wing; and replacement of any existing aluminum fitting with a new steel fitting and modification of the actuator aft attachment.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends that the initial inspection be performed using a visual method and subsequent repetitive inspections be performed at regular maintenance intervals using an eddy current technique, this proposed AD would require that both the initial and repetitive inspections be accomplished using the eddy current method. The support fittings of the Krueger flap actuator on each wing are susceptible to stress corrosion cracking, and the crack growth rate for such cracking is unknown. The FAA finds that, if a visual inspection is accomplished to detect cracking of the support fittings, such cracking may not be detected in a timely manner to adequately address the unsafe condition. Therefore, the FAA has determined that an adequate level of safety for the affected fleet requires that both the initial and repetitive inspections of these fittings be performed at intervals not to exceed 3,000 hours time-in-service using an eddy current technique, which is a more reliable method for detection of cracking.

Operators also should note that this AD proposes to mandate, within 5 years after the effective date of this AD, replacement of any existing aluminum support fitting of the Krueger flap actuator on each wing with a new steel fitting; and modification of the actuator aft attachment, as described in Boeing Service Bulletin 737–57–1129, Revision 2, as terminating action for the repetitive inspections. Incorporation of this terminating action is described as optional in the service bulletin.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

There are approximately 727 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 270 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 96–17–04, and retained in this proposed AD, take approximately 12 work hours per airplane (6 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $194,400, or $720 per airplane, per inspection.

The replacement and modification that is proposed in this new AD action would take approximately 88 work hours per airplane (44 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $12,226 per airplane. Based on these figures, the cost impact of the replacement and modification proposed by this AD on U.S. operators is estimated to be $4,726,620, or $17,506 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.

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 39–9712 (61 FR 41957, August 13, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–320–AD. Supersedes AD 96–17–04, Amendment 39–9712.

Applicability: Model 737–100 and –200 series airplanes, line numbers 001 through 813 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 (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 possible failure of one or more hydraulic systems and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 96–17–04:

Repetitive Inspections

(a) Within one year after September 17, 1996 (the effective date of AD 96–17–04, amendment 39–9712), perform an eddy current inspection to detect cracking of the support fitting of the Krueger flap actuator on each wing, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981, as revised by Notices of Status Change 737–57–1129NSC1, dated July 23, 1982; 737–57–1129 NSC2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; or Revision 2, dated May 28, 1998.

(1) If no cracking is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 hours time-in-service.

(2) If any cracking is detected, prior to further flight, accomplish the replacement and modification specified in paragraph (b) of this AD.

New Requirements of This AD:

Terminating Action

(b) Within 5 years after the effective date of this AD: Replace any existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modify the actuator aft attachment, in accordance with Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998. Accomplishment of this replacement and modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Replacement of the existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modification of the actuator aft attachment, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981, as revised by Notices of Status Change 737–57–1129NSC1, dated July 23, 1982; 737–57–1129 NSC2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; is considered acceptable for compliance with the modification required by paragraph (b) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane any aluminum support fitting identified in the ''Existing Part Number'' column of Paragraph 2.D. of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 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 March 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6333 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–13–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B 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 Saab Model SAAB 340B series airplanes. This proposal would require a one-time inspection to detect discrepancies of the flight idle stop override mechanism, 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 prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown.

DATES: Comments must be received by April 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–13–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 Saab Aircraft AB, SAAB Aircraft .. Product Support, S–581.88, Linkoping, Sweden. 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 2000–NM–13–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. 2000–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that it received a report of an incident in which a flight crew, when attempting to use the automatic flight idle stop override that was required during landing, discovered that the override knob was stuck in position in the control quadrant. Subsequent inspection of the override knob mechanism revealed that cablewire was stuck in its conduit between the knob and the uplock mechanism. It appeared that the cablewire may have become stuck during modification of the control quadrant for installation of the automatic flight idle stop. Similar sticking may occur on other airplanes that have been modified in a similar manner. This condition, if not corrected, could result in inability to move the power levers below the flight idle position after touchdown, which could result in increased braking distance.

Other Related Rulemaking

On April 6, 1998, the FAA issued AD 98–08–16, amendment 39–10465 (63 FR 5902, April 14, 1998), applicable to certain Saab Model SAAB SF340A and 340B series airplanes, which currently requires a one-time inspection to detect discrepancies of the flight idle stop override mechanism, and corrective action, if necessary. That AD was prompted by issuance of mandatory continuing airworthiness information by the LFV (Swedish airworthiness directive 1–116, dated June 9, 1997). The actions required by that AD are intended to prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown.

Since issuance of that AD, the FAA has determined that the same unsafe condition addressed in that AD may exist on certain additional Saab Model SAAB 340B series airplanes. Those airplanes (identified as serial numbers –380 through –404 inclusive, –406 through –408 inclusive, and –410 through –413 inclusive) were omitted inadvertently from the applicability of AD 98–08–16 (those airplanes had also been excluded inadvertently from the effectivity of Swedish airworthiness directive 1–116). Therefore, those additional airplanes are also subject to the same unsafe condition addressed in AD 98–08–16.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–76–041, dated May 29, 1997, and Revision 01, dated July 2, 1997, which describe procedures for a one-time inspection to detect whether the override knob moves freely without scratching or jamming in the control quadrant. For any discrepant mechanism, this service bulletin describes procedures for replacement of the control quadrant with a new or serviceable control quadrant. The procedures in the original version and Revision 01 of the service bulletin are the same; Revision 01 was issued to incorporate certain minor clarifications of the procedures. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD 1–148, dated November 18, 1999, in order to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, 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 $1,860, or $60 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 a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

Saab Aircraft AB: Docket 2000–NM–13–AD.

Applicability: Model SAAB 340B series airplanes, certificated in any category; serial numbers –380 through –404 inclusive, –406 through –408 inclusive, and –410 through –413 inclusive.

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 increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown, accomplish the following:

Inspection

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the flight idle stop override mechanism to detect any discrepancy, in accordance with Saab Service Bulletin 340–76–041, dated May 29, 1997, or Revision 01, dated July 2, 1997. If any discrepancy is found, prior to further flight, replace the control quadrant with a new or serviceable control quadrant in accordance with the service bulletin.

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 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

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

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–148, dated November 18, 1999.

Issued in Renton, Washington, on March 9, 2000.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6332 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 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 certain Fokker Model F.28 Mark 0100 series airplanes, that currently requires a one-time visual inspection and a one-time eddy current and/or dye penetrant inspection of the nose landing gear (NLG) main fitting to detect cracking; and rework of the NLG main fitting, if necessary. This action would require new inspections (one-time detailed visual inspection and repetitive eddy current or dye penetrant inspections) to detect cracking of the NLG main fitting subassembly, and corrective actions, if necessary. This action also would revise the applicability of the existing AD. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers.

DATES: Comments must be received by April 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–02–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

Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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 2000–NM–02–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. 2000–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 13, 1998, the FAA issued AD 98–22–01, amendment 39–10847 (63 FR 58625, November 2, 1998), applicable to certain Fokker Model F.28 Mark 0100 series airplanes, to require a one-time visual inspection and a one-time eddy current and/or dye penetrant inspection of the nose landing gear (NLG) main fitting to detect cracking; and rework of the NLG main fitting, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has advised the FAA that, during maintenance, several additional occurrences of cracking of the main fitting subassembly (MFSA) of the downlock plunger support webs of the NLG were found. The cracks initiated on the inner side of both the left-hand and right-hand support webs of the downlock plunger. In light of the recent events, the manufacturer has released new service information and the FAA has determined that it is necessary to perform a new, one-time detailed visual inspection and repetitive eddy current or dye penetrant inspections to enable early detection of cracking in the affected area.

Issuance of New Service Information

The manufacturer has issued Fokker Service Bulletin SBF100–32–118, dated October 8, 1999, which describes procedures for a one-time detailed visual inspection and repetitive eddy current or dye penetrant inspections of the NLG main fitting subassembly to detect cracking, and rework of the main fitting, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1997–116/2 (A), dated October 29, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

The Fokker service bulletin references Messier-Dowty Service Bulletin F100–32–92, Revision 1, dated October 8, 1999, as an additional source of service information for accomplishing the inspections and rework of the NLG main fitting subassembly.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 the requirements of AD 98–22–01. This proposed AD would require a new, one-time detailed visual inspection, and a new eddy current or dye penetrant inspection to be accomplished repetitively. This proposed AD would revise the applicability of the existing AD to include airplanes on which a certain main fitting subassembly is installed. The actions would be required to be accomplished in accordance with the Fokker service bulletin described previously, except as described below. The proposed AD also would require that operators report all findings of the one-time detailed visual inspection and the initial eddy current or dye penetrant inspection to Fokker Services.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Fokker service bulletin specifies that the manufacturer may be contacted for disposition of certain cracking conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the RLD (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the RLD would be acceptable for compliance with this proposed AD.

Cost Impact

There are approximately 87 airplanes of U.S. registry that would be affected by this proposed AD.

The one-time detailed visual inspection proposed by 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 one-time inspection proposed by this AD on U.S. operators is estimated to be $5,220, or $60 per airplane.

The repetitive eddy current or dye penetrant inspections proposed by 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 repetitive inspection proposed by this AD on U.S. operators is estimated to be $5,220, or $60 per airplane, per inspection cycle.

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 a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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 39–10847 (63 FR 58625, November 2, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 2000–NM–02–AD. Supersedes AD 98–22–01, Amendment 39–10847.

Applicability: Model F.28 Mark 0100 series airplanes, certificated in any category; equipped with Messier-Dowty nose landing gear (NLG) having part number (P/N) 201071001 or 201071002, on which a main fitting subassembly (MFSA) having P/N 201071200, 201071228, 201071248, or 201071249 is installed.

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 (f) 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 cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers, accomplish the following:

One-time Detailed Visual Inspection

(a) Prior to the accumulation of 7,500 total flight cycles or within 50 flight cycles after the effective date of this AD, whichever occurs later: Perform a one-time detailed visual inspection of the NLG main fitting subassembly to detect cracking, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999.

(1) If no cracking is detected, no further action is required by this paragraph.

(2) If any cracking is detected, prior to further flight, accomplish the actions required by paragraph (b) of this AD.

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 mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Actions accomplished prior to the effective date of this AD, in accordance with Fokker Service Bulletin SBF100–32–112, dated November 14, 1997, which was cited in AD 98–22–01, amendment 39–10847, are not considered acceptable for compliance with any requirements of this AD.

Repetitive Eddy Current and/or Dye Penetrant Inspections

(b) Except as required by paragraph (a)(2) of this AD: Prior to the accumulation of 7,875 total flight cycles or within 375 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection of the NLG main fitting subassembly to detect cracking, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999. Such inspection within the compliance time required by paragraph (a) of this AD terminates the requirements of paragraph (a) of this AD. Repeat the inspection thereafter, using an eddy current or dye penetrant technique, at intervals not to exceed 750 flight cycles.

(c) If any cracking is detected during any inspection required by paragraph (b) of this AD: Prior to further flight, rework the main fitting of the NLG, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999. If, after rework, any cracking remains that exceeds the limits specified in the service bulletin, prior to further flight, accomplish the actions specified by either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the NLG in accordance with the service bulletin; and within 7,875 flight cycles after such replacement, perform the inspection as specified in paragraph (b) of this AD, and repeat the inspection thereafter at intervals not to exceed 750 flight cycles. Or

(2) Repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Rijksluchtvaartdienst (RLD) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 4: The Fokker service bulletin references Messier-Dowty Service Bulletin F100–32–92, Revision 1, dated October 8, 1999, as an additional source of service information for accomplishing the inspections and rework of the NLG main fitting subassembly.

Reporting Requirements

(d) Submit a report of the detailed visual inspection findings (positive and negative) required by paragraph (a) and a report of the initial eddy current or dye penetrant inspection findings (positive and negative) required by paragraph (b) to Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; at the applicable time specified in paragraph (d)(1) or (d)(2). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMP) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C.

3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the detailed visual inspection specified by paragraph (a) of this AD and the initial repetitive eddy current or dye penetrant inspection specified by paragraph (b) of this AD are accomplished after the effective date of this AD: Submit each report within 7 days after performing the applicable inspection.

(2) For airplanes on which the detailed visual inspection specified by paragraph (a) of this AD and the initial repetitive eddy current or dye penetrant inspection specified in paragraph (b) of this AD have been accomplished prior to the effective date of this AD: Submit the reports within 7 days after the effective date of this AD.

Spares

(e) As of the effective date of this AD, no person shall install a NLG having P/N 201071001 or 201071002 unless the installed MFSA has been inspected, by means of an eddy current or dye penetrant inspection, in accordance with paragraph (b) of this AD.

Alternative Methods of Compliance

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

Note 5: 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

(g) 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 6: The subject of this AD is addressed in Dutch airworthiness directive BLA 1997–116/2 (A), dated October 29, 1999.

Issued in Renton, Washington, on March 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6331 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110, and 165

[CGD01–99–191]

RIN 2115–AA97, AA98, AE46

Temporary Regulations: SAIL BOSTON 2000, Port of Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish several temporary regulated areas, safety and security zones, and spectator anchorages before, during, and after Sail Boston 2000 events in the Port of Boston, Massachusetts, to be held between July 10–16, 2000. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: Comments and related material must reach the Coast Guard on or before May 1, 2000.

ADDRESSES: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office Boston, Attn: Waterways Management Division, 455 Commercial Street, Boston, MA 02109. The Waterways Management Division of Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents, will become part of this docket and will be available for inspection and copying at the Coast Guard Marine Safety Office.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian Downey, Marine Safety Office Boston, Boston, MA 02109; (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Each person submitting comments should include their name and address, identify this notice (CGD01–99–191), the specific section of the proposal to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8½″ × 11″ unbound paper in a format suitable for copying and electronic filing. Persons requesting acknowledgement of receipt of comments should include a stamped, self-addressed postcard or envelope. All comments submitted during the comment period will be considered by the Coast Guard and may change this proposal. The comment period for this regulation is 45 days. This time period is adequate to allow public comment because this event is highly publicized and coordinated with other Coast Guard Districts. The shortened comment period will allow the full 30 day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Hearing

The Coast Guard has no plans to hold a public hearing. Informal public meetings were held December 1 and 7, 1999, and comments raised have been incorporated into this document. Persons may request a public hearing by writing to Commander, First Coast Guard District (m) via Marine Safety Office Boston, at the address listed under **ADDRESSES.** The request should include reasons why a public hearing would be beneficial. If the Coast Guard determines that oral presentations will aid in this rulemaking, it will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary regulations are for Sail Boston 2000 events held in Boston Harbor. These events will be held from July 10 through 16, 2000. This rule is proposed to provide for the safety of life on navigable waters and to protect U.S. Navy vessels, tall ships, spectators, and the Port of Boston during these events. At the time of this notice, Sail Boston 2000 events are expected to include the following:

1. July 10–11: Tall Ship Rally
2. July 11: Grand Parade of Sail
3. July 11–16: Safety and Security Zones
4. July 11–16: USS JOHN F. KENNEDY and Support Vessel Visits
5. July 12–15: Public Boarding of Tall Ships
6. July 15: Boston 2000 Fireworks Extravaganza
7. July 16: Salute to USS CONSTITUTION Parade
8. July 16: Tall Ships 2000 Race Restart

Discussion of Proposed Rule

Sail Boston 2000, Inc. is sponsoring Sail Boston 2000. The scheduled events will occur between July 10 and 16, 2000 in the Port of Boston and surrounding waters. The events will consist of a July 10 and 11, 2000 Tall Ship Rally in Broad Sound, and a July 11, 2000 Parade of Sail from Broad Sound into Boston Harbor. The parade route will originate in Broad Sound and follow

Boston North Channel southwesterly, passing between Deer Island and Long Island through President Roads and continue inbound through the Boston Main Channel to various berths throughout the Port of Boston using the Main Ship Channel. The USS CONSTITUTION will lead the Grand Parade of Sail. The festivities also include a July 15, 2000 fireworks display and a July 16, 2000 Salute to the USS CONSTITUTION. The Salute to the USS CONSTITUTION consists of a tall ship parade. The parade route will begin from various mooring sites in Boston Inner Harbor, transiting outbound through the Main Channel, Boston North Channel to Broad Sound. The USS CONSTITUTION will anchor in Spectator Anchorage K. No other vessels will be permitted in Spectator Anchorage K without permission of the Captain of the Port.

During this same period it is expected that U.S. Navy aircraft carrier USS JOHN F. KENNEDY will be in port joining this celebration. The USS JOHN F. KENNEDY will be berthed at the North Jetty in the Marine Industrial Park, South Boston, MA.

The Coast Guard estimates 10,000 spectator craft will attend the events. The proposed regulations would create temporary anchorage regulations, vessel movement controls through regulated areas, and safety and security zones. The proposed regulations would be in effect at various times in Boston Harbor between July 10 and 16, 2000. Vessel congestion, due to the anticipated large number of participating and spectator vessels, poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

All coordinates are North American Datum (NAD) 1983.

Regulated Areas

The Coast Guard proposes to establish three regulated areas in Boston Harbor that will be in effect during Sail Boston 2000 events. These proposed regulated areas are needed to permit unrestricted law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with the dense vessel traffic.

Regulated Area A covers all waters of Broad Sound and Boston Outer Harbor bounded by 070°52′00″ W, 070°57′13″ W, 42°17′30″ N, and 42°24′42″ N including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, Hull Bay, and Nantasket Roads. The area includes also all temporary spectator anchorages established in 33 CFR 110.T01–135–191. Regulated Area A would be applicable from 8 am until 6 pm on July 11, 2000 and 8 am until 6 pm on July 16, 2000.

Regulated Area B covers all waters of Boston Inner Harbor westward from a line drawn between Deer Island at position 42°20′38″ N, 070°57′13″ W and Long Island at position 42°19′51″ N, 070°57′13″ W including President Roads, Sculpin Ledge Channel, Dorchester Bay, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street Bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge. The area also includes all temporary spectator anchorages established in 33 CFR 110.T01–135–191. Regulated Area B would be applicable from 8 am on July 11, 2000 until 6 pm on July 16, 2000.

A fifty (50) foot safety zone around all moored tall ships is proposed. Regulated Area B will ensure the safety of moored tall ships and spectator craft.

On July 11, 2000, following the Grand Parade of Sail, Boston Harbor will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships has passed Castle Island, vessel operators anchored in spectator anchorages east of Castle Island may depart for locations outside Boston Harbor. After the final flotilla of tall ships has safely moored, vessel operators may depart from the remaining established spectator anchorages. Vessels transiting through Boston Harbor must proceed as directed by on-scene Coast Guard personnel.

On July 16, 2000, following the Salute to USS CONSTITUTION, Boston Harbor will reopen in sequence with the movement of the last outbound tall ship. After the last outbound tall ship has passed Castle Island, vessel operators may depart established spectator anchorages west of Castle Island and transit to locations within Boston Harbor, but west of Castle Island.

After the last outbound tall ship has passed the Boston North Channel Entrance Lighted Gong Buoy ''NC'', vessel operators anchored in established spectator anchorages may depart for locations outside Boston Harbor.

Regulated Area C is proposed as an Emergency Transit Lane from Boston Main Channel Light ''5'' to Charlestown Navy Yard Pier ''1'' extending fifty (50) yards into the outbound lane of the Boston Main Channel. The lane is proposed to allow unlimited access to emergency and law enforcement vessels.

Regulated Area C, implementing emergency lane restrictions, would be enforced from 8 am until 6 pm on July 11, 2000 and from 8 am until 6 pm, on July 16, 2000.

Anchorage Regulations

The Coast Guard proposes to establish temporary anchorage regulations for participating Sail Boston 2000 ships and spectator craft. 33 CFR 110.134 is temporarily suspended by this regulation and new spectator anchorages and regulations are temporarily established.

The proposed anchorage regulations temporarily establish spectator anchorages for spectator craft or Sail Boston 2000 participant vessel use only. They restrict all other vessels from using these spectator anchorages during Sail Boston 2000 events.

The Coast Guard proposes to establish temporary spectator anchorages in the vicinity of Boston North Channel, Long Island, President Roads, and Boston Inner Harbor. Additionally, the Coast Guard proposes to establish a temporary anchorage for the exclusive use of tall ships in Broad Sound and Mystic River. The applicable dates for the proposed temporary spectator anchorages are July 10 and 11, 2000 and July 15 and 16, 2000.

Safety and Security Zones

The Coast Guard proposes to establish temporary safety and security zones throughout Broad Sound and Boston Inner and Outer Harbors. During the July 10 and 11, 2000 Tall Ship Rally in Broad Sound, a safety zone encompassing all waters within a five hundred (500) yard radius from approximate position 42°23′06″ N, 070°53′26″ W and all tall ship anchorages established in 33 CFR 110.T01–135–191 is proposed.

On July 11, 2000 from 8 am until 6 pm a three hundred (300) yard moving safety zone around participating tall ships is proposed for Broad Sound and Boston Harbor. The safety zone will ensure the safety of participating tall ships and spectator craft during the Grand Parade of Sail. On July 15, 2000 a four hundred (400) yard safety zone surrounding fireworks barges in Boston Inner Harbor is proposed from 8 pm until 11 pm The safety zone will ensure the safety of spectator craft during the scheduled fireworks display. Fireworks will be fired from barges anchored northeast of Pier ''2'' in South Boston. From 8 am until 6 pm on July 16, 2000, a three hundred (300) yard moving

safety zone around each participating tall ship is proposed for Boston Harbor and Broad Sound. The safety zone will ensure the safety of participating tall ships and spectator craft during the Salute to the USS CONSTITUTION Parade. On July 16, 2000 a three (3) square mile safety zone is proposed for Massachusetts Bay off of Nahant from 10 am until 6 pm. This three (3) square mile area will serve as the staging area for the Tall Ships 2000 Race Restart. The safety zone will ensure the safety of participating tall ships and spectator craft during the Tall Ships 2000 Race Restart. A three hundred (300) yard moving safety zone around each participating tall ship is also proposed for the Tall Ships 2000 Race Restart as each proceeds from its respective berth to the staging area.

From 6 pm July 10, 2000 until 6 pm July 16, 2000, a five hundred (500) yard security zone is proposed for Boston Inner Harbor's North Jetty, in South Boston. The security zone will protect the moored U.S. naval aircraft carrier USS JOHN F. KENNEDY. All safety and security zones will be easily identifiable by patrolling Coast Guard and law enforcement craft.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policy and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The economic impact of this proposed rule is expected to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation imposes traffic restrictions in portions of Boston Harbor during the events, the effect of this regulation will not be significant for the following reasons: The regulated areas, spectator anchorages, and safety and security zones, will be limited in duration; and extensive advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, marine safety information broadcasts, local Port Operators Group meetings, the Internet, and Boston area newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, these regulated areas are tailored to impose the least impact on maritime interests without compromising safety.

Similar regulated areas and safety and security zones were established for Sail Boston 1992 events. Based upon the Coast Guard's experiences from that previous similar magnitude event, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

Small Entities

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

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Broad Sound and Boston Inner and Outer Harbors during various times from July 10 until 16, 2000. These regulations would not have a significant economic impact on a substantial number of small entities because the Coast Guard will notify the public via mailings, facsimiles, Local Notice to Mariners, marine safety information broadcasts, local Port Operators Group meetings, the media, the Internet, and Boston area newspapers. In addition, the sponsoring organization, Sail Boston 2000, Inc., plans to announce event information in local newspapers, pamphlets, and television and radio broadcasts. The advance notice will permit mariners to adjust their plans accordingly. Although these regulations would apply to a substantial portion of the Port of Boston, areas for viewing the Parade of Sail, Boston 2000 Fireworks Extravaganza, Salute to USS CONSTITUTION, and Tall Ships 2000 Race Restart are being established to maximize the use of the waterways by commercial vessels that usually operate in the affected areas.

Businesses, organizations, or governmental jurisdictions that qualify as a small entity and believe that this rule would significantly impact them may submit a comment (see ADDRESSES) explaining why they think they qualify and how and to what degree this rule would economically affect them.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard aims to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Brian Downey, Marine Safety Office, Boston, at (617) 223–3000.

Collection of Information

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

Federalism

An analysis of this proposed rule under E.O. 13132 has determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

An analysis of this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks has determined that this rule is not an economically significant rule and does not concern an environmental risk to health or risk to

safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34 (f, g, and h) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

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

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

2. Add temporary § 100.TO1–191 to read as follows:

§ 100.TO1–191 Regulated area, Broad Sound, Boston Outer Harbor, and Boston Inner Harbor.

(a) Regulated Areas: All regulated area coordinates are NAD 1983.

(1) *Regulated Area A*—(i) *Location.* The following is Regulated Area A: All waters of Broad Sound and Boston Outer Harbor bounded by 070°52′00″ W, 070°57′13″ W, 42°17′30″ N, and 42°24′42″ N including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, Hingham Bay, Hull Bay, and Nantasket Roads.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 8 am until 6 pm on July 11, 2000 and from 8 am until 6 pm on July 16, 2000.

(2) *Regulated Area B*—(i) *Location.* The following is Regulated Area B: Boston Inner Harbor westward from a line drawn between Deer Island at position 42°20′38″ N, 070°57′13″ W and Long Island at position 42°191′51″ N, 070°57′13″ W including President Roads, Sculpin Ledge Channel, Dorchester Bay, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street Bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 8 am on July 11, 2000 until 6 pm on July 16, 2000.

(3) *Regulated Area C*—(i) *Location.* The following is Regulated Area C: All waters from Boston Main Channel Light ''5'' to Charlestown Navy Yard Pier ''1'' extending fifty (50) yards into the outbound lane of the Boston Main Channel.

(ii) *Enforcement period.* Paragraph (a)(3)(i) of this section is enforced from 8 am until 6 pm on July 11, 2000 and from 8 am until 6 pm on July 16, 2000.

(b) *Special local regulation.* (1) During the effective period, vessel operators transiting through regulated areas A and B shall proceed at no wake speeds not to exceed five miles per hour, unless otherwise authorized by the Captain of the Port.

(2) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, local, state, and federal law enforcement vessels.

(3) After completion of the fireworks display on July 15, 2000, vessel operators within Regulated Area B are prohibited from passing outbound patrol vessels showing blue lights.

(4) Vessel operators must remain in established spectator anchorages established in 33 CFR 110.T01.135–191, from 8 am, until 6 pm on July 11 and 16, 2000 except as authorized by the Captain of the Port.

(5) Vessel operators anchored in Spectator Anchorages N, P, or Q established in 33 CFR 110.T01–135–191 may depart those anchorages to view offshore activities following the Salute to USS CONSTITUTION on July 16, 2000, provided they observe enforced safety zones and transit outside main channels. Vessel operators who cannot safely navigate outside of established channels must remain anchored until the channels are reopened to routine navigation.

(6) Vessels, except for those participating in the Grand Parade of Sail and Salute to the USS CONSTITUTION or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring sites in Regulated Area B from 8 am until 6 pm on July 11 and July 16, 2000 except as authorized by the Captain of the Port.

(7) Vessel operators transiting the Reserved Channel during authorized times, not mentioned in (b)(6) of this section, must enter and keep to the starboard side of the channel, proceeding as directed by on-scene Coast Guard patrol personnel. Vessel traffic shall move in a counterclockwise direction around the turning point established off the Sithe New England power plant, as marked by an appropriate on-scene patrol vessel. Vessel operators shall exit the Reserved Channel keeping to the starboard side of the channel.

(8) Vessel operators transiting the regulated areas must maintain at least fifty (50) feet safe distance from all moored tall ships and make way for all deep draft vessel traffic underway in the regulated areas.

(9) Vessels, except emergency, law enforcement, and those authorized by the Captain of the Port, may not transit through Regulated Area C, which has been designated as an Emergency Transit Lane.

(c) *Effective dates.* This section is effective from 8 am on July 11, 2000 until 6 pm on July 16, 2000.

PART 110—ANCHORAGE GROUNDS

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

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From July 10, 2000 through July 16, 2000, § 110.134 is temporarily suspended and § 110.T01–135–191 is temporarily added as follows:

§ 110.T01–135–191 Boston Harbor, Mass.

Note: Mariners are cautioned that the areas established as spectator anchorages in this section have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. In addition, the anchorages are in areas of substantial currents, and not all anchorages are over good holding ground. Mariners are advised to take appropriate precautions when using these temporary anchorages. These are not special anchorage areas. Vessels must display anchor lights, as required by the Inland Navigation rules.

(a) *The anchorages.* All anchorages in this paragraph are applicable as specified. Vessel operators using the anchorages in this paragraph must comply with the general operational

requirements specified in paragraph (b) of this section. All coordinates are NAD 1983.

(1) *Long Island Anchorage.* (i) All bearings are reflected as true. East of Long Island, bounded as follows: Beginning at the southwestern most point of Gallups Island; then 270° to Long Island; then southerly along the eastern shore line of Long Island to Bass Point; then to the northernmost point of Rainsford Island; then to Georges Island Gong Buoy ''6''; and then to the point of beginning.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(2) *Castle Island Anchorage.* (i) Bounded on the north by Castle Island and adjacent land; on the east by a line between Castle Rocks Fog Signal Light and Old Harbor Shoal Buoy ''2''; on the southeast by a line between Old Harbor Shoal Buoy ''2'' and Old Harbor Buoy ''4''; and on the west by a line running due north from Old Harbor Buoy ''4'' to the shore line at City Point.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(3) *Explosives Anchorage.* (i) In the lower harbor, bounded on the northeast by a line between the northeast end of Peddocks Island and the northeast end of Rainsford Island; on the northwest by Rainsford Island; on the southwest by a line between the western extremity of Rainsford Island and the westernmost point of Peddocks Island; and on the southeast by Peddocks Island.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(4) *Tall Ship Anchorage.* (i) All bearings are reflected as true. In the outer harbor in Broad Sound and Nahant Bay, bounded as follows: On the east by a line connecting Boston North Channel Lighted Bell Buoy ''2'' on Finns Ledge to Off Rock, Littles Point, Swampscott, MA and bounded on the west by a line connecting approximate position 42°22′11″ N, 070°56′17″ W and approximate position 42°24′05″ N, 070°57′05″ W; then running from approximate position 42°24′05″ N, 070°57′05″ W to Bailey's Hill Nahant, MA then north to include Nahant Harbor and Nahant Bay.

(ii) This anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 2000 activities. Vessel movements through these areas during the periods specified, shall be directed by on-scene Coast Guard patrol personnel.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 16, 2000.

(5) *Mystic Anchorage.* (i) All bearings are reflected as true. All waters in the inner harbor in the Mystic River off Charlestown, in the vicinity of the old Amstar and Revere Sugar docks, bounded as follows: By a line running along 071°04′00″ W extending into the river four hundred (400) feet from shore; then turning 100° and running to the approximate position 071°03′44″ N, then running east along 071°03′44″ W for four hundred (400) feet back to shore; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 2000 activities. Vessel movements through these areas during the periods specified, shall be directed by on-scene Coast Guard patrol personnel.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 16, 2000.

(6) *Spectator Anchorage B.* (i) All bearings are reflected as true. All waters in the inner harbor along the shoreline of East Boston, east of the Boston Main Channel, bounded as follows: By a line from Boston Main Channel Light ''14'', extending northwesterly to the Main Channel's edge at approximate position 42°22′19″ N, 071°02′47″ W, then southeasterly, along Boston Main Channel's eastern edge to 42°22′39″ N, 071°02′33″ W, and then to the southwest corner of Massport Pier ''1'', East Boston.

(ii) This anchorage is designated for the exclusive use of recreational vessels 45 feet or less in length with superstructures not to exceed ten (10) feet in height.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(7) *Spectator Anchorage C.* (i) All bearings are reflected as true. All waters in the inner harbor along the southern edge of Cashman's shipyard, East Boston eastward of the Main Channel, situated to provide a channel between it and Spectator Anchorage D, allowing access to Bird Island Flats, bounded as follows: beginning at 42°21′32.7″ N, 071°01′53″ W; then 210° to the northern edge of the Boston Main Channel; then northwesterly along Boston Main Channel's edge to approximate position 42°21′42″ N, 71°02′28.4″ W; then running to approximate position 42°21′48″ N, 071°02′23″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations).

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(8) *Spectator Anchorage D.* (i) All bearings are reflected as true. All waters in the inner harbor along the southwestern edge of Logan International Airport, East Boston, east of the Main Channel, situated to provide a channel between it and Spectator Anchorage C, allowing access to Bird Island Flats, bounded as follows: Beginning at Bird Island Flats Buoy ''2''; then running 224° to the northern edge of the Boston Main Channel; then to 42°21′03″ N, 071°01′18″ W; then turning 024° and running to the shore; and then running to the point of beginning at Bird Island Flats Buoy ''2.''

(ii) This anchorage is designated for the exclusive use of recreational vessels forty-five (45) feet or less in length. Spectator Anchorage D may not be used as an overnight anchorage from 6 pm until 6 am for any vessels during the Sail Boston 2000 events.

(iii) This paragraph is applicable on July 11, 2000 and July 16, 2000.

(9) *Spectator Anchorage E.* (i) All bearings are reflected as true. All waters in the inner harbor along the southeastern edge of Logan International Airport, bounded as follows: Beginning at Boston Main Channel Lighted Buoy ''12''; then 030° and running to shore; then along the shore to approximate position 42°20′48″ N, 071°00′27.5″ W; then running to approximate position 42°20′38.3″ N, 071°00′35.6″ W; then running along the northern edge of the Boston Main Channel to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels with a height above water at any point not to exceed fifty (50) feet.

(iii) This anchorage may not be used as an overnight anchorage between 6 pm and 6 am for any vessels during the Sail Boston 2000 events.

(iv) This paragraph is applicable July 11, 2000 and July 16, 2000.

(10) *Spectator Anchorage F.* (i) All bearings are reflected as true. All waters in the inner harbor along the Massport

North Jetty, South Boston, bounded as follows: Beginning at approximate position 42°21′05″ N, 071°01′54″ W; then running to approximate position 42°20′59″ N, 071°01′39″ W; then running to 42°20′56″ N, 071°01′41″ W; then running northwesterly along the face of the Massport North Jetty to the corner of the Jetty; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels forty-five (45) feet or less in length with superstructures not to exceed ten (10) feet in height.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(11) *Spectator Anchorage G.* (i) All waters in the inner harbor along the Fan Pier, South Boston, situated to provide a channel between it and Boston Special Anchorage, allowing access to the Fort Point Channel, bounded and described as follows: beginning at 42°21′22″ N, 071°02′50″ W; then to 42°21′24″ N, 071°02′38″ W; then to 42°21′04″ N, 071°02′31″ W; then to 42°21′20″ N, 071°02′26″ W; then to Pier ''4'' Wreck Buoy (white and orange can, privately maintained); and then to the point of beginning.

(ii) This anchorage is designated as a special use anchorage, as deemed appropriate by the Captain of the Port. No vessel may anchor in this Anchorage without the permission of the Captain of the Port.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(12) *Spectator Anchorage H.* (i) All waters in the inner harbor bounded as follows: Beginning at the Boston Main Channel Lighted Buoy ''6''; then to 42°20′12″ N, 070°59′14.5″ W; then to Boston Main Channel Lighted Buoy ''4''; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels of any size.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(13) *Spectator Anchorage J.* (i) All waters in the inner harbor to include the waters between the Main Channel and Governor's Island Flats, bounded as follows: Beginning at 42°20′12″ N, 070°59′14.5″ W; then to 42°20′30″ N, 70°59′14.5″ W; then to President Roads Anchorage Lighted Buoy ''D'', located at approximate position 42°20′33″ N, 70°58′52″ W then to 42°20′05″ N, 070°58′43.5″ W; then to Boston Main Channel Lighted Bell Buoy ''4'', located at approximate position 42°20′04″ N, 070°59′26″ W; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of commercial fishing vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(14) *Spectator Anchorage K.* (i) All bearings are reflected as true. All waters in the inner harbor between the Main Channel and Deer Island Flats as follows: Beginning at a point bearing 237°, 522 yards from Deer Island Light; thence to a point bearing 254°, 2,280 yards from Deer Island Light; thence to a point bearing 261°, 2,290 yards from Deer Island Light; thence to a point bearing 278°, 2,438 yards from Deer Island Light; thence to a point bearing 319°, 933 yards from Deer Island Light; thence to a point bearing 319°, 666 yards from Deer Island Light; and thence to the point of beginning.

(ii) This anchorage is a special use anchorage, as deemed appropriate by the Captain of the Port. No vessel may anchor in this Anchorage without the permission of the Captain of the Port

(iii) This paragraph is effective from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(15) *Spectator Anchorage L.* (i) In the inner harbor off the northwestern edge of Long Island into the entrance to Sculpin Ledge Channel, bounded as follows: Beginning at Boston Main Channel Lighted Buoy ''17''; then to 42°19′40.5″ N, 070°57′50″ W; then to 42°19′40.5″ N, 070°58′43.8″ W; then to Boston Main Channel Lighted Buoy ''1''; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(16) *Spectator Anchorage M.* (i) All waters in the inner harbor along the northern edge of Spectacle Island, bounded as follows: Beginning at 42°20′00″ N, 071°00′00″ W; then to Boston Main Channel Lighted Buoy ''3''; then to Boston Main Channel Lighted Buoy ''1''; then to 42°19′40″ N, 070°59′57″ W; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels of any size.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(17) *Spectator Anchorage N.* (i) All waters in the outer harbor along the western edge of the Boston North Channel bounded as follows: Beginning at Boston North Channel Lighted Bell Buoy ''10''; then to Boston North Channel Lighted Buoy ''4''; then to 42°22′00″ N, 070°56′24″ W; then to 42°21′40″ N, 070°56′17.5″ W; then to 42°21′20.5″ N, 070°56′10″ W; then to 42°20′39″ N, 070°56′38.5″ W; and then to the point of beginning.

(ii) This anchorage is designated for any latecoming spectator craft on hand to view the Grand Parade of Sail and Salute to USS CONSTITUTION Parade.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(18) *Spectator Anchorage P.* (i) All bearings are reflected as true. All waters in the outer harbor between the eastern edge of the Boston North Channel and Boston South Channel, bounded as follows: Beginning at Boston North Channel Lighted Buoy ''3''; then southeast to Boston South Channel Lighted Buoy ''6''; then along the northern edge of Boston South Channel to Boston South Channel Lighted Buoy ''10''; then to Boston North Channel Lighted Buoy ''PR''; then along the eastern edge of the Boston North Channel to the point of beginning.

(ii) This anchorage is designated for any latecoming spectator craft on hand to view the Grand Parade of Sail and Salute to USS CONSTITUTION Parade.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(19) *Spectator Anchorage Q.* (i) All waters in the outer harbor at the entrance to the Boston South Channel, bounded as follows: Beginning at Boston North Channel Lighted Buoy ''PR''; then to Boston South Channel Lighted Buoy ''10''; then to Boston South Channel Buoy ''11'' then to 42°20′15″ N, 070°56′23″ W; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under subchapter T and K of title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels. Spectator Anchorage Q has one localized ledge eight feet deep.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(b) *The regulations.* The anchorages designated in paragraphs (a)(1) through (19) of this section are subject to the following regulations:

(1) General Operational Requirements for all anchorages. Vessel operators using any of the anchorages established in this section shall:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor during marine events;

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, local, state, and federal law enforcement vessels;

(iii) Vacate anchorages after termination of their effective periods;

(iv) Mark with an identifiable bouy any anchors which have been fouled on lobster trap lines or other obstructions if such anchors cannot be freed or raised.

(v) Use only Spectator Anchorages N, P, or Q if going offshore to view the tall ship events occurring in Massachusetts Bay on July 11, 2000 and July 16, 2000;

(vi) Display anchor lights when anchoring at night in any anchorage;

(vii) Not leave vessels unattended in any anchorage at any time; (viii) Not tie off to any buoy;

(ix) Maintain at least twenty (20) feet of clearance if maneuvering between anchored vessels;

(x) Not nest or tie off to other vessels in that anchorage;

(xi) Not block access to designated emergency medical evacuation areas.

(c) *Effective dates.* This section is effective from July 10, 2000 until July 16, 2000.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5.

5. Add § 165.TO1–191 to read as follows:

§ 165.TO1–191 Safety Zone: Tall Ship Rally and Grand Parade of Sail, Broad Sound and Boston Harbor, Boston, MA.

(a) *Location.* The following are safety zones (all coordinates are NAD 1983): (1) All waters within a three hundred (300) yard radius of each vessel participating in the Grand Parade of Sail as it proceeds from approximate position 42°24′00″ N, 070°52′00″ W in Broad Sound, following the Boston North Channel and Boston Main Channel to various mooring sites throughout Boston Inner Harbor.

(2) All waters within a five hundred (500) yard radius from approximate position 42°23′06″ N, 070°53′26″ W; and

(3) All tall ship anchorages established in 33 CFR § 110.T01–135–191.

(b) *Effective dates.* This section is effective from 6 pm on July 10, 2000 until 6 p.m. on July 11, 2000.

(c) *Regulations.* The following special regulation applies: Vessels, except those participating in the Grand Parade of Sail, and duly authorized patrol craft, may not transit the safety zone except as authorized by the Captain of the Port.

6.Add § 165.TO1–192 to read as follows:

§ 165.TO1–192 Safety Zone: Boston 2000 Fireworks Extravaganza, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following is a safety zone (all coordinates are NAD 1983): All waters within a four hundred (400) yard radius of Boston 2000 Fireworks Extravaganza barges and attending tug boats moored at approximate position 42°21′30″ N, 071°02′30″ W.

(b) *Effective date.* This section is effective from 8 pm until 11 p.m. on July 15, 2000.

(c) *Regulations.* The following special regulation applies: Vessels may not transit through the safety zone unless authorized by the Captain of the Port.

7. Add new § 165.TO1–193 to read as follows:

§ 165.TO1–193 Safety Zone: Salute to USS CONSTITUTION Parade, Boston Harbor, Boston, MA.

(a) *Location.* The following are safety zones (all coordinates are NAD 1983): (1) all waters within a three hundred (300) yard radius of the USS CONSTITUTION anchored at approximate position 42°20′24″ N, 071°58′14″ W.

(2) A moving safety zone within a three hundred (300) yard radius of all vessels participating in the Salute to the USS CONSTITUTION as they proceed from their various Boston Inner Harbor mooring sites transiting outbound using the Boston Main Channel and Boston North Channel to the Tall Ship 2000 Restart in Broad Sound established in 33 CFR 165.T01–194. The zone also includes all temporary spectator anchorages established in 33 CFR 110.T01–135–191.

(b) *Effective period.* This section is effective from 8 am until 6 pm on July 16, 2000.

(c) *Regulations.* The following special regulation applies: Vessels, except for those participating in the Salute to USS CONSTITUTION and duly authorized patrol craft, may not enter or remain in the safety zone except as authorized by the Captain of the Port.

8. Add § 165.TO1–194 to read as follows:

§ 165.TO1–194 Safety Zone: Tall Ships 2000 Race Restart, Massachusetts Bay, Boston, MA.

(a) *Location.* The following is a safety zone (all coordinates are NAD 1983): All waters in a three (3) square mile area in Massachusetts Bay bounded as follows: Beginning at 42°27′12″ N, 070°40′00″ W; thence to 42°27′12″ N, 070°36′00″ W; thence to 42°24′06″ N, 070°36′00″ W; thence to 42°24′06″ N, 070°40′00″ W; and thence to the point of beginning.

(b) *Effective period.* This section is effective from 10 am on until 6 pm on July 16, 2000.

(c) *Regulations.* The following regulation applies: Vessels, except for those participating in the Tall Ships 2000 Race Restart, and duly authorized patrol craft, may not enter or remain in the safety zone from 10 a.m. to 6 p.m. except as authorized by the Captain of the Port.

9. Add § 165.TO1–195 to read as follows:

§ 165.TO1–195 Security Zone: USS JOHN F. KENNEDY, North Jetty, Boston Harbor, Boston, MA.

(a) *Location.* The following is a security zone (all coordinates are NAD 1983): All waters of Boston inner harbor at the North Jetty, South Boston, bounded as follows: Beginning at 42°20′53″ N, 071°01′34″ W; thence to 42°20′56″ N, 071°01′32″ W; along the western edge of Boston Harbor South Channel thence to 42°20′51″ N, 071°01′23″ W; thence to 42°20′49″ N, 071°01′24″ W; then running along the pier face to the point of beginning.

(b) *Effective dates.* This section is effective from 6 pm on July 10, 2000 until 6 pm on July 16, 2000.

(c) *Regulations.* The following special regualtion applies: Vessels may not enter the security zone except unless authorized by the Captain of the Port.

Dated: February 29, 2000.

G.N. Naccara,

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

[FR Doc. 00–6249 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 54, 61, and 69

[CC Docket Nos. 96–262; 94–1; 99–249; 96–45; FCC 99–235]

Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, and Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: comments requested.

SUMMARY: The Federal Communications Commission (FCC) issued a notice of proposed rulemaking regarding the modified integrated universal service and access charge reform proposal (modified proposal) submitted by the Coalition for Affordable Local and Long Distance Service (CALLS). After *inter alia* reviewing the comments and reply comments in response to the original integrated universal service and access charge reform proposal, the CALLS members submitted a modified proposal. As indicated in this proposed rule, interested parties may file comments and reply comments regarding the modified proposal.

DATES: Submit comments on or before March 30, 2000. Submit reply comments on or before April 13, 2000.

ADDRESSES: Submit electronic comments and other data to http://www.fcc.gov.e-file/ecfs.html. *See* **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Submit paper copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th, S.W., TW–A325, Washington, D.C. 20554. *See* **SUPPLEMENTARY INFORMATION** for information on additional instructions for filing paper copies.

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, 202–418–1537.

SUPPLEMENTARY INFORMATION: By this Notice the Commission invites supplemental comment on the proposal of the Coalition for Affordable Local and Long Distance Service (CALLS) for universal service and interstate access charge reform. CALLS submitted its original proposal on July 29, 1999. On September 15, 1999, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment on whether the Commission should adopt all or some portion of the CALLS proposal, or an alternative plan. *See* Access Charge Reform, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, CC Docket Nos. 96–262, 94–1, 99–249 and 96–45, Notice of Proposed Rulemaking, FCC 99–235 (rel. Sept. 15, 1999) 64 FR 53648, Oct. 4, 1999. On March 8, 2000, the CALLS members filed a written *ex parte* submission containing a modified version of the proposal (modified proposal). A copy of the submission is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. S.W., Room CY–A257, Washington, D.C. or copies may be purchased from the Commission's duplicating contractor, ITS Inc. 1231 20th St. N.W., Washington D.C. 20036; (202) 857–3088. The complete text of the Notice including the modified proposal also may be obtained through the Worldwide Web, at http://www.fcc.gov. The Commission seeks comment on whether it should adopt all or some portion of the modified proposal.

In separate letters, the CALLS long-distance signatories have made a number of commitments to consumers with respect to the ways in which they would pass on the benefits they would receive if CALLS were adopted. Copies of the AT&T and Sprint letters, which were filed as written *ex parte* submissions on February 25, 2000, are available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. S.W., Room CY–A257, Washington, D.C. or copies may be purchased from the Commission's duplicating contractor, ITS Inc. 1231 20th St. N.W., Washington D.C. 20036; (202) 857–3088. As noted, the complete text of the Notice including the letters also may be obtained through the Worldwide Web, at http://www.fcc.gov. The Commission seeks comment on the commitments made in these letters, and how the Commission should enforce them.

Regulatory Flexibility Analysis

The NPRM in this proceeding contained an Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 603; *see* also 5 U.S.C. 601 *et seq.*, as amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This Notice sets forth substitute rules for those contained in the NPRM. The IRFA is therefore revised as follows.

As required by the RFA, this IRFA of the possible significant economic impact on small entities by the proposals in this Notice has been prepared. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice, and should have a separate and distinct heading designating them as responses to the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. *See* 5 U.S.C. 603(a).

Legal Basis

This rulemaking action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

Description and Estimate of the Number of Small Entities to Which the Notice will Apply

The RFA generally defines the term ''small entity'' as having the same meaning as the term ''small business.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. *See* 5 U.S.C. 601 (3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees. *See* 13 CFR 121.201.

Total Number of Telephone Companies Affected

Price Cap Local Exchange Carriers

The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, significantly fewer than 13 providers of local exchange service are estimated to be small entities

or small price cap LECs that may be affected by these proposals. Although small price cap LECs have been included in this RFA analysis, this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. In particular, treatment here of small price cap LECs as ''non-dominant'' for SBA size standards has no effect on Commission determinations of ''dominance'' in other, common carrier, contexts.

Competitive Local Exchange Carriers

Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. *See* Standard Industrial Classification (SIC) Code 4813. The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *See* FCC, Common Carrier Bureau, *Carrier Locator: Interstate Service Providers,* Figure 1 (number of carriers paying into the TRS Fund by type of carrier) (Jan. 1999). The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The revised CALLS proposal would require price cap LECs to file with the Universal Service Administration Corporation (USAC) additional information pertaining to line counts by zone and customer class, revenue data, and information regarding zone boundaries. Competitive LECs would also have to file with USAC line counts by zone and customer class. The filings are on a quarterly basis. Otherwise, it is not clear whether, on balance, the proposals will increase or decrease price cap LECs' administrative burdens.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The proposals made by CALLS could have varying positive or negative impacts on price cap LECs, including any such small carriers. The alternative to consideration of adopting the CALLS proposal at this time would be to continue in effect the existing access charge and universal service fund rules. Public comments is welcomed on modifications of the CALLS proposal rules that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that take into account the resources of small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities subject to the rules; and whether waiver or forbearance from the rules for small entities is feasible or appropriate. Comments should be supported by specific economic analysis.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act

The NPRM released September 15, 1999 contained either a proposed or modified information collection. As part of its continuing effort to reduce the paperwork burden, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the following information collections contained in the proposal published in the NPRM as modified by the modified proposal herein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the Notice; OMB comments are due 60 days from the date of publication of the Notice in the **Federal Register**. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) estimates of the collection burden; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Filing Comments

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 30, 2000. Interested parties may file reply comments on or before April 13, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing Documents in Rulemaking Proceedings, 63 FR 24,121 (May 1,1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov.e-file/ecfs.html>. Commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554.

Parties also must send three paper copies of their filing to Wanda Harris, Competitive Pricing Division, 445 12th Street S.W., Fifth Floor, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 61

Access charges, Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Carol Mattey,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 00–6425 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648–XA39

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[I.D. 102299A]

RIN 1018–AF80

Endangered and Threatened Wildlife; Extension of Comment Period on Proposed Endangered Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo salar*) in the Gulf of Maine

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS and FWS (the Services) provide notice to extend the public comment period on the proposed determination of endangered status for a distinct population segment (DPS) of Atlantic salmon (*Salmo salar*) in the Gulf of Maine.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m., eastern daylight time, on April 14, 2000.

ADDRESSES: Written comments and materials regarding the proposed rule should be sent to the Endangered Species Program Coordinator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (fax 978–281–9394), or to the Chief, Division of Endangered Species, FWS, 300 Westgate Center Drive, Hadley, MA 01035 (fax 413–253–8308). Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS, 978–281–9116, fax 978–281–9394, e-mail mary.colligan@noaa.gov, or Paul__Nickerson, FWS, 413–253–8615, fax 413–253–8308, e-mail Paul Nickerson@fws.gov.

SUPPLEMENTARY INFORMATION: The Gulf of Maine DPS includes all naturally reproducing wild populations of Atlantic salmon having historical, river-specific characteristics found in a range north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the US-Canada border. The DPS includes both early and late run Atlantic salmon. Threats to the species include low marine survival, disease, the use of non-North American strains of Atlantic salmon in the U.S. aquaculture industry, aquaculture escapees, water withdrawal and sedimentation.

On November 17, 1999, the Services published a proposed rule (64 FR 62627) to list the Gulf of Maine DPS of Atlantic salmon as endangered under the Endangered Species Act of 1973, as amended (ESA). The public comment period originally was announced to close on February 15, 2000. On January 7, 2000 (65 FR 1082) the Services extended the public comment period to March 15, 2000. Because of several requests for additional time, the Services are extending the public comment period to 5:00 P.M. Eastern Daylight Time, April 14, 2000.

Electronic Access

The 1999 Status Review may be downloaded from the following site: http://news.fws.gov/salmon/asalmon.html.

Dated: March 9, 2000.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

Dated: March 9, 2000.

Ronald E. Lambertson,

Regional Director, Region 5, U.S. Fish & Wildlife Service.

[FR Doc. 00–6414 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 51
Wednesday, March 15, 2000

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.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meetings

The Advisory Commission on Electronic Commerce was established by Public Law 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce will hold a meeting by telephone conference call on Thursday, March 30, 2000, at a time to be determined. Meetings of the Commission shall be open to the public. This meeting will be audiocast live on the World Wide Web. The audiocast will be accessible from''Calendar/Meetings'' page of the Commission's Web site, *www.ecommercecommission.org/calendar.htm*. The time for the meeting will be posted on the Web site no later than March 29, 2000. A verbatim transcript of this meeting will be posted on the Web site no later than April 7, 2000.

Oral comments from the public will be excluded at this meeting.

A listing of the members of the Commission and details concerning their appointment were published in the **Federal Register** on June 9, 1999, at 64 FR 30958.

Heather Rosenker,

Executive Director.

[FR Doc. 00–6325 Filed 3–14–00; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Extension of Comment Period for the Technical Guidance for Developing Comprehensive Nutrient Management Plans (CNMPs)

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: This Public Notice announces an extension of the comment period deadline for the Technical Guidance for Developing Comprehensive Nutrient Management Plans.

DATES: Comments will be received until April 14, 2000.

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: This is a summary of the Public Notice, released December 9, 1999. The complete text of the Public Notice is available on the NRCS website at http://www.nhq.nrcs.usda.gov/PROGRAMS/ahcwpd/ahCNMP.html.

The ''Technical Guidance for Developing Comprehensive Nutrient Management Plans'' 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 will be developing or assisting in the development of Comprehensive Nutrient Management Plans (CNMP). The purpose of this document is to provide technical guidance, not to establish regulatory requirements, for local, tribal, State, or Federal programs. This technical guidance is not intended as a sole source or reference for developing CNMPs. CNMP is a subset of a conservation plan 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.

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To file a complaint of discrimination with USDA, write USDA 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 March 8, 2000

Pearlie S. Reed,

Chie, Natural Resources Conservation Service

[FR Doc. 00–6411 Filed 3–14–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Second Quarter of 2000

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the second quarter of 2000.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for

advances on municipal rate loans with interest rate terms beginning during the second calendar quarter of 2000.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning April 1, 2000, and ending June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW, Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. E-mail: GSalgado@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the second calendar quarter of 2000 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of ''Municipal Market Data—General Obligation Yields'' or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2000 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.875 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the second calendar quarter of 2000.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2021 or later	5.875
2020	5.875
2019	5.875
2018	5.875
2017	5.750
2016	5.750
2015	5.750
2014	5.625
2013	5.625
2012	5.500
2011	5.375
2010	5.375
2009	5.250
2008	5.250
2007	5.125
2006	5.125
2005	5.000
2004	4.875
2003	4.625
2002	4.375
2001	4.125

Dated: March 8, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–6387 Filed 3–14–00; 8:45 am]

BILLING CODE 3410–15–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Special Public Outreach Hearing for the Mountain States and a Public Business Meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a special public outreach meeting of the Council with representatives from the Mountain States. At the Outreach Hearing, the Council has invited, among others, representatives from the states of Arizona, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Utah, and Wyoming, and from Amtrak as well, to discuss all aspects of current and future intercity railroad passenger service. The Mountain States are served almost exclusively by the long-haul trains that Amtrak operates from the Midwest and Southeast Regions to the West Coast.

DATES: The Special Public Outreach Hearing will be held on Thursday, March 30, 2000 from 9:00 a.m. to 5:00 p.m. and the Business Meeting will be held on Friday, March 31, 2000 from 8:30 a.m. to 12:30 p.m. Both the Hearing and Business Meeting are opened to the general public.

ADDRESSES: Both the Outreach Hearing and Business Meeting will take place at the University of Denver, 2nd Floor-Ballroom, Driscoll Center, 2300 S. York Street, Denver, Colorado 80208. (The Driscoll Center is located North of the campus.) Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. You can also visit the ARC's website at *www.amtrakreformcouncil.gov,* for information regarding ARC's upcoming events, the agenda for upcoming events, the ARC's First Annual Report, information about the ARC Staff and the Council Members and much more.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after two years, the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five-year term.

Issued in Washington, DC, March 10, 2000.

Thomas A. Till,

Executive Director.

[FR Doc. 00–6415 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, June 2000 Fertility Supplement.

Form Number(s): This automated instrument has no form number.

Agency Approval Number: 0607–0610.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden: 250 hours.

Number of Respondents: 30,000.

Avg Hours Per Response: 30 seconds.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning fertility to be conducted in conjunction with the June 2000 Current Population Survey (CPS). The Census Bureau sponsors the supplement questions, which have been asked periodically since 1971. The June 2000 Supplement differs from previously conducted supplements in that it only includes fertility items. The most recent supplement, conducted in 1998, contained both fertility items and birth expectations items.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June 2000 CPS interviewing. All interviews are conducted using computer-assisted interviewing.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6320 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2000]

Proposed Foreign-Trade Zone—Waco, Texas; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Waco, Texas, to establish a general-purpose foreign-trade zone at sites in Waco, Texas, adjacent to the Dallas/Fort Worth Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 6, 2000. The applicant is authorized to make the proposal under Texas Revised Civil Statute Article 1446.01.

The proposed zone would be the sixth general-purpose zone in the Dallas/Fort Worth Customs port of entry area. The existing zones are FTZ 39 in Dallas/Ft. Worth (site also in Grayson County) (Grantee: Dallas/Fort Worth International Airport Board, Board Order 133, 43 FR 37478, 8/23/78); FTZ 113 in Ellis County (Grantee: Midlothian Trade Zone Corporation, Board Order 283, 50 FR 300, 1/3/85); FTZ 168 in the Dallas/Ft. Worth, Texas, area (Grantee: Dallas/Fort Worth Maquila Trade Development Corporation, Board Order 491, 55 FR 46974, 11/8/90); FTZ 196 in the Fort Worth area Grantee: Alliance Corridor, Inc., Board Order 651, 58 FR 48826, 9/20/93); and, FTZ 227 in Durant, Oklahoma (Grantee: Rural Enterprises of Oklahoma, Inc., Board Order 947, 63 FR 5929, 2/5/98).

The proposed new zone would consist of 3 sites (409 acres) in Waco: *Site 1* (200 acres)—Aviation Parkway East, within the 1,000-acre Texas Aeroplex Industrial Park, adjacent to Highway 84 and within 5 miles of Interstate 35, Waco; *Site 2* (139 acres)—Bagby Avenue/MK&T Railroad site, within the 3,000-acre Texas Central Industrial Park, adjacent to Highway 6 and within 1 mile of Interstate 35, Waco; and, *Site 3* (70 acres)—Madison-Cooper Airport site, which is part of the 100-acre Regional Airport Industrial Park, on and adjacent to the Waco Regional Airport, Waco. Site 1 is a State Enterprise Zone. Sites 1 and 2 are owned by the Waco Industrial Foundation, and Site 3 is owned by the applicant.

The application indicates a need for foreign-trade zone services in Waco. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 19, 2000, at 1:00 p.m., at the City of Waco Civic Center, 100 Washington, Cameron Room, Waco, Texas 76701.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 15, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 30, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Greater Waco Chamber of Commerce, 101 South University Parks Drive, Waco, TX 76701.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 9, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–6402 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of New Shipper Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to a request by a PRC exporter of subject merchandise, Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng). This review covers shipments of this merchandise to the United States during the period of September 1, 1998 through February 28, 1999.

We have preliminarily determined that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service not to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman, Thomas Gilgunn or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4106, (202) 482–0648 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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' regulations are to the current regulations, codified at 19 CFR Part 351 (April, 1999).

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997 (62 FR 48218). On March 30, 1999, the Department received a request from Yancheng Haiteng for a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise which states that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value (LTFV) investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer who exported, if the Department has not previously established such a margin for the exporter or producer. The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (1) The date on which the merchandise was first entered, or withdrawn from the warehouse, for consumption, or, if it cannot certify as to the date of the first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (2) a list of the firms with which it is affiliated; (3) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI, and (4) in an antidumping proceeding involving inputs from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government. See 19 CFR 351.214(b)(2)(ii), (iii), and (iv). Yancheng Haiteng's request was accompanied by information and certifications establishing the date on which it first shipped freshwater crawfish tail meat. Yancheng Haiteng also claimed it had no affiliated companies which exported crawfish tail meat from the PRC during the POI. In addition, Yancheng Haiteng certified that its export activities are not controlled by the central government. Based on the above information, the Department initiated a new shipper review covering Yancheng Haiteng. (See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of New Shipper Administrative Review, 64 FR 24328, May 6, 1999.)

Due to extraordinarily complicated issues in this case, the Department extended the deadline for completion of the new shipper review on November 3, 1999. (See Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Freshwater Crawfish Tail Meat from the People's Republic of China, 64 FR 59739, November 3, 1999.)

Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 0306.19.10 and 0306.29.00.00. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

This review covers the period September 1, 1998 through February 28, 1999.

Issues of Relationships to Other Exporters

The Department will be further analyzing the implications of relationships between Yancheng Haiteng and other crawfish exporters for the final results. This process will entail the collection of additional data, contacting of parties, and possible verifications. For example, we will further consider whether Yancheng Haiteng should receive a rate different from that of another PRC exporter of subject merchandise that is an indirect parent of Yancheng Haiteng. This determination may affect whether it is appropriate to continue to treat Yancheng Haiteng as a new shipper. For further information, see the Memorandum to the File through Maureen Flannery from Thomas Gilgunn and Sarah Ellerman; New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (A–570–848): Sales and Factors Verification Report for Yancheng Haiteng Aquatic Products and Foods Co., Ltd., dated February 24, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided

by Yancheng Haiteng, which is both the producer and exporter of the subject merchandise, using standard procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public version of the verification reports.

Separate Rates

Yancheng Haiteng has requested a separate, company-specific rate. In its questionnaire response, Yancheng Haiteng states that it is an independent legal entity and a PRC-foreign joint venture.

To establish whether a company operating in a nonmarket economy country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test 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), as amplified by 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).

Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. 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. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over its export activities, evidence on the record indicates that Yancheng Haiteng is not controlled by the government. Yancheng Haiteng submitted evidence of its legal right to set prices independent of all government oversight. Yancheng Haiteng's business license and certificate of approval indicate that it is a Sino-U.S. joint venture. We find no evidence of *de jure* government control restricting Yancheng Haiteng from the exportation of crawfish. (*See Section A Response,* pages A–2 through A–8, and exhibits 2–4, June 22, 1999.)

No export quotas apply to crawfish and an export license is not required for exports of the subject merchandise to the United States. (*See Section A Response,* page A–5, June 22, 1999.) Prior verifications have confirmed that there are no export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in China's Tariff and Non-Tariff Handbook for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled Temporary Provisions for Administration of Export Commodities. (See Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review, 64 FR 8543, February 22, 1999.) The Department also checked the PRC's Export License Issued Categories and Quota List at verification, and found that neither crawfish tail meat nor crawfish shells were listed as products requiring a special export license or with a quota imposed by the government.

The PRC's Enterprise Legal Person Registration Administrative Regulations (Legal Person Regulations), issued on June 13, 1988, by the State's Industrial and Commercial Bureau, and placed on the record of this review, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. (*See* Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56046 (November 6, 1995) (Manganese Metal) and Yancheng Haiteng's Section A response, June 22, 1999.)

Yancheng Haiteng submitted the Foreign Trade Law of the People's Republic of China, adopted by the government of the People's Republic of China in 1994, which grants autonomy to businesses involved in the importation and exportation of merchandise in their management decisions and establishes accountability for their own profits and losses. The business license of Yancheng Haiteng allows Yancheng Haiteng to enter into contracts and conduct business activities without the direction of a government ministry or agency. Yancheng Haiteng also submitted its Certificate of Approval for Establishment of Enterprises with Foreign Investment in the PRC, which documents its status as an enterprise with foreign investment. Therefore, with respect to the absence of *de jure* control over export activity, we determine that these firms are independent legal entities.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information presented indicates that the management of Yancheng Haiteng is responsible for all decisions such as the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or selection of management for Yancheng Haiteng. (See Section A Response, pages A–5 through A–7, and exhibit 6; see also Separate Rate Analysis in the New Shipper Review of Yancheng Haiteng; Freshwater Crawfish Tail Meat from the People's Republic of China, dated February 24, 2000 (Separate Rates Memorandum), which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Yancheng Haiteng's export activities, we preliminarily determine that this exporter is entitled to a separate rate. For further discussion of the Department's preliminary determination that these exporters are entitled to separate rates, see the Separate Rates Memorandum.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at NV, we compared its United Sates price to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not

otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. We deducted domestic inland freight and brokerage and handling expenses in the home market from the starting price (gross unit price) in accordance with 772(c) of the Act. Consistent with the original investigation and Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review, 64 FR 8543 (February 22, 1999) (Ningbo New Shipper Review), we used India as a surrogate country for valuing all expenses. We valued movement expenses as follows:

• To value truck freight, we used the rates reported in an April 20, 1994 newspaper article in the ''Times of India'' and submitted for the Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 60 FR 52647 (October 10,1995). We adjusted the rates to reflect inflation through the POR using WPI for India in the International Financial Statistics published by the International Monetary Fund (IMF).

• To value brokerage and handling in the home market, we used information reported in the antidumping administrative review of Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184 (September 9, 1998) (Stainless Steel Wire Rod from India), and also used in Ningbo New Shipper Review.

Normal Value

For companies located in NME countries, section 773(c)(1) of Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) 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.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Yancheng Haiteng has not contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation, we determined that India: (1) Is comparable with the PRC in terms of level of economic development, and (2) is a significant producer of comparable merchandise. With the exception of the crawfish input, we valued the factors of production using publicly available information from India. (*See* Memorandum to Edward Yang through Maureen Flannery from the Crawfish Team, Antidumping Investigation of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values and Preliminary Margin Calculations, dated March 19, 1997.) For crawfish input, we used Spanish import statistics for crawfish imported from Portugal. (See Memorandum to Joseph Spetrini from Edward Yang, New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Determination of Surrogate Country Selection for Crawfish Input, dated February 16, 1999 and Memorandum to Barbara Tillman through Maureen Flannery from Sarah Ellerman, New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum (Factors Memorandum), dated February 24, 2000. We used import prices to value many factors. As appropriate, we adjusted import prices by adding freight expenses to make them delivered prices. For a complete analysis of surrogate values, *see* Factors Memorandum. We valued the factors of production as follows:

• To value whole crawfish, we used the average Spanish import price for fresh (not frozen) crawfish imported from Portugal. In order to factor out seasonal fluctuations in the price of the Spanish import data, we valued whole crawfish using data from the calender year 1997, the most recent period for which data is available. Spanish import data show insignificant amounts of crawfish from other countries at aberrational prices and, therefore, it would not be appropriate to include these data in the calculation of the crawfish cost. These data are publicly available and are published by the Spanish Ministry of Customs in Madrid. Since our valuation of the crawfish input was for a period which did not coincide with the factors of production reporting period, we had to adjust this factor value. *See* Factor Values Memorandum for further discussion.

• To value the by-product of shells in the investigation and the Ningbo New Shipper Review, we used Indian import data for HTSUS category 0508.00.05, ''shells of mollusks, crustaceans, and echinoderms.'' The petitioner has argued in this review, as it did in the Ningbo New Shipper Review, that Indian import prices are aberrational. In the Ningbo New Shipper Review, we found that no other tariff classifications for comparable merchandise are as detailed as the Indian HTSUS category under which we valued the crawfish shells. In this review, the petitioner has argued that the Indian tariff category under which we valued the crawfish shells is overbroad and includes different items with much higher values. HTSUS category 0508.00.05 includes echinoderms. Petitioner has maintained that echinoderms, such as starfish, which do not have shells and do not contain chitin (the chemical that makes crustacean shells valuable), are traded only for decorative purposes, thereby inflating the overall value of this tariff category. To substantiate its argument for this review, petitioner has placed on the record information demonstrating that the resulting Indian import price of 55 cents per pound for crawfish shells is highly exaggerated, including: (1) An offer to sell dried, crushed crab shells from an electronic bulletin board; (2) a delivered price for wet crustacean shells reported in a study on marine biopolymers; and (3) a price for crustacean scrap sold in India, calculated from a report detailing chitin and chitosan exports using established yields from crawfish shells for the production of chitosan. All of these items show significantly lower prices for shells of crustaceans than the 55 cents per pound used in the Ningbo New Shipper Review. In addition, we know that the price of the Spanish whole, live crawfish is 59 cents per pound. Finally, we received from the U.S. Embassy in Sri Lanka information indicating that Sri Lankan exports consist of conch shells and chanks for decorative purposes. *See* Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of the New Shipper Review for Yancheng Baolong Biochemical Products, Co., Ltd.: Freshwater Crawfish Tail Meat from the People's Republic of China, 64 FR 55236, October 12, 1999 (Preliminary Results of the First Administrative Review). Based on this information taken as a whole, we determined in the Preliminary Results of the First Administrative Review that the Indian import statistics are an inappropriate surrogate value for crawfish shells.

Some of the alternate information currently on the record is internally

inconsistent, quite old, or possibly includes items other than crawfish shells. For these preliminary results, we applied a surrogate value based on a free-on-board (FOB) factory price quote for crab and shrimp shells from a Canadian seller of crustacean shells. We chose this price from any available alternatives because it is an actual price for crustacean scrap that is reasonably contemporaneous with the POR. We adjusted this price to reflect deflation to Yancheng Haiteng's crawfish processing season. (*See* Factor Value Memorandum.)

• To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of ''Steam Coal for Industry'' and ''Electricity for Industry,'' published in the International Energy Agency's publication, Energy Prices and Taxes, First Quarter, 1998. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the November 1993 Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank. To achieve comparability of the energy and water prices to the factors reported for the crawfish processing period applicable to Yancheng Haiteng, we adjusted these factor values using the WPI for India, as published in the *IFS*, to reflect inflation through the applicable periods.

• To value plastic bags, cardboard boxes and adhesive tape, we relied upon Indian import data from the April 1997 through March 1998 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics). We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used for the calculation of freight expenses on raw materials, we added to surrogate values from India a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China (Roofing Nails), 62 FR 51410 (October 1, 1997). We adjusted the reported factor values to reflect inflation through the POR.

• To value factory overhead, selling, and general and administrative expenses (SG&A), and profit, we calculated simple average rates using publicly available financial statements of three Indian seafood processing companies submitted in the original investigation for which more current data is now available, and applied these rates to the calculated cost of manufacture. (*See* Factor Values Memorandum.)

• For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 1999. (*See* http://www.ita.doc.gov/import__admin/records/wages.) Because of the variability of wage rates in countries with similar per capita Gross Domestic Products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of the wage rate data on the Import Administration's Web site can be found in the 1998 Year Book of Labour Statistics, International Labor Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ exporter	Time period	Margin (percent)
Yancheng Haiteng Aquatic Products and Foods, Co., Ltd..	09/01/98–02/ 28/99.	0

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC, 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filled not later than 35 days after the date of publication. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from issuance of these preliminary results, unless this time limit is extended.

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rate will be effective upon publication of the final results of this new shipper review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from the warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate indicated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will the company-specific

rate established in the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 201.63 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, 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.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–6400 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V. (CEMEX), and its affiliate, Cementos de Chihuahua, S.A. de C.V. (CDC). The period of review is August 1, 1997, through July 31, 1998.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5760 and (202) 482–0180, 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 of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On September 8, 1999, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 64 FR 48778 (1999) (preliminary results). We invited parties to comment on our preliminary results of review. The Department has conducted this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Verification

Pursuant to section 782(i) of the Act, we verified information provided by CEMEX and CDC using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records, as well as the selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports, dated July 23, 1999, July 26, 1999, August 6, 1999, and January 6, 2000, and located in the public file in Room B–099 of the Department's main building.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading ''Mexico''. The paper copy and electronic version of the Decision Memo are identical in content.

Duty Absorption

We have determined that duty absorption has occurred with respect to CEMEX and CDC (collectively ''CEMEX'') with respect to 99.96% of sales which this firm made through its U.S. affiliated parties. For a discussion of our determination with respect to this matter, see the ''Duty Absorption'' section of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import__admin/records/frn/.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with

which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import__admin/records/frn/.

Final Results of Review

We determine that the following weighted-average margin exists for the period August 1, 1997, through July 31, 1998:

Company	Margin
CEMEX/CDC	45.98%

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer assessment value. With respect to both export-price and constructed-export-price sales, we calculated a unit duty per metric ton by dividing the total margins for the reviewed sales by the total entered quantity of those reviewed sales for each importer. For a discussion concerning our calculation of a unit duty per metric ton rather than an assessment rate, see the notice of preliminary results, dated September 8, 1999, and the preliminary calculation memorandum, dated September 2, 1999. We will instruct Customs to assess the resulting unit duty against the entered quantities of for the subject merchandise on each of the importer's entries made during the review period.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of gray portland cement and clinker from Mexico, 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) The cash deposit rate for CEMEX/CDC will be the rate shown above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the ''all others'' rate in the LTFV investigation. See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244 (July 18, 1990).

The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix—List of Issues

1. Revocation
2. As Invoiced vs. as Produced
3. Ordinary Course of Trade
4. Level of Trade
5. Constructed Export Price Calculation
6. Regional Assessment
7. Bag vs. Bulk
8. Difference-in-Merchandise Calculation
9. Sales-Below-Cost Test
10. Special Cement
11. Assessment-Rate Calculation
12. Adjustments
    a. Rebates
    b. Freight
    c. Advertising
    d. Early-Payment Discounts
    e. Credit Expenses
    f. Other Adjustments
13. Financing of Cash Deposits
14. Duty Absorption
15. PROMEXMA Sales
16. Contrucentro's Employee Sales
17. Further-Manufactured Sales
18. Ministerial Errors
    a. Model Matching
    b. CDC's Employee Sales
    c. U.S. Direct Selling Expenses

[FR Doc. 00–6399 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads (paintbrushes) from the People's Republic of China (''PRC'') in response to requests by petitioner, the Paint Applicator Division of the American Brush Manufacturers Association (''the Paint Applicator Division''), and one of the respondents, Hebei Animal By-Products Import and Export Corporation (''HACO''). This review covers the period February 1, 1998, through January 31, 1999 (POR).

We have preliminarily determined that sales have been made below normal value (''NV'') by one of the companies subject to this review. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price (''EP'') and NV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman, Mark Hoadley, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4106, (202) 482–0666, and (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On February 14, 1986, the Department published in the **Federal Register** (51 FR 5580) an antidumping duty order on paintbrushes from the PRC. On February 11, 1999, the Department published in the **Federal Register** (64 FR 6878) a notice of opportunity to request an administrative review of the antidumping duty order on paintbrushes from the PRC covering the period February 1, 1998, through January 31, 1999.

On February 26, 1999, in accordance with 19 CFR 351.213(b)(1), petitioner, the Paint Applicator Division, requested that we conduct an administrative review of Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation (''Hunan''). HACO submitted a request on February 23, 1999, that its entries be reviewed. Accordingly, we published a notice of initiation of this antidumping duty administrative review on March 29, 1999 (64 FR 14860). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. Excluded from the review are paint brushes and brush heads with a blend of 40% natural bristles and 60% synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by HACO, Hunan, and their suppliers by using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in public and proprietary versions of the verification reports.

Successorship to HACO

The record indicates that HACO has merged with two other companies to form Hebei Founder Import and Export Company (Founder). In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g.,* Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992); Steel Wire Strand for Prestressed Concrete from Japan; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 55 FR 7759 (March 5, 1990); and Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944 (February 14, 1994).

While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if its operations are essentially inclusive of the alleged predecessor's. *See* Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 20460, 20461 (May 13, 1992). Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

At verification, we confirmed that HACO had been combined with two other Chinese companies in December 1998 to form Founder. HACO no longer exists as a separate entity, and is now a department within Founder. We verified this fact by examining Founder's financial statements and paintbrush catalogs, and by discussing the matter with Founder personnel and former personnel of HACO. (For a more complete discussion, *see* the Memorandum to the File from Mark Hoadley and Sarah Ellerman; 1998–1999 Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (A–570–501) Sales Verification Report of Founder Import and Export Company, dated February 28, 2000. These former employees of HACO are now employed by Founder, which can be seen by comparing the verified organizational charts from the current review period with those of the previous review period. Furthermore, Founder's supplier and U.S. purchasers of subject merchandise are the same as HACO's, which can be seen by comparing the verified response of the current review with the verification report from the previous review period. For more information, see the proprietary version of Memorandum to the File from Sarah Ellerman; Inclusion Memo, dated February 28, 2000. Therefore, we preliminarily determine that Founder is the successor to HACO for purposes of this proceeding, and refer to the former HACO as Founder for the remainder of this notice.

Separate Rates

To establish whether a respondent operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each respondent under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), and further defined in 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''). Under this test, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes the following: (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.

De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

With respect to the absence of de jure government control over export activities, evidence on the record indicates that both Founder and Hunan operate under the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (''WPE Law''). The WPE Law gives qualifying enterprises such rights as the right to act on their own behalf, adopt independent accounting methods, assume the sole responsibility for their

profits and losses, make their own managerial decisions, negotiate and set their own prices, and elect their own management. (*See* Exhibit 6B of Founder's July 14, 1999, questionnaire response and Exhibit 3 of Hunan's May 12, 1999, questionnaire response.)

With respect to the absence of *de facto* control over export activities, the management of both Founder and Hunan is elected by company personnel, and we found no evidence at verification that either company made operating decisions under government constraint, but substantial evidence that the two companies make operating decisions regarding prices, products, and customers independently of government interference. *See* Separate Rates Analysis in the Administrative Review of Hebei Animal By-Products Import and Export Corporation; Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (Separate Rates Memorandum Founder) regarding Founder, and Separate Rates Analysis in the Administrative Review of Hunan Provincial Import and Export Corporation; Natual Bristle Paintbrushes and Brush Heads from the People's Republic of China (Separate Rates Memorandum Hunan) regarding Hunan, both dated February 28, 2000, and public versions of the verification reports, on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Because evidence on the record demonstrates an absence of government control, both in law and in fact, over respondents' export activities, the Department preliminarily grants Founder and Hunan separate rates.

Date of Sale

Hunan reported the invoice date as the date of sale. We have selected a date of sale other than the invoice date for Hunan. For more information, see Memorandum to the File from Sarah Ellerman; Analysis of Hunan Provincial Product & Animal By-Product Import & Export Corp. (Hunan) for the Preliminary Results of Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China, dated February 28, 2000.

United States Price

For sales made by Founder and Hunan, we based United States price on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States, and constructed export price was not otherwise warranted by the facts on the record.

We calculated export price based on the price to these unrelated purchasers. For Founder, we deducted amounts for domestic inland freight because we were unable to verify that the U.S. customer paid for this expense. For Hunan, we also deducted amounts for inland freight.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) 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.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an 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. Accordingly, we have applied surrogate values to factors of production to determine NV in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations.

We have determined that Indonesia is: (1) Comparable to the PRC in terms of level of economic development; and (2) is a significant producer of comparable merchandise. *See* Memorandum to the File, Natural Bristle Paint Brushes from the People's Republic of China—icant Production in Indonesia of Comparable Merchandise and Memorandum to Ed Yang from Jeff May, Director, Office of Policy, Natural Bristle Paintbrushes and Brush Heads: Nonmarket Economy Status and Surrogate Country Selection, dated March 26, 1999. Therefore, for this review, we have used publicly available information relating to Indonesia to value the various factors of production.

We valued the factors of production as follows:

For brush handles, bristles, epoxy, wood, nails, tin plate, and packing materials, we used per kilogram values, given in U.S. dollars, obtained from Indonesia's Foreign Trade Statistical Bulletin (Biro Pusat Statistik). Because statistics were not available for the entire POR, we adjusted these values for inflation. We calculated surrogate freight costs for these factors using the shorter of (a) the distance between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See* Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) (Roofing Nails). For Founder, we used a publicly available rate for wooden core submitted in the current review. For more information, *see* Memorandum to Maureen Flannery from Sarah Ellerman; 1998–1999 Antidumping Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Factors Values Memorandum, dated February 28, 2000.

For labor, we used the PRC regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised on June 2, 1997. *See* http://www.ita.doc.gov/import__admin/records/wages. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web page is found in the 1996 Year Book of Labour Statistics, International Labour Office (Geneva: 1996), Chapter 5B: Wages in Manufacturing.

For factory overhead, selling, general and administrative expenses (SG&A), and profit, we used data provided by respondent Hunan, in a previous review, from the Large and Medium Manufacturing Statistics: 1995, Vol. II, published by the Indonesian Bureau of Statistics. *See* Hunan's submission dated July 28, 1997, which was placed on the record of this review. This source provides a cost breakdown for large and medium sized manufacturers of hand tools and cutlery, and was also used in Roofing Nails. *See* 62 FR at 51410. We calculated factory overhead as a percentage of the total cost of manufacture. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Lastly, we calculated a profit rate by dividing profit by the cost of production.

To value electricity, we used a value from A Brief Guide for Investors: 1995, published by the Indonesian Government's Investment Coordinating Board. We adjusted this value to reflect inflation through the end of the POR using the Indonesian wholesale price index (WPI) published by the International Monetary Fund (IMF). We then converted this figure to dollars using the Federal Reserve Bank's certified exchange rate on the date of sale.

To value truck freight, we used the rates reported in a September 1991 cable from the U.S. Consulate in Indonesia submitted for the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 58 FR 47859 (Sep. 20, 1993), which was placed on the record of this review. We adjusted these rates to reflect inflation through the end of the POR using Indonesian WPI published by the IMF.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Hebei Founder Import and Export Corp., also known as: Hebei Animal By-Products Import and Export Corporation.	02/01/98–01/31/99	4.18
Hunan Provincial Native Produce & Animal By-Products I/E Corp	02/01/98–01/31/99	0.00

Parties to the proceeding may request disclosure within 10 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(b)(2)(ii). 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 publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to quantity of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer for that class or kind of merchandise made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of paintbrushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firms will be the rates established in the final results of this review (except that no deposit will be required for firms with *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 351.92 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, 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.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 351.221.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–6401 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 011300C]

Extension of Public Comment Period for Draft Environmental Impact Statement and Application for an Incidental Take Permit for the Tacoma Water Department, Green River Watershed, Habitat Conservation Plan, King County, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of extended public comment period.

SUMMARY: This notice announces a 17-day extension of the public comment period for the Draft Environmental Impact Statement and application for an Incidental Take Permit (Permit) for the Tacoma Water Department, Green River Watershed, Habitat Conservation Plan, King County, Washington. The Permit application includes: (1) the proposed Habitat Conservation Plan; (2) the proposed Implementing Agreement; and, (3) Draft Environmental Impact Statement. Direct mailings have been sent to affected State and local agencies, Federal agencies, Tribes, Federal and State legislators, public interest groups, and other interested parties, informing them of this extension.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00pm, Pacific standard time, on March 31, 2000.

ADDRESSES: Requests for documents on CD ROM should be made by calling FWS at (360)534–9330. Hardbound

copies are also available for viewing, and partial or complete duplication, at the following libraries: Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595; Tacoma Main Public Library, 1102 Tacoma Avenue South, Tacoma, WA, (253)591–5666; Enumclaw City Library, 1700 1st Street, Enumclaw, WA, (360)825–2938; Auburn Public Library, 808 9th Street SE, Auburn, WA, (253)931–3918; and, Seattle Public Library, Government Publications Desk, 1000 4th Avenue, Seattle, WA, (206)386–4636. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

Written comments on the permit application, Environmental Impact Statement, Plan, and Implementing Agreement should be sent to Tim Romanski, Project Biologist, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, WA, 98503–1273, (telephone: 360/753–5823; facsimile: 360/534–9331), or Mike Grady, Project Biologist, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–6052; facsimile: 360/753–9517). Comments will not be accepted if submitted via e-mail or the internet. Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (360)534–9330.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, FWS,(phone: 360/753–5823, fax: 360/534–9331, e-mail: Tim__Romanski@r1.fws.gov), or Mike Grady, NMFS, (phone: 360/753–6052, fax: 360/753–9517, e-mail: Michael__Grady__AT–NMFS–OFO.1PO–OLES.FWCC__1POHUB@fws.gov).

SUPPLEMENTARY INFORMATION: The original **Federal Register** publication announcing the public comment period for this project was announced on January 14, 2000 (65 FR 2390). That notice stated that comments would be accepted through March 14, 2000. The purpose of this extension is to provide additional review and comment time in response to requests from several parties.

Dated: March 7, 2000.

Thomas J. Dwyer,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: March 10, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6413 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F, 4310–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021000D]

International Whaling Commission; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice defines guidelines for participating on the Committee, provides a tentative schedule of meetings and of important dates, and describes the procedure for submitting nominations for the U.S. Delegation to the July IWC meetings.

DATES: The March 21, 2000, Interagency Meeting will be held at 2:00 p.m. Nominations for the U.S. Delegation to the July IWC meetings are due on April 1, 2000. See **SUPPLEMENTARY INFORMATION** for tentative 2000 meeting schedules.

ADDRESSES: The March 21, 2000, meeting will be held in Room B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Copies of nominations for the U.S. Delegation to the July IWC meetings should be sent to Cathy Campbell, Office of International Affairs, 14th Street and Constitution Avenue, Room 6228, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, (202) 482–2652.

SUPPLEMENTARY INFORMATION: The March 21, 2000, Interagency Committee meeting will review recent events relating to the IWC and issues that will arise at the 2000 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The tentative schedule of additional meetings and deadlines, including those of the IWC, during 2000 follows. Specific locations and times will be published in the **Federal Register**.

March 21, 2000 (Rm B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C.): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

April 1, 2000: Nominations for the U.S. Delegation to the July IWC meetings are due to the U.S. Commissioner, with a copy to Cathy Campbell (see **ADDRESSES**). All persons wishing to be considered for the U.S. Commissioner's recommendation to the Department of State concerning the composition of the delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

May 17, 2000 (Rm 4830, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C.): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

June 12–13, 2000 (Adelaide, Australia): IWC Scientific Committee Working Groups and Sub-committees.

June 14–26, 2000 (Adelaide, Australia): IWC Scientific Committee.

June 28 - July 1, 2000 (Adelaide, Australia): IWC Commission Committees, Sub-committees and Working Groups.

July 3–6, 2000 (Adelaide, Australia): IWC 52nd Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: March 2, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resourses, National Marine Fisheries Services.

[FR Doc. 00–6346 Filed 3–10–00; 3:05 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021100C]

Marine Mammals; Scientific Research Permit (PHF# 642–1536–00)

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

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Joseph R. Mobley, Jr., Ph.D., University of Hawaii - West Oahu, 96–129 to take (*i.e.*, harass) several species of cetaceans in Hawaiian waters for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Species Program Manager, Pacific Islands Area Office, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700;

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 3, 1999, notice was published in the Federal Register (64 FR 67882) that a request for a scientific research permit to take several species of cetaceans for purposes of scientific research had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6354 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0007]

Tacoma Electric, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(4). Published below is a provisionally-accepted Settlement Agreement with Tacoma Electric Supply, Inc., containing monetary payments totalling between $205,000 and $375,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comments on its contents by filing a written request with the Office of the Secretary by March 30, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comment to the Comment 00–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Margaret H. Plank, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1450.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 9, 2000.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission, and Tacoma Electric Supply, Inc. (''Tacoma''), a domestic corporation, to settle the staff's allegations that Tacoma distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company (''Cadet''), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The ''staff'' is the staff of the Consumer Product Safety Commission (''the CPSC'' or ''the Commission''), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2053, as amended.

2. Respondent Tacoma is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at 1311 South Tacoma Way, Tacoma, WA 98409. Tacoma is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names ''Cadet'' and ''Encore.'' These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987, series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, and FX–242), manufactured between

1985 and 1994; series LX (including models LX–242, LX–302, LX–402, and LX–482), manufactured between 1985 and 1994; series TK (including models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1984 and 1998; series ZA (including models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, and ZA–242), manufactured between 1985 and 1994; series Z (including models Z–072, Z–101, Z–102, Z–151, Z–152, Z–202, and Z–208), manufactured between 1993 and 1999; and all series and models of the same or functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX–072, RX–101, RX–102, RX–151, RX–152, RX–202, and RX–242), manufactured between 1985 and 1994; series RLX (including models RLX–302, RLX–402, and RLX–482) manufactured between 1985 and 1994; series RK (including models RK–101 and RK–102), manufactured between 1984 and 1998; series RA (including models RA–101, RA–102, RA–151, RA–152, and RA–202), manufactured between 1985 and 1994, and series ZC (including models ZC–072, ZC–101, ZC–102, ZC–151, ZC–152, ZC–202, and ZC–208) manufacture between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as ''the Heaters.'' The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1982, Tacoma has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint (''Complaint'') against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire, and/or allows lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. On July 30, 1999, the CPSC approved a Consent Agreement and Order (''the Cadet Order'') between the Staff and Cadet which, *inter alia,* required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters (''the Cadet Corrective Action Plan'' or ''the Plan''), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the ''Effective Date'' of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter ''Order'' or ''the Order''), which is hereby incorporated by reference, shall resolve all potential obligations of Tacoma (and each of Tacoma's predecessors, successors, assigns, parents, subsidiaries, affiliated entities, agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively ''the Tacoma Releasees'') under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of the alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the Heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Tacoma Releasees for all other claims and causes of action which could have been alleged by the CPSC against the Tacoma Releasees relating to the Heaters, based upon information known to the CPSC, or otherwise in the CPSC's possession, at the time the CPSC staff signs this Consent Agreement. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 20 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Tacoma for replacement heaters, and the staff has concluded that the Cadet Corrective Action Plan, and Tacoma's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of consumers.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Tacoma or as evidence: (a) Of any violation of law or regulation by Tacoma; (b) of other wrongdoing by Tacoma; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Tacoma or with respect to the Heaters.

9. The Heaters are ''consumer products'' within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C.. 2052(a)(1).

10. Tacoma is a ''distributor'' of ''consumer product[s],'' which are ''distributed in commerce,'' as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. The CPSC has jurisdiction over Tacoma and the Heaters under Sections 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and 2064.

12. For purposes of this settlement only, Tacoma agrees not to contest the staff's allegation, which Tacoma denies, that the Heaters contain a ''defect which creates a substantial product hazard,'' as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Tacoma knowingly, voluntarily, and completely waives and relinquishes any past, present, and/or future right or rights in this matter: (a) To the issuance of a proposed complaint in accordance with 16 CFR 1115.20(6), to an administrative or judicial hearing, and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (b) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (c) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21 and 24 of this Consent Agreement, and (d) to file any

claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Tacoma to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. Tacoma agrees to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power. Tacoma acknowledges and agrees that this Consent Agreement and Order are pursuant to the CPSC's police and regulatory power to remedy the alleged risk created by the Heaters, and that, once Tacoma signs the Consent Agreement and Order, the Consent Agreement and Order will not be subject to an automatic stay in any bankruptcy proceeding involving Tacoma.

17. Tacoma acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in any United States District Court in which Tacoma is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Tacoma merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Tacoma shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Tacoma's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Tacoma and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Tacoma's assets, Tacoma shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Tacoma may disclose terms of this Consent Agreement and Order to the public.

20. The CPSC, at its sole discretion and upon reasonable notice to the staff and Tacoma, may void, suspend, or rescind this Consent Agreement and Order if, in Tacoma's submissions to the staff dated March 4, 1999 and June 18, 1999, Tacoma materially misrepresented the quantity of Heaters is sold. Notwithstanding the provision of Paragraph 28 of this Consent Agreement, the CPSC may exercise its rights under this Paragraph 20 within, and not later than, three (3) years after the date on which the CPSC finally accepts this Consent agreement and enters the Order.

21. If any provisions of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of this added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC determines, after providing Tacoma with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

22. This Consent Agreement and Order have been negotiated by the parties. Tacoma is not relying on the advice of the staff, nor anyone associated with the staff, as to legal, tax, or other consequences of any kind arising out of this Consent Agreement and Order, and Tacoma specifically assumes the risk of all legal, tax, and other consequences.

23. Tacoma acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated, and knowledgeable parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

24. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve potential claims by the CPSC against Tacoma with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the American Arbitration Association then in effect. The CPSC and Tacoma shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and Tacoma are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitrator Association. Either party may institute an action arising under this Consent Agreement and order, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District of Columbia.

25. The existence of a dispute between the staff and Tacoma over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation of deadline imposed upon Tacoma under this Consent Agreement and Order, other than the specific provision in dispute.

26. This Consent Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the parties and approved by the CPSC.

27. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

28. Tacoma's obligations under this Consent Agreement and Order shall terminate when Tacoma makes the final payment required under Paragraphs 4 and 5 of the Order.

29. Tacoma makes the monetary payments described in Paragraphs 4 and 5 of the Order solely as restitution to fund the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement

and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Tacoma may request appropriate verification from the staff, including record review, of the number of replacement heaters ordered from Cadet under the Cadet Corrective Action Plan. Upon receipt of a request from Tacoma, the staff shall provide such verification, subject to appropriate protective orders preserving the confidentiality of business records obtained from Cadet. In the event that such verification demonstrates the number of replacement heaters represented by the CPSC to Tacoma pursuant to Paragraph 5 of the Order to be incorrect, thus rendering Tacoma's payment into the escrow account incorrect, the staff shall direct the Escrow Agent to refund the overpayment to Tacoma in the amount of $0.85 per heater. A dispute as to the proper amount of contingent contribution shall be resolved in accordance with Paragraph 24 of this Consent Agreement.

31. Tacoma and the staff consent to the entry of the Order attached hereto.

32. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1115.20(b)(5).

33. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Tacoma.

34. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: February 7, 2000. Original fax transmission signed and dated February 3, 2000.

Howard N. Tarnoff,

Trial Attorney.

Margaret H. Plank,

Trial Attorney.

Eric L. Stone,

Director, Legal Division.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, Telephone: (301) 504–0626, Facsimile: (301) 504–0359.

Dated: February 2, 2000.

Randy Mauerman,

President, Tacoma Electric Supply, Inc., 1311 South Tacoma Way, Tacoma, WA 98409, Telephone: (253) 627–3982, Facsimile: (253) 383–7122.

Order

Upon consideration of the Consent Agreement entered into between Respondent Tacoma Electric Supply, Inc. (''Tacoma'') and the staff of the Consumer Product Safety Commission (''the staff'') (Collectively ''the parties''); and

The Consumer Product Safety Commission (''the CPSC'' or ''the Commission'') having jurisdiction over the subject matter and Tacoma;

It is hereby ordered that:

1. The Consent Agreement between Tacoma and the staff is incorporated herein by reference and accepted, and Tacoma shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet's series FW, FX, LX, TK, ZA, and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as ''the Heaters.''

3. Tacoma shall immediately cease and desist offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Tacoma-owned distribution centers, or any other persons or entities over whom Tacoma has control.

4. Tacoma shall pay into an escrow account (Chase Manhattan Trust Company, National Association, Account #76609060682) established by the staff and Cadet for the purpose of remedying the alleged hazard posed by the heaters (''Escrow Account'') the sum of two hundred and five thousand dollars ($205,000) upon the CPSC's final acceptance of this Order.

5. Tacoma shall pay into the Escrow Account contingent contribution(s) of an additional ($0.85) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 (''the Cadet Order''); provided that the sum total of all of Tacoma's contingent contribution(s) shall be capped at one hundred and seventy thousand dollars ($170,000). Tacoma shall pay contingent contributions quarterly within fifteen (15) days of Tacoma's receipt of written notice form the staff of the number of replacement heaters over 250,000 ordered by consumers during each quarter within twenty-four months of the Effective Date of the Cadet Order issued by the CPSC on July 30, 1999.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above: (a) To offset expenses directly related to Cadet's CPSC-approved Corrective Action Plan; and/or (b) to otherwise remedy the alleged hazard posed by the Heaters.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Tacoma fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Tacoma shall be liable for additional contributions to the Escrow Account. Such additional contributions shall consist of the follows:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the deposit is not made within thirty (30) days after the due date.

In no event shall a failure by Tacoma to make timely contributions to the Escrow Account result in an increase in the $170,000 cap on total contingent contributions by Tacoma to the Escrow Account.

Provisionally accepted and Provisional Order issued on the 9th day of March, 2000.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–6280 Filed 3–14–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of 20 Department of Defense Federal Advisory Committees

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the ''Federal Advisory Committee Act,'' notice is hereby given that the following 20 advisory committees have been determined to be in the public interest and have been renewed:

A. Board of Visitors, National Defense University.

B. Strategic Advisory Group for the U.S. Strategic Command.

C. Advisory Group on Electron Devices.

D. Defense Science Board.

E. Defense Advisory Committee on Military Personnel Testing.

F. Defense Advisory Committee on Women in the Services.

G. DoD Wage Committee.

H. National Security Agency Advisory Board.

I. Armed Forces Epidemiological Board.

J. Army Science Board.

K. Army Education Advisory Committee.

L. Chief of Engineers Environmental Advisory Board.

M. Scientific Advisory Board of the Armed Forces Institute of Pathology.

N. Board of Advisors to the President, Naval War College.

O. Board of Advisors to the Superintendent, Naval Postgraduate School.

P. Chief of Naval Operations Executive Panel Advisory Committee.

Q. Naval Research Advisory Committee.

R. Air University Board of Visitors.

S. Community College of the Air Force Board of Visitors.

T. U.S. Air Force Scientific Advisory Board.

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education, and training, and various technical program areas. Some of them are authorized by statute.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluation in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer Spaeth, DoD Committee Management Officer, 703–695–4281.

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6289 Filed 3–14–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Proposed Collection; Comment Request Entitled Small Disadvantaged Business Procurement Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Small Business Procurement Credit Programs. This OMB clearance expires on June 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 15, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA, 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 20,340.

Responses Per Respondent: 8.97.

Total Responses: 183,257.

Average Burden Hours Per Response: 2.09.

Total Burden Hours: 383,007.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: March 9, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–6294 Filed 3–14–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152]

Proposed Collection; Comment Request Entitled Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Service Contracting. This OMB clearance expires on June 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 15, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement implements the statutory requirements of Section 834, Public Law 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at $100,000 or more. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

B. Annual Reporting Burden

Number of Respondents: 19,906.
Responses Per Respondent: 1.
Total Responses: 19,906.
Average Burden Per Response: 30 minutes.
Total Burden Hours: 9,953.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: March 9, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–6295 Filed 3–14–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Impact of DoD Acquisition Policies and Practices on the Health and Competitiveness of US Defense Companies will meet in closed session on February 22, 2000; March 7, March 20–21, April 4 and April 10. All meetings will be held at Strategic Analysis Inc., One Virginia Square, 3601 Wilson Blvd., Suite 600, Arlington, VA 22201.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review the Department of Defense's acquisition policies and regulations governing the primary vendors of military equipment; determine whether these acquisition policies, processes and regulations have supported or weakened rational and economical business practices within the primary vendors of military equipment; and assess the impact of those policies, practices and regulations on the health and competitiveness of US defense companies. The Task Force plans to hold sensitive programmatic discussions with the primary vendors during the course of this effort.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c) (1) and (4) (1994), and that accordingly these meetings will be closed to the public.

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6290 Filed 3–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiatives Review Panel

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the ongoing schedule and for the next two meetings of the DoD Healthcare Quality Initiatives Review Panel. Meetings will be open to the public. Notice of these meetings are required under the Federal Advisory Committee (FAC) Act (Pub. L. 92–463).

DATES: March 23, 2000; April 27, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

PROPOSED SCHEDULE AND AGENDA: Agenda will be posted on the homepage located *@www.hqirp.org.* The DoD Healthcare Quality Initiatives Review Panel (HQIRP) will meet in open session from approximately 8:30 am to 5:30 pm. There will be 20 minutes provided for Public Commentary beginning at approximately 4:30 pm. Public seating for this meeting is limited and is available on a first-come, first-served basis.

FOR FURTHER INFORMATION: Please contact Gia Edmonds at (703) 933–8325.

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6291 Filed 3–14–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Spring 2000 Conference Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming semi-annual conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Spring 2000 DACOWITS Conference is to assist the Secretary of Defense on matters relating to women in the Services. Conference sessions will be held daily and will be open to the public, unless otherwise noted below.

DATES: April 26–30, 2000.

ADDRESSES: Washington Dulles Airport Hotel, 13869 Park Center Road, Herndon, VA 20171; telephone: (703) 478–2900.

FOR FURTHER INFORMATION CONTACT: Major Susan E. Kolb, ARNG, or Sergeant First Class Verena Sander, USA, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122 or E-Mail: *SANDERV@PR.OSD.MIL.*

SUPPLEMENTARY INFORMATION: The following rules will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the DoD Luncheon, DoD Reception and Dinner and Conference Field Trip.

(2) The Opening Session, General Session, all Subcommittee Sessions, Tri-Committee Review, and the Voting Session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or to submit a written statement to the Committee must notify the point of contact listed above no later than April 10, 2000.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Sunday, April 30, 2000, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office with one (1) copy of the presentation by April 10, 2000 and bring 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one (1) copy of the statement by the close of the conference on Sunday, April 30, 2000.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Military Director, DACOWITS and Military Women Matters, for consideration.

(10) Members of the public will not be permitted to enter oral discussions conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) After the official participants have asked questions and/or made comment to the scheduled speakers, members of the public will be permitted to ask questions if recognized by the Chair and if time allows.

(12) Non-social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the Committee. Conference sessions will be conducted according to the following agenda:

Tuesday, April 25, 2000

New Member Orientation (DACOWITS Members Only).

Wednesday, April 26, 2000

Conference Registration, New Member Orientation (DACOWITS Members Only), Military Representatives Meeting (Senior Military Representatives Only), Executive Committee Rules and Procedures Meeting (DACOWITS Members Only).

Thursday, April 27, 2000

Opening Session and General Session (Open to public), DoD Luncheon (Invited Guests Only), Subcommittee Sessions (Open to Public).

Friday, April 28, 2000

Subcommittee Sessions (Open to Public), Luncheon (Paid Registered Conference Participants Only), Subcommittee Session (Open to Public), Executive Committee Rules and Procedures Meeting (DACOWITS Members Only), DoD Reception and Dinner (Invited Guests Only).

Saturday, April 29, 2000

Tri-Committee Session (Open to Public), Subcommittee Sessions (Open to Public), Field Trip (DACOWITS Members and Senior Military Representatives Only), Executive Committee Rules and Procedures Meeting (DACOWITS Members Only).

Sunday, April 30, 2000

Voting Session (Open to Public).

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–6292 Filed 3–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will given to all comments received by May 15, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, LA 70161 ATTN: CEWRC–NDC–C (J. Alexander Wieriman). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Vessel Operation Report, ENG Forms 3925, 3925B, 3925P, 3925C, 0710–0016.

Needs and Uses: The Corps of Engineers uses ENG Forms 3925, 3925B, and 3925P as the basic instruments to collect waterborne commerce statistics. This data constitutes the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors. The data is collected from vessel operating companies, and are essential in maintaining U.S. navigable waterways. The data is also critical to the enforcement of the Harbor Maintenance Tax authorized under Section 1402 of Public Law 99–662.

Affected Public: Business or other for profit.

Annual Burden Hours: 44,479.

Number of Respondents: 1,321.

Responses Per Respondent: 228,752.

Average Burden Per Response: 5 minutes.

Frequency: Monthly.

SUPPLEMENTARY INFORMATION: The information collected is the basic data from which the Corps of Engineers compiles and publishes waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, rehabilitation projects, and operations and maintenance of existing projects. The WCSC is the sole authorized collector of data on domestic waterborne commerce and provides same to maritime Administration (MARAD), Department of Energy, Tennessee Valley Authority, Interstate Commerce Commission, the Coast Guard, State taxing agencies, U.S. Customs Service, Department of Treasury, and the Internal Revenue Service.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6342 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATE: Consideration will be given to all comments received by May 15, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, LA 70161 ATTN: CEWRC–NDC–C (J. Alexander Wieriman). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Record of Arrivals and Departures of Vessels at Marine Terminals, ENG Form 3926, OMB Number 0710–0005.

Needs and Uses: The Corps of Engineers uses ENG Form 3926, as a quality control instrument by comparing the data collected on the Corps' Vessel Operation Report (OMB Control Number 0710–0006) with that collected on the ENG Form 3926. The information is voluntarily submitted by the respondents to assist the Waterborne commerce Statistics Center (WCSC) in the identification of vessel operators who fail to report significant vessel moves and tonnage.

Affected Public: Business or other for profit.

Annual Burden Hours: 2,500.

Number of Respondents: 450.

Responses Per Respondent: 12.

Average Burden Per Response: 5 minutes.

Frequency: Voluntary.

SUPPLEMENTARY INFORMATION: The information is invaluable in documenting the movement of petroleum products out of Valdez, Alaska. Without the information furnished on the ENG Form 3926 at least 50,000,000 tons of petroleum products would got unreported each year. This situation exists because there are many vessel operating companies moving crude petroleum from Valdez to points south.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6343 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF THE DEFENSE

Department of the Army, Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft Supplement to the Environmental Impact Statement (D–SEIS) for the Kennedy Bechara Segment of the Rio Puerto Nuevo Flood Control Project in Guaynabo and San Juan, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Cancellation notice.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers hereby cancels its Notice of Intent to prepare a Draft Supplement to the Environmental Impact Statement for the Rio Puerto Nuevo Flood Control Project, Kennedy-Bechara segment, as published in the **Federal Register** (Vol. 64, No. 174), Thursday, September 9, 1999, page 48995. Additional information concerning the cancellation is contained in the Supplementary Information paragraph indicated below.

FOR FURTHER INFORMATION CONTACT: Questions can be forwarded to Mr. Elmar G. Kurzbach, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, Phone: (904)–232–2325.

SUPPLEMENTARY INFORMATION: The Notice is cancelled because, after scoping for the proposed Supplement was completed, no new issues were raised; no request was received for public meetings, and comments were received only from environmental and resource agencies. All substantive comments made reference primarily to adverse impacts on wetlands of the flood mitigation alternatives then under consideration, all of which would have used a wetland (mangrove) parcel for disposal of excavated material to a greater or lesser degree. Federal and Commonwealth of Puerto Rico resource agencies, including the project co-sponsor, Department of Natural and Environmental Resources, stated that using remnant wetlands for disposal of excavated material was unacceptable. Consequently, the preferred alternative

has been revised to allow excavated material to be deposited upon uplands. With the resolution of this issue, the remaining wetlands footprint of the preferred alternative is less than that of the base plan previously coordinated under the National Environmental Policy Act in 1984 and 1993.

An Environmental Assessment will be prepared and coordinated for the proposed action. This document is expected to be available in approximately one month.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6341 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on April 13, 2000, in St. Louis, Missouri, at the Regal Riverfront Hotel, 200 South 4th Street, St. Louis, Missouri 63102–1804, (Tel. 1–800–325–7353 or (314) 241–9500). Registration will begin at 9:00 AM and the meeting is scheduled to adjourn at 4:00 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CEW–PF, Washington, D.C. 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6344 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–92–M

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 April 14, 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, D.C. 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: March 9, 2000.

William Burrow,

Leader Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Application for the Field-Initiated Studies Educational Research Grant Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses 750, Burden Hours: 11,250.

Abstract: This information collection allows institutions of higher education; state and local education agencies; public and private organizations; institutions and agencies; and individuals to apply for grants under the Field-Initiated Studies Education Research Grant Program supported by OERI's five National Research Institutes. Funds will support education research that will improve American education.

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 may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). 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. 00–6324 Filed 3–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP00–30–004]

ANR Pipeline Company; Notice of Compliance Filing

March 9, 2000.

Take notice that on March 6, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, a motion to place rate schedule ITS–3 into effect and the revised tariff sheets listed in Appendix A to the filing, to be effective March 1, 2000.

ANR states that this filing is made in compliance with the Commission's Order dated February 28, 2000 in the captioned proceeding.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6305 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP00–203–001]

ANR Pipeline Company; Notice of Proposed Change In FERC Gas Tariff

March 9, 2000.

Take notice that, on March 6, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 1, following revised tariff sheet to be effective April 1, 2000:

Fourteenth Revised Sheet No. 19

ANR states that this filing is made to correct an error in pagination in the tariff sheet previously submitted on March 1, 2000 in Docket No. RP00–203–000.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6306 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–100–000]

National Fuel Gas Supply Corporation; Notice of Application for Abandonment Authorization

March 9, 2000.

Take notice that on February 25, 2000, National Fuel Gas Supply Corporation (National Fuel) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP00–100–000 an application pursuant to Section 7(b) of the National Gas Act and Part 157 of the Commission's Regulations, for authority to abandon an inactive storage field and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.*us*/online/rims.htm. Call (202) 208–2222 for assistance.

In its filing, National Fuel proposes to abandon by sale to its affiliate, Seneca Resources Corporation (Seneca), its Duhring Storage Field (Duhring), located in Forest County, Pennsylvania. National Fuel indicates that Duhring consists of 12 wells and 30,016 feet of various size well pipelines. It is indicated that following the conveyance of the storage field, Seneca plans to produce the native gas. National Fuel further states that the abandonment of Duhring will have no effect on existing services.

National Fuel's application states it is also seeking any required authorization to abandon by sale to Seneca the adjacent gathering facilities which include approximately 10 miles of 2-inch to 4-inch diameter gathering pipelines and five receipt points where National Fuel receives gas from three independent producers, including Seneca.

National Fuel states that the storage facilities and the gathering facilities will be used for production and gathering purposes following conveyance and requests that the Commission determine that such facilities will not be subject to the Commission's jurisdiction after the sale.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

Any person desiring to be heard or to make a protest with reference to said application should on or before March 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party to a proceeding or to participate, as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required further notice of such hearing will be duly given.

Under the procedures herein provide for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–6309 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–103–000]

Northern Natural Gas Company; Notice of Application

March 9, 2000.

Take notice that on February 28, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP00–103–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an individually certificated transportation agreement between Northern and Southern Union Gas Company (Southern Union) under its Rate Schedule X–25 contained in its FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Northern states that the agreement provided for Northern to make firm deliveries of up to 14 Mcf of natural gas per day on any day of the year and interruptible deliveries of up to 151 Mcf per day of Off Peak volumes between April 1 and October 1 to Southern Union. According to Northern, the contract underlying this arrangement has been terminated by mutual agreement between the parties, and no service has been provided for several years. No facilities will be abandoned as a result of the proposed abandonment of service. Northern contends that it will file the appropriately revised tariff sheets upon approval by the Commission of the requested abandonment.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 Southern 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421, or Laura L. Lantefield, Regulatory Analyst, at (402) 398–7080.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 2000, file with the Federal Energy Regulatory Commission (888 First Street, NE, Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–6310 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2342–011]

PacifiCorp; Notice Clarifying Comment Deadline for Offer of Settlement and Application for Amendment of License

The Commission's Notice of Offer of Settlement and Application for Amendment of License, issued February 2, 2000, in this proceeding, set a deadline for filing comments and or motions in Project No. P–2342–011 of March 15, 2000, or 45 days after the filing of the PacifiCorp's Removal Plan with the Commission, whichever occurs later. On February 11, 2000, PacifiCorp filed the Removal Plan. Accordingly, the deadline for filing comments and or motions in Project No. P–2342–011 is now March 27, 2000.

David P. Boergers,

Secretary

[FR Doc. 00–6302 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–205–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 9, 2000.

Take notice that on March 6, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1–A, Third Revised Sheet No. 122. PG&E GT–NW requests that the above-referenced tariff sheet become effective April 1, 2000.

PG&E GT–NW asserts that the purpose of this filing is to correct the pagination designation for this sheet, as directed by the Commission's March 3, 2000 Letter Order.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6308 Filed 3–14–00; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–109–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

March 9, 2000.

Take notice that on March 6, 2000, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP00–67–000 a request pursuant to Sections 157.205, 157.208, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.216) for authorization to construct, operate, and maintain certain replacement facilities on Texas Eastern's existing 30-inch Line No. 16 located in Harris County, Texas as a miscellaneous rearrangement of existing facilities and to abandon by removal that segment of facilities being replaced under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that in on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern requests authorization to: (i) construct, install, own, operate, and maintain approximately 3,112 feet of 30-inch pipeline on Texas Eastern's Line 16 in the Houston Ship Channel (HSC) from approximately milepost (MP) 341.68 to MP 342.05; (ii) install a 30-inch valve at MP 340.68 upstream of the rearrangement segment; (iii) remove and abandon approximately 3,176 feet of the existing 30-inch Line No. 16 mainline of which approximately 2,342 feet will be removed and 834 feet will be abandoned in place; and (iv) remove approximately 1,989 fee of the existing 30-inch auxiliary Line No. 16. Texas Eastern declares that the replacement of the facilities is necessary to accommodate the deepening and widening of the HSC as proposed by the Port of Houston.

Texas Eastern states that the estimated cost of the HSC pipeline replacement and removals is approximately $8,662,000.

Texas Eastern declares that its proposal herein will be accomplished without detriment or disadvantage to Texas Eastern's customers.

Any questions regarding the application should be directed to Steven E. Tillman at (713) 627–5113, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 00–6311 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–204–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 9, 2000.

Take notice that on March 6, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Sixteenth Revised Tariff Sheet No. 27. The proposed effective date of the enclosed tariff sheet is April 1, 2000.

Transco states that the purpose of the instant filing is to supplement Transco's Transmission Electric Power Cost Adjustment Filing of March 1, 2000 (March 1 Filing), which filing inadvertently neglected to revise the Rate Schedule GSS Excess Delivery Charge. In order to reflect the correct rate, Transco is submitting Substitute Sixteenth Revised Tariff Sheet No. 27 to replace the tariff sheet effective April 1, 2000 in the March 1 Filing.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6307 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2731–020 & 2737–002 Vermont]

Central Vermont Public Service Corporation; Notice of Availability of Draft Environmental Assessment

March 9, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new license for the continued operation of the Weybridge and Middlebury Lower Hydroelectric Projects located on Otter Creek, in the towns of Middlebury and Weybridge, Addison County, Vermont, and has prepared a Draft Environmental Assessment (DEA) for the projects. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the projects and has concluded that approval of the projects, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The DEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and

should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1–A, Washington, D.C. 20426. Please affix ''Weybridge and Middlebury Lower Hydroelectric Projects No. 2731–020 and 2737–002'' to all comments. For further information, contact Jack Duckworth at (202) 219–2818 or by E-mail at jack.duckworth@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–6304 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2611–038 Maine]

Kimberly-Clark Tissue Company, UAH-Hydro-Kennebec Limited Partnership and Madison Paper Industries; Notice of Availability of Environmental Assessment

March 9, 2000.

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 an environmental assessment (EA) for Kimberly-Clark Tissue Company, UAH-Hydro-Kennebec Limited Partnership, and Madison Paper Industries' (licensees) application to amend the license for the Hydro-Kennebec Project. Specifically, the licensees propose to delete from the license in inoperable old powerhouse and related facilities. The old powerhouse has been inoperable since 1998 and has an authorized capacity of 3,730 kilowatts. The changes would reduce the project's authorized capacity from 19,163 kilowatts to 15,433 kilowatts. The Hydro-Kennebec Project is located on the Kennebec River in Kennebec and Somerset Counties, Maine.

In the EA, staff concludes that approval of the licensee's application would not constitute a major Federal action significantly affecting the quality of the human environment. The EA is attached to a Commission order issued on March 6, 2000 for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371, or through the Commission's homepage at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6303 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices, OMB Control No. 2050–0122, expires April 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov,* or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1381.06. For technical information about the collection, contact Dwight Hlustick at (703) 308–8647.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping and Reporting Requirements for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices, OMB Control No. 2050–0122, expiring April 30, 2000. This information collection is an extension of a currently approved collection.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 10, 1999 (64 FR 31216); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 97 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Municipal Solid Waste Landfills.

Estimated Number of Respondents: 2300.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 239,858 Hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No. 1381.05 and OMB Control No. 2050–0122 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information,

Collection Strategies Division (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–6392 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–9]

Agency Information Collection Activities: Continuing Collection; Comment Request; Request for Information for the Bioremediation Field Initiative Database System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Request for Information for the Bioremediation Field Initiative Database Systems, EPA ICR No. 1672.03, OMB Control No. 2080–0048, expires 05/31/2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 15, 2000.

ADDRESSES: Office of Research and Development, Technology Transfer and Support Division, National Risk Management Research Laboratory, 26 West Martin Luther King Drive (Mailstop G75), Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Fran Kremer, ph: 513–569–7346, fax: 513–569-7620, email: *kremer.fran@epa.gov.*

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those that are involved in the use of innovative technologies at Superfund sites, such as state and local governments, businesses, and nonprofit institutions.

Title: Request for Information for the Bioremediation Field Initiative Database System, OMB Control No. 2080–0048, expires 05/31/2000.

Abstract: This is an ICR renewal for gathering information on the design, operation, and performance of biological treatment technologies from remediation experts and managers working at sites where biological treatment technologies are being tested or implemented. The authority for collecting information on innovative treatment technologies is described at Section 311 of the Superfund Amendments and Reauthorization Act, Section 8003 of the Resource Conservation and Recovery Act, Section 7001 of the Oil Pollution Act, and Section 10 of the Toxic Substance Control Act. Response to the collection of information is voluntary. The information will help the EPA to deploy innovative technologies more quickly at Superfund and other sites.

Selected respondents are asked to complete and return, via mail, a two-part questionnaire. The first part requests general site information, such as location, contacts, contaminants, and legislative authority under which the site is being remediated. The second part requests site-specific biotechnology information, such as the stage of the operation, wastes and media being treated, cleanup level goals, and the performance and cost of the treatment. Again, all responses are strictly voluntary. Following the initial questionnaire, respondents receive followup questionnaires on a semi-annual basis to update the information already provided. EPA has developed an easy-to-use PC-based version of the questionnaire that is currently in use. To run the electronic questionnaire, the user must have access to a Windows-capable IBM-compatible PC, preferably 486-class or better. The PC questionnaire has several benefits:

- Questions that apply only under particular circumstances (i.e., are dependent on previous responses) are only presented to the user as necessary.
- Data validations are performed optionally as the user is filling out the questionnaire and are required when a respondent is ready to submit the data to EPA. Data validation conditions are reported with an explanation of the problem/situation and recommended corrective action(s).
- Pick lists are provided for several questions, so that users may choose an item from a list rather than enter the full text using the keyboard.

Respondents may utilize either the paper- or the PC-based questionnaire, which ever they prefer. In each case, when respondents are updating the site records for sites that are already in the Bioremediation Field Initiative database, the questionnaire shows the site's complete responses from past questionnaires, so that information that has not changed need not be reentered. Respondents with access to the Internet may express comments or request assistance using an e-mail account that is identified in each questionnaire mailing. Each form of the questionnaire is updated occasionally between data collection cycles to include prominent new technologies and contaminants as they are identified in prior collection efforts. A Web-based version of the questionnaire with essentially the same features as the PC-based version is in development.

EPA compiles information from completed questionnaires into the Bioremediation Field Initiative computer database. EPA developed a software program called the Bioremediation in the Field Search System (BFSS) to search, view, and report information in the database. Recently, EPA re-engineered this software into a Web-enabled application, making the BFSS data available to the public for online searching.

Each site in the database includes contact information for one or more individuals associated with the regulatory authority or application of bioremediation technology at the site. Remediation professionals may contact individuals with common site conditions to share information. Summary statistics may be drawn from the database to elucidate trends in bioremediation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: The following burden figures are taken from the currently approved ICR:

Respondent type	Burden hours
First-time respondents	5.0
Update respondents	1.0
No-change respondents	0.5
Nonrespondents	0.25
Total	6.75

Respondent type	Respondents		
	Period one	Period two	Yearly
First-time respondents	50	50	100
Update respondents	449	482	931
No-change respondents	129	139	268
Nonrespondents	102	110	212
Total	730	781	1511

(First-time respondents fill out a questionnaire for the first time, entering data for a site not previously included in the Bioremediation Field Initiative database. Update respondents receive a questionnaire containing the current record of site data in the Bioremediation Field Initiative database and enter information to make the information current. No-change respondents receive a questionnaire containing the current record of site data in the Bioremediation Field Initiative database, review the information and find that it is current; therefore, they need not modify information to make the site current. Nonrespondents receive the questionnaire, review it, and elect not to respond.)

The cost per hour of respondent time is estimated as $52 for management personnel, $45 for technical personnel, and $32 for clerical personnel, based on recent labor rates.

Annual respondent burdens are calculated as follows:

• In period one, up to 730 respondents will be sent questionnaires. Of these, 50 first-time respondents will take 5 hours each to complete the questionnaire. All of the 578 previously submitted questionnaires will be mailed out for updates, 449 respondents will update the questionnaire (1 hour), 129 respondents will review their data and return the questionnaire indicating that the data have not changed (0.5 hour), and 102 respondents will not return the questionnaire (0.25 hour).

PERIOD ONE HOURS:					
Hours Total * No. of Respondents					
First-time Respondents	5.00	*	50	=	250
No. Updating Respondents	1.00	*	449	=	449
No. No Change Respondents	0.50	*	129	=	D65
Nonrespondents	0.25	*	102	=	26
Total Period Burden (Hours)					790
PERIOD ONE COSTS:					
Cost Total * No. of Respondents					
First-time Respondents	$210.75	*	50	=	$10,538
No. Updating Respondents	43.38	*	449	=	19,478
No. No-Change Respondents	20.88	*	129	=	2,694
Nonrespondents	12.13	*	102	=	1,237
Total Period Cost					33,947

• In period two, up to 781 respondents will be sent questionnaires. Of these, 50 first-time respondents will take 5 hours each to complete the questionnaire. All of the 628 previously submitted questionnaires will be mailed out for updates, 482 respondents will update the questionnaire (1 hour), 139 respondents will review their data and return the questionnaire indicating that the data have not changed (0.5 hour), and 110 respondents will not return the questionnaire (0.25 hour).

PERIOD TWO HOURS:					
Hours Total * No. of Respondents					
First-time Respondents	5.00	*	50	=	250
Updating Respondents	1.00	*	482	=	482
No-Change Respondents	0.50	*	139	=	70
Nonrespondents	0.25	*	110	=	28
Total Period Burden (Hours)					830
PERIOD TWO COSTS:					
Cost Total * No. of Respondents					
First-time Respondents	$210.00	*	50	=	$10,538
Updating Respondents	43.38	*	482	=	20,909

No-Change Respondents	20.88	*	139	=	2,902
Nonrespondents	12.13	*	110	=	1,334
Total Period Cost					35,683

Based on these estimates, the annual respondents' burden is projected as follows:

	Hours	Cost
Period One	790	$33,947
Period Two	830	35,683
Total	1,620	69,630

EPA's experience to this point indicates that, in most cases, the paperwork burden associated with completing the questionnaire is essentially the same regardless of whether the respondent is using the paper or the electronic version. A general, indirect efficiency advantage for respondents using the electronic version is that the software application's data validation function (described above) is likely to reduce the need for callbacks from EPA concerning incomplete or nonstandard data. (This also will be true for the Web-based version of the questionnaire when it is deployed.) The most significant efficiencies associated with use of the electronic version would accrue to the relatively small percentage of respondents who provide information for numerous sites. An important benefit of the electronic version not related to the respondents' paperwork burden is that collected site data can be more efficiently added to the computer database.

Each year, the burden figures increase somewhat, as first-time respondents are added to the database. In subsequent years, first-time respondents will be divided among the other respondent types. This growth is offset slightly as sites are removed from the data collection cycle—most typically if the site activity is completed, but for other reasons as well.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 29, 2000.

Robert A. Olexsey,

Director, Land Remediation and Pollution Control Division.

[FR Doc. 00–6394 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6561–3]

Investigator-Initiated Grants: Requests for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of Requests for Applications.

SUMMARY: This notice provides information on the availability of fiscal year 2000 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under ''announcements.''

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Assessing the Consequences of Interactions between Human Activities and a Changing Climate; (2) Development of National Aquatic Ecosystem Classifications and Reference Conditions; (3) Valuation of Children's Health Effects; (4) Recreational Water Quality: Indicators and Interstitial Zones; and (5) Exploratory Research to Anticipate Future Environmental Issues. Applications must be received as follows: April 26, 2000, for topic (1); April 17, 2000, for topic (2); June 6, 2000, for topics (3) and (4); and July 6, 2000, for topic (5).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the ''Assessing the Consequences of Interactions between Human Activities and a Changing Climate'' RFA is Bernice L. Smith (smith.bernicel@epa.gov), telephone 202–564–6934. Contact person for the ''Development of National Aquatic Ecosystem Classifications and Reference Conditions'' RFA is Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911. Contact person for the ''Valuation of Children's Health Effects'' RFA is Matthew Clark (clark.matthew@epa.gov), telephone 202–564–6842. Contact person for the ''Recreational Water Quality: Indicators and Interstitial Zones'' RFA is Cynthia Nolt-Helms (nolt-helms.cynthia@epa.gov), telephone 202–564–6763. Contact persons for the ''Exploratory Research to Anticipate Future Environmental Issues'' RFA are David Kleffman (*kleffman.david@epa.gov*), telephone 202–564–6903, Roger Cortesi (*cortesi.roger@epa.gov*), telephone 202–564–6852, and Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911.

Dated: February 29, 2000.

Approved for publication.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–6396 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–6]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 28–30, 2000 at the Wyndham Hotel, 1400 M Street, NW, Washington, D.C. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, March 28, 2000 Work Group meetings only; plenary sessions Wednesday, March 29, 2000 and Thursday, March 31, 2000.

ADDRESSES: Wyndham Hotel, 1400 M Street, NW, Washington, D.C. 20005; 202–429–1700.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science and Research Work Group, the Legacy Work Group, and the Data Needs Work Group will meet from 9:30 a.m. to 5:00 p.m. on Tuesday, March 28, 2000. The plenary CHPAC will meet on Wednesday, March 29, 2000 from 9:00 a.m. to 5:30 p.m. with a public comment period at 5:00 p.m. and on Thursday, March 30, 2000 from 9:00 a.m. to 12:00 noon.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include discussion of the status of the CHPAC recommendations on the five standards selected for reevaluation in 1999 and reports from the other Work Groups.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7778, goode.paula@epa.gov.

Dated: March 8, 2000.

Paula R. Goode,

Designated Federal Officer, Children's Health Protection Advisory Committee.

[FR Doc. 00–6390 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181075; FRL–6495–9]

Fluazinam; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Virginia Department of Agriculture and Consumer Services and the Oklahoma Department of Agriculture to use the pesticide fluazinam (CAS No. 79622–59–6) to treat up to 45,000 acres in Virginia and 33,000 acres in Oklahoma of peanuts to control sclerotinia blight. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP–181075, must be received on or before March 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181075 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

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

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

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

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181075. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy.,

Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181075 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181075. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Virginia Department of Agriculture and Consumer Services and the Oklahoma Department of Agriculture has requested the Administrator to issue a specific exemption for the use of fluazinam on peanuts to control sclerotinia blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that in Virginia since 1992, several events have impacted the peanut crop and resulted in an overall decline in its value. Major factors responsible for this decline have been the steady spread of sclerotinia blight, the absence of effective control measures, and the unchanging market prices that farmers receive for peanuts under provisions of the 1996 farm bill. Emergency exemptions for use of dicloran to control sclerotinia blight were granted to the Virginia Department of Agriculture and Consumer Services from 1978 through 1983. The state claims that disease control with dicloran was erratic. In 1985, iprodione was registered to control sclerotinia blight in peanuts. Acording to the state, sclerotinia blight has developed resistance to iprodione and therefore does not provide effective disease control. In Virginia epidemics of sclerotinia blight occur in peanuts each year once the crop develops a complete canopy that covers the soil surface. Cool-to-moderate temperatures and moist conditions under the plant canopy are a triggering factor for germination of sclerotia and subsequent infection of plant parts. Yield losses without the use of fluazinam are expected to exceed 10% for 60% of the total acres planted in 2000.

Sclerotinia blight of peanuts was first discovered in Oklahoma in 1972 and became endemic since its discovery. Disease outbreaks may occur in early July or soon after peanut plants have formed a foliar canopy that shades the soil surface. The disease is favored by high humidity and cool to warm temperatures. The disease is expected to be most severe in the late summer when the prevailing temperatures are cooler and the peanut plant canopy shades the soil and cools soil temperatures. A favorable microclimate is present in irrigated fields because of a dense plant canopy, vegetative wetness, and cool moist soils. The majority (80%) of the peanut acreage in Oklahoma is irrigated. The state contends that registered fungicides such as iprodione and Tenncop (Cu-based) do not adequately control sclerotinia blight. Although a peanut variety (Tamspan 90) resistant to sclerotinia blight is available, it is a Spanish type variety and growers are reluctant to plant this type of peanut because the nut processing industry prefers runner-type peanut varieties. The Oklahoma Department of Agriculture has been granted emergency exemptions for use of dicloran to control sclerotinia blight for the past 3 years (1997, 1998, and 1999). EPA denied an exemption request for dicloran on peanuts in Oklahoma in 1991 due to insufficient progress toward a section 3 registration. Previously, exemptions were granted for this use from 1978 through 1984 and from 1987 through 1990. The state claims that

growers have reported efficacy problems with the use of dicloran.

The Virginia Department of Agriculture and Consumer Services proposes to make no more than three applications of an end-use product containing 40% fluazinam on 45,000 acres of peanuts. A total of 3 pints of product (three applications at 1 pint each) or a total of 1.56 lb active ingredient may be applied per acre for a total of 70,200 pounds active ingredient. Treatments are proposed for use from June 15, 2000 to October 1, 2000. Fields requiring treatments are located in the city of Suffolk, and the counties of Southampton, Isle of Wight, Greensville, Sussex, Dinwiddie, Prince George, Surry, Accomack and Northampton.

The Oklahoma Department of Agriculture proposes to make no more than three applications of an end-use product containing 40% fluazinam on 33,000 acres of peanuts. A total of 4 pints of product or a total of 2.1 lb active ingredient may be applied per acre for a total of 70,200 pounds active ingredient. Treatments are proposed for use from July 15, 2000 to October 15, 2000. Fields requiring treatments are located in Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Choctaw, Cleveland, Comanche, Creek, Custer, Dewey, Garvin, Grady, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kiowa, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Muskogee, Okfuskee, Oklahoma, Okmulgee, Payne, Pittsburg, Pontotoc, Pottawatomie, Seminole, Stephens, Tillman, and Washita.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing ''use of a new chemical (i.e., an active ingredient which has not been registered by the EPA.'' The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Virginia Department of Agriculture and Consumer Services, and the Oklahoma Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 3, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–5926 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6539–3]

Casmalia Disposal Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the Environmental Protection Agency (''EPA'') is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Casmalia Disposal Site in Santa Barbara County, California (''the Casmalia Disposal Site''). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 433 settling parties for the Casmalia Disposal Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. For most of the settling parties, the settlement will also resolve their Casmalia Disposal Site-related liability for the response costs for the federal Natural Resources Trustees' (the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the United States Department of the Air Force), and potential natural resource damages. The settling parties will pay a total of $27.6 million toward Casmalia Disposal Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before April 14, 2000.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105–3901, and should refer to: Casmalia Disposal Site, Santa Barbara County, CA, U.S. EPA Docket No. 99–02(a). The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U. S. EPA Region IX Superfund Records Center (415–536–2000), 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105–3901 and at the Santa Maria Library (805–925–0994), 420 South Broadway, Santa Maria, CA 93454. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

SUPPLEMENTARY INFORMATION: The following are parties to this *de minimis* settlement:

A & H Plating, Inc.; Accuride International; Acme Metals Inc.; Action Computer Products Sales Inc.; Air Industries Corp.; Air Logistics Corporation; Air Products and Chemicals, Inc.; AJ Daw Printing Ink Co.; Akzo Nobel Coatings; Alflex Corp.; Allan Hancock Joint Community College; Allergan Inc.; Alliant Foodservice, Inc.; Alma Pistons Co./ Tomadur Engine Co.; Al's Plating Company Inc.; Alvord Unified School District; Alyeska Pipeline Service; American Broadcasting Company; American Honda Motor Co.; Ameron International Corp.; Amico West; Amtrak—National Railroad Passenger Corp; A.O. Smith; Angelus Sanitary Can Machine Co.; Anheuser-Busch Companies; Applied Power Inc.; Arcadia Unified School District; Armtec Defense Products; Ashland Specialty Chemical Company, a Division of Ashland Inc.; Asphalt Products Oil Corp.; Associates Insectary; Astech/MCI Manufacturing; Astro Pak Corporation; Atlas Galvanizing; Avery Dennison; Aviall Service Inc.; Baker Petrolite; Ball Corp.; Bandag Incorporated; Bank America; BASF Corp.; Basic Vegetable Products; Baxter Healthcare; Benjamin Moore & Co.; Bently Nevada Corp.; Berkshire Hathaway; Bethlehem Steel Corp.; Beylik Drilling Inc.; BFI Waste Systems of North America; BHP Coated Steel Corporation; Bio-Rad Laboratories; BMC Industries Inc.; BOC Gases; Borg-Warner Automotive, Inc. (including Borg-Warner Security Corporation, f/k/a Borg-Warner Corporation, n/k/a Burns

International Services Corporation, and Flowserve Corporation, f/k/a BW/IP International, Inc.); Bregin, Inc.; Brown Pacific Inc.; Brush Wellman Inc.; Cabrillo Community College District; California Finished Metals; California Highway Patrol; California Institue of Technology; California Office of State Printing; California Regional Water Quality Control Board, North Coast Region; California State Compensation Insurance Fund; California Steel Industries; California Technical Plating Inc.; Camco International Inc.; Camsco Residential; Carrier Corp.; Case Corporation; Central Santa Clara County Regional; Ceradyne Inc.; Cerritos Community College; Chabot-Las Positas Community College District; Chaffey Community College District; Champion Technologies, Inc.; Charter Community Hospital; Chemron Corp.; CHW Central Coast-Marian Hospital; CIPCO Inc.; Citrus Community College; City of Azusa; City of Carlsbad; City of Guadalupe; City of Monrovia; City of Mountain View; City of Norwalk; City of Richmond; City of Riverside; City of San Marino; City of Santa Paula; City of Sunnyvale; City of Thousand Oaks; City of Torrance; City of Vernon; Clougherty Packing Co.; CNF Transportation Inc.; Coast Community College District; Coca-Cola Enterprises; Coherent Incorporated; Cohu Inc. Electronics; Colonial Heights Packaging Inc., on behalf of Milprint and Bemis Company, Inc.; Cominer Corporation; Commonwealth Aluminum Concast, Inc.; Conejo Circuits Inc.; Consolidated Drum Reconditioning; Consolidated Fabricators Corp.; Construction Specialties (California), Inc.; Continental Materials Corp.; Contra Costa Community College District; Conway Oil Company; Cooper Industries; Cosmotronic Company; County of Contra Costa; County of Marin; County of Riverside; County of Sacramento; County of San Benito; County of San Joaquin; County of Santa Barbara; County of Santa Clara; County of Ventura; CoxCom Inc.; Crane Company (including Hydro Aire, Inc., Barksdale, Inc., and Pacific Valves); Crowley Maritime Corporation; Cubic Corp; Culligan Industrial Water Purification; Culligan International & Culligan Water Conditioning; Cytec Industries; D & S Industries; Daimler Chrysler; Decalta International; Delta Airlines; Deluxe Packages; Diagnostic Products; Diversey Corp. (n/k/a Raython Corp.); Don E. Keith Transportation; Downey Glass; Dunn Edwards Corporation; Dura-Bond Bearing Co./ SKF USA, Inc.; E & T LLC; Eastman Kodak; Eaton Corporation; EDO Corporation; El Camino Community College; Electromatic Inc.; Electronic Plating Services; Elf Atochem North America Inc.; Elixir Industries Corp.; Embee Inc.; Emerson Electric Co.; Energy Factors Inc; Enthone OMI Inc.; Ernest Carlson; ESCO Electronics Corporation; Estate of Elfrida Hanchett and Hanchett Family Corp.; EXAR Corporation; Exide Corporation; Facet Energy (Gammaloy Ltd.); Fansteel Corp.; Far Best Corporation; Farr Co.; Fedco Inc.; Federal Bureau of Prisons; Federal Express Corporation; Federal Mogul; Federal Reserve Bank of San Francisco; Finegood Holdings Inc.; Fleetwood Enterprises Inc.; FMC Corp.; Foothill-DeAnza Community College District; Frazee Industries; Fremont Newark Community College District; GATX Corp.; Genentech Inc; Genlyte Thomas Group; George Industries; Gillette SMMC; Glendale Community College District; Glendale Development Corporation (f/k/a Glenfed Development Corporation); Goleta Union School District; Great Lakes Chemical Corp.; Great Spring Waters of America, Inc.; Great Western Chemical; Grossmont Cuyamaca Community College; H & H Paramount, Ltd.; Hanson Permanente Cement Inc.; Hartnell Community College District; Hawthorne/Stone Real Estate; Holmes Tuttle Ford Inc.; Hooker Industries; Hurst Chemical; ICN Pharmaceuticals Inc.; Industrial Wire Products Corp.; Ingersoll-Rand Company; Intel Corporation; Intermetro; International Extrusion Corporation; International Paint HD & Marine; International Paper Company; JASCO Chemical Corp.; Jensen General Contractors; Johns Manville International Inc.; Joslyn Manufacturing Corp.; J.R. Simplot Company; Julius L. Zelman Co.; Jurupa Unified School District; Kaiser Aerospace and Electronics Corporation; Kalex Chemical Products (including Ellay, Inc.); Kamei International Corp.; Kern Community College; Kern County; Kern Industries; Kimball International Inc.; Kinder Morgan Energy Partners; Kinsbursky Brothers Supply Inc.; Koch Industries; Koppers Industries (n/k/a Beazer East Inc.); Leggett & Platt, Incorporated (including Bedline Manufacturing, a division of Leggett & Platt Inc., and L & P Property Management Company dba L & P PMC, Inc.); Levin-Richmond Terminal Corp. (a/k/a Levin Enterprises Inc.); Lindberg Corporation; Lindberg Heat Treating Co. (including Industrial Steel Treating); Lodi Door-Overhead Door Corp.; Long Beach Community Medical Center; Long Beach Memorial Hospital; Long Beach Unified School District; Longview Fibre Company; Los Angeles Chemical Co.; Los Angeles Community College District; Los Angeles County Metropolitan Transit Authority; Los Angeles Galvanizing Co.; Los Angeles Office of Education (Long Beach Community College); Los Angeles Times, Division of Times Mirror; Los Rios Community College District; Lubeco Inc.; Magna Plating Co. Inc.; Mandalay Properties; Marin Community College District; Master Halco Inc.; Matheson Tri-Gas Inc., (f/k/a Matheson Gas Products); Matlack Inc.; Matson Navigation Co.; Mattel Inc.; Maytag Corp.; Mazda Motors of America; M.C. Gill Corporation; McKesson HBOC Inc.; McKesson Water Products Company; Mechanical Metal Finishing Co.; Merced Community College; Mercy Healthcare Sacramento; Mesa Center Automotive; Metal Container Corporation of California; Methodist Hospital of Arcadia; MGF Industries; Milard Group; Minnesota Mining and Manufacturing (including Imation Corporation); Mission Industries (f/k/a Mission Linen Supply); Mission Valley Ford Trucks; Modesto City Schools; Modine Manufacturing Company; Monrovia Unified School District; Montrose Chemical Corp.; Motorola Inc. Semiconductor; Mt. San Antonio Community College District; Mt. San Jacinto Community College District; Mountain View-Los Altos High School District; NAPP Systems Inc.; NASA Ames Research Center; NASA Jet Propulsion Laboratory; National Steel and Shipbuilding; National Supply Company; Neville Chemical Co.; North Orange Community College District; Northwest Pipe Company (f/k/a Northwest Pipe and Casing); Norwalk-La Mirada Unified School District; O'Connor Hospital; Oakdale Memorial Park Inc.; Occidental Chemical Corporation (successor to Diamond Shamrock Chemicals Company); Ogden Food Products (including Ogden Corporation); Olin Corporation; Olocco Agricultural Services; ORC Technologies Inc. (f/k/a Optical Radiation Corporation); Osbourne United; OSCA Inc.; Oxnard Pest Control Association; PAC Foundry; Pacific Coast Drum Company; Pacific Refining; Pacific Tube Company; Palomar Community College District; Parker Hannifin Corp.; Pasadena Area Community College; Pennzoil-Quaker State Company (including PennzEnergy Exploration and Production, L.L.C.); Pentrate Metal Processing, Inc.; Petrolite Corporation; Pilot Chemical; Pioneer North America Inc. (including Pioneer Video Manufacturing Inc. and DiscoVision Associates); Plastic Materials Inc.; Pool California Energy Services; Pool Energy Services; Port of

San Diego; Poway Unified School District; PQ Corp.; PRC-DeSoto International Inc.; Prime Alloy Steel Castings; Primex Technologies Inc.; Printronix; Products Engineering Corp.; Prudential General Real Estate; Prudential Lighting Corporation; Public Storage Inc.; Ralston Purina Company; Rancho Santiago Community College District; Revlon Inc.; Rheem Manufacturing Co.; Riverside Cement Co.; Riverside Community Hopsital; Riverside Superintendent of Schools; Riverside Unified School District; Rogers Corporation; RR Donnelley & Sons; Sacramento County Sanitation District 1; Sacramento Municipal Utilities District; Sage Energy Company; San Bernadino Community College District; San Diego Community College District; Sandia National Laboratory; San Diego Metropolitan Transit Development Board; San Francisco Community College; San Joaquin Refining; San Jose Evergreen Community College District; San Luis Obispo County Community College District; Santa Barbara Community College District; Santa Clara County Transit; Santa Monica Community College District; Sanyo E & E Corp.; Schmid Insulation Contractors, Inc.; Scripps Clinic and Research Foundation; Sears, Roebuck & Co.; Sequa Corporation; Shasta-Tehama-Trinity Community College District; Siebe Inc.; Sierracin Corp.; Sigma Circuits Inc.; Sigma Plating Co., Inc.; Signetics Corp.; Siliconix, Inc.; Smith International; Sonoma County Community College District; Sony Technology; Soule Steel—Arnon Liquidating Agency; South Orange Community College District; Spectra-Physics Lasers, Inc.; SRI International; ST & I; Standex International Corp.; Stanford University; State Center Community College District; Steelcase, Inc.; Stepan Company; STI Properties Inc. c/o Hemisphere Corporation; St. Mary's Medical Center; Sunnyvale School District; Superior Industries International Inc.; Supra Alloys Inc.; Taormina Industries; Technicolor Film Service; Ted Levine Drum Co.; Tesoro Petroleum Companies; Texas Instruments; The Archdiocese of Los Angeles; The Bekins Company; The Interlake Corporation; The Marmon Corporation; The Mead Corporation; The Okonite Co.; The Valspar Corp.; Three Bond International Inc.; Time Warner Inc.; Torrance Unified School District; Transtechnology Corp.; Treasure Chest Advertising; Tree Island Industries Ltd.; Tricast, Inc.; Tri Valley Growers; Tucson Electric Power Co.; TWA Airlines; Tyco Printed Circuit Group; Union Bank of California; Union Carbide; United Air Lines; United States Sales Corporation; University of Southern California; US Army; US Borax; US Border Patrol; US Bureau of Indian Affairs; US Bureau of Land Management; US Bureau of Reclamation; US Customs Service; US Department of Agriculture; US Department of Defense; US Department of Energy; US Department of Health and Human Services; US Department of Immigration and Naturalization Services; US Department of Transportation/FAA; US Drug Enforcement Administration; US Federal Bureau of Investigation; US Fish and Wildlife Service; US General Services Administration; US Geological Survey; US Marshall Service; US Mint; US Park Service; US Small Business Administration; Ventura County Community College District; Verdugo Hill Golf Course; Vesper Corp.; Virco Manufacturing Corp.; VWR Corporation; WAISCO (Marwais Steel Co.); Walt Disney Co.; Walt Disney Pictures & Television; Watkins-Johnson Co.; Weber Metals Inc.; West Valley-Mission Community College District; Western Fuel Oil Company; Western Tube & Conduit Corp.; Westminster Ceramics, Inc.; Wheaton USA Inc.; Xerox Corporation; Yosemite Community College District; Zero Corporation.

FOR FURTHER INFORMATION CONTACT: Karen Goldberg, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105–3901; E-Mail: goldberg.karen@epa.gov; Tel: (415) 744–1382.

Dated: March 8, 2000.

Julie Anderson,

Director, Waste Management Division, Region IX.

[FR Doc. 00–6395 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6561–1]

Rutledge Property/Rock Hill Chemical Company Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with BASF (Inmont) Corporation; Burlington Industries, Inc.; Chase Packaging, Inc.; CTS Corporation; Engraph, Inc.; FMC Corporation, Lithium Division; CNA Holdings, Inc. successor to Hoechst Celanese Corporation; Homelite Division of Textron; Rexam Inc.; and W.R. Grace and Company for response costs pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Rutledge Property/Rock Hill Chemical Company Site located in Rock Hill, York County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: February 29, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–6389 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 8, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 15, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Application for a Multipoint Distribution Service or Instructional Television Fixed Service Booster Station, Response Station Hub or 125 kHz (I Channels) Point to Multipoint Transmissions.

Form Number: FCC 331.

Type of Review: New collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 4,000.

Estimated Time per Response: 32 hours (2 hours applicant, 6 hours contract attorney, 24 hours contract consulting engineer).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 8,000.

Total Annual Costs: $19,200,000.

Needs and Uses: On September 17, 1998, the Commission adopted a Report and Order (''Two-Way Order'') in MM Docket No. 97–217 in the matter of Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') Licensees to Engage in Fixed Two-Way Transmissions. These rule changes enhance the flexibility of MDS and ITFS operations through facilitated use of response stations, use of cellular configurations, use of signal booster stations with program origination capability, and use of variable bandwidth (subchanneling or superchanneling). As a result of these rule changes, MDS and ITFS frequencies in the 2 GHz band may be used by licensees, or leased to operators, for broadband data, video or voice transmissions to and/or from subscribers' premises, promoting the competitive position of the relevant industry, augmenting the educational uses of these frequencies by ITFS entities, and increasing services to consumers. The Commission has adopted an initial one-week filing window, in which it will accept FCC Form 331 applications from MDS and ITFS licensees. Following the initial one-week filing window, the Commission will accept FCC Form 331 applications via a rolling, one-day filing window.

The Commission has developed an FCC Form 331 to be used by the licensees of MDS, Multichannel Multipoint Distribution Service (MMDS), ITFS or Commercial ITFS to apply for modification to main station, response station hub, high-power signal booster station, notification of low-power signal booster station or 125 kHz (I channel(s)) point-to-multipoint transmissions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6338 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 6, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 15, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Form No.: FCC Form 740.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 5,077.

Estimated Time Per Response: 0.84 hours (5 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 28,030 hours.

Total Annual Cost: N/A.

Needs and Uses: The Federal Communications Commission (FCC), working in conjunction with the U.S. Customs Service, is responsible for the regulations of both authorized radio services and devices that can cause interference. FCC Form 740 must be completed for each radio frequency device that is imported into the United States. Examples of radio frequency (RF) devices include: Microwave ovens, computer microprocessors, computers, computer peripherals, telephones with memory or other advanced features, video cameras, recorders, transmitters, electronic musical instruments, video games, radio remote control toys, etc. The purpose of the information collection is to keep non-compliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications.

In addition to completing this form in paper, the FCC Form 740 can now be filed electronically.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6340 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 14, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0912.

Title: Cable Attribution Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 20.

Estimated Time Per Response: 4 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 80 hours.

Total Annual Cost: $3,200.

Needs and Uses: Filings will be used by the Commission to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

The Commission requested emergency clearance for this submission. The request was approved by OMB on February 9, 2000. We are now requesting an extension of the emergency approval to obtain the full three-year OMB approval.

OMB Control No.: 3060–0466.

Title: Section 74.1283, Station Identification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 650.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Total Annual Burden: 108 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 74.1283(c)(1) requires FM translator stations whose station identification is made by the primary station to furnish current information on the translator's call letters and location. The information is kept in the primary station's files. The information is used to contact the translator licensee in the event of a malfunction of the translator.

OMB Control No.: 3060–0249.

Title: Section 74.781, Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 7,100.

Estimated Time Per Response: 1 hour.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 5,503 hours.

Total Annual Cost: $639,000.

Needs and Uses: Section 74.781 requires licensees of low power television, TV translator and TV booster stations to maintain adequate records. The records are used by FCC staff in field inspections to assure that reasonable measures are taken to maintain proper station operations and to assure compliance with the Commission's Rules.

OMB Control No.: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 14,500.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 379,407 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.1870 requires licensees of radio and television stations to designate chief operators and post designation with operator license. This rule section also requires chief operators to review station records weekly. The data is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with the station authorization.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6339 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010776–116.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., APL Co. Pte Ltd., Hapag-Lloyd Container Linie GmbH, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk SeaLand, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line, P&O Nedlloyd B.V., P&O Nedlloyd Limited.

Synopsis: The modification extends the suspension of the conference through November 1, 2000.

Agreement No.: 203–011681–001.

Title: Amazon River Discussion Agreement.

Parties: Amazon Line Ltd., APL Co. Pte. Ltd., American Transport Line, Mitsui O.S.K. Lines Ltd., P&O Nedlloyd B.V.

Synopsis: The proposed amendment would remove language excluding states bordering on the U.S. Pacific Coast from those U.S. states which the parties might serve via U.S. Atlantic and Gulf ports. In Brazil, it would delete previous restrictive language and would allow service to all inland and coastal points served via Belem, Manaus, and Amazon River ports North of Manaus.

Agreement No.: 217–011696.

Title: The KL/YML Asia/U.S. East and Gulf Coast Slot Exchange Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd., Yang Ming Transport Corporation.

Synopsis: The proposed Agreement would permit the parties to charter space to one another aboard their own vessels or on vessels on which they have chartered space in the trade between United States Atlantic and Gulf ports, and inland U.S. points via such ports, and ports and points in Japan, Korea, China, and Taiwan.

Agreement No.: 202–011697.

Title: North East Independent Carrier Agreement.

Parties: NPR Inc., Tecmarine Liner Inc., Kent Line.

Synopsis: The proposed agreement authorizes the parties to establish a conference in the trade between ports and points in the United States North Atlantic, Puerto Rico, and the U.S. Virgin Islands, and ports and points in the Dominican Republic, Haiti, Trinidad, Jamaica, Venezuela, Leeward and Windward Islands, Guyana, and Suriname.

Dated: March 10, 2000.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–6417 Filed 3–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 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 Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Consolidated Powers Ltd., Cargo Building 80 JFK International Airport, #202, Jamaica, NY 11430. Officers: Michael Bodack, President (Qualifying Individual), Martin Weisblatt, Vice President

KS Logix, Inc., 500 Carson Plaza Drive, Suite #118, Carson, CA 90746. Officers: Ok Bae Park, CFO (Qualifying Individual), Kil Soo Hur, President.

Kinitetsu Flexipak, Inc., 3414 Yale Street, Houston, TX 77018. Officer: Roger Goose, President (Qualifying Individual)

SITC Logistics Co., Ltd., 754 S. Glasgow Avenue, Inglewood, CA 90301. Officers: Jia-Ming Shi, CEO (Qualifying Individual), Danny Chen, Director

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Multimodal International Shipping, Inc. d/b/a Masterpiece Ocean Freight Ltd., 185 S. Douglas Street, 1st Floor, El Segundo, CA 90245. Officers: William Robert Wratschko, Secretary (Qualifying Individual), David R. Epstein, President

Courtney International Forwarding Inc., 372 Doughty Blvd., Inwood, NY 11096. Officers: Ruth Cardace, Export Manager (Qualifying Individual), Trevor R. Hume, President

Rahebo International Freight Systems Corp., 8232 N.W. 68th Street, Miami, FL 33166. Officers: Alejandro Orsini, Director (Qualifying Individual), Juan Vicente Ramirez, President

Inter-Trade Liner Shipping Co., Inc., 451 E. Carson Plaza Dr., #201, Carson, CA 90746. Officer: Kyung Hwan Oh, President (Qualifying Individual)

Int'l Network Trans., Inc., 9841 Airport Blvd., Suite #1002, Los Angeles, CA 90045. Officer: Hwa H. Lee, President (Qualifying Individual)

HR Services, Inc. d/b/a HR Shipping Services, 211 North Union Street, Suite 100, Alexandria, VA 22314. Officers: Nigel J. McCallum, Vice President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Candice K. Blankenship, 1025 Wynngate Drive, Chesapeake, VA 23320, Sole Proprietor

NTD Shipping, Inc., 12110 Oak Park Drive, Houston, TX 77070. Officers: Casie McCorquodale, President (Qualifying Individual), Diana Atchison, Secretary

Nasser Massry d/b/a Maromax Industries, 417 Pisgah Church Road, Greensboro, NC 27455. Nasser Massry, Owner (Qualifying Individual)

Worldwide Express, Inc., 20200 First Avenue, Middleburg Heights, OH 44130. Officers: Serop S. Demirjian, President (Qualifying Individual), Lousie Demirjian, Vice President

Dated: March 10, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–6418 Filed 3–14–00; 8:45 am]

BILLING CODE 6730–01–P

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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 April 7, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Business Bancshares, Inc., Madison, Wisconsin; to acquire 51 percent of the voting shares of The Business Banc Group, Ltd. (in formation), Brookfield, Wisconsin, and thereby indirectly acquire First Business Bank-Milwaukee, Brookfield, Wisconsin.

In connection with this application, The Business Banc Group, Ltd., Brookfield, Wisconsin, also has applied to become a bank holding company.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. National Penn Bancshares, Inc., Boyertown, Pennsylvania; to acquire indirectly through its wholly owned subsidiary, NPB New Jersey, Inc., Morristown, New Jersey, 100 percent of the voting shares of Panasia Bank, Fort Lee, New Jersey. In connection with this application, NPB New Jersey, Inc., has applied to become a bank holding company.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. NBM Corp Employee Stock Ownership Plan, McAlester, Oklahoma; to become a bank holding company by acquiring 30.48 percent of the voting shares of NBM Corp, McAlester, Oklahoma, and thereby indirectly acquire Bank N.A., McAlester, Oklahoma.

Board of Governors of the Federal Reserve System, March 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6300 Filed 3–15–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. BancFirst Ohio Corp., Zanesville, Ohio; to acquire Milton Federal Financial Corporation, West Milton, Ohio, and its subsidiary, Milton Federal Savings Bank, West Milton, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4) of Regulation Y. Applicant would merge Milton Federal Savings Bank, West Milton, Ohio, with and into the applicant's banking subsidiary, The First National Bank of Zanesville, Zanesville, Ohio.

Board of Governors of the Federal Reserve System, March 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6301 Filed 3–14–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, March 20, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6470 Filed 3–13–00; 11:10 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01001]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds for Fiscal Year 2001

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for training grants in occupational safety and health. This program addresses the ''Healthy People 2010'' priority area of occupational safety and health. The goal of the program is to provide an adequate supply of qualified personnel to carry out the purposes of

the Occupational Safety and Health Act. The specific program objective is to provide financial assistance to eligible institutions or agencies to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Projects are supported for Occupational Safety and Health Education and Research Center Training Grants (ERCs) and for Long-Term Training Project Grants (TPGs). In FY 2001, a total of approximately $13,900,000 is available for award. Of this total, approximately $2,510,000 is available for competing continuation or new awards. The balance of approximately $11,390,000 is available for non-competing continuation awards.

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for an institutional training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds and Types of Training Awards

In total, approximately $2,510,000 is expected to be available in FY 2001 to fund ERC and TPG programs as described below:

1. For ERCs: Approximately $1,960,000 of the total funds available will be utilized as follows:

a. Approximately $600,000 is available to award one competing continuation or new ERC grant. Awards range from $400,000 to $800,000 with the average award being $600,000.

b. Approximately $300,000 is available to award supplemental funds to five competing continuation or new training grants; three of the awards are planned for $180,000 for Hazardous Substance Academic Training Programs and two of the awards are planned for $120,000 for Hazardous Substance Training Programs. The awards are to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. This program is supported with funds transferred from NIEHS to NIOSH through the Interagency Agreement entitled ''Development and Implementation of a Training Program for Hazardous Substances''.

c. Approximately $60,000 is available to award supplemental funds to one competing continuation or new training grant. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $1,000,000 is available to award supplemental funds to fifteen competing continuation or new grants to support the enhancement of the ERC research training mission through the support of pilot project research training programs. The pilot projects should be related to the National Occupational Research Agenda (NORA).

2. For TPGs: Approximately $550,000 of the total funds available will be utilized as follows:

a. To award approximately ten competing continuation or new TPG grants. Awards will range from approximately $20,000 to $100,000, with the average award being $55,000. These awards will support academic programs in the core disciplines (i.e., industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (*e.g.,* occupational injury prevention, industrial toxicology, ergonomics). These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

3. It is expected that awards will begin on or about July 1, 2001 and will be made for a 12-month budget period within a project period of up to five years. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

The following are intended to serve as applicant requirements:

1. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered responsive. If the characteristics are not met, the application will be considered non-responsive and will not be reviewed.

a. Cooperative arrangements with a: medical school or teaching hospital (with an established program in preventive or occupational medicine); school of nursing or its equivalent; school of public health or its equivalent; or school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, *e.g.,* epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended multidisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training in four core disciplines: occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students or full-time equivalent students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core and component programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a

minimum of three academic programs of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: new and innovative academic programs that are relevant to the occupational safety and health field, *e.g.,* ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees in core and component academic programs will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium ERCs generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic-Serving Institutions. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (*e.g.,* Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (*e.g.,* high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one,

preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). Further information regarding NORA may be found at the CDC/NIOSH home page: <http://www.cdc.gov/niosh>). The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

1. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students or full-time equivalent students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

E. Application Content

Competing Applications

Use the information in the Program Requirements and Other Requirements sections to develop the application content.

Applications will be evaluated on the basis of the Program Requirements, Other Requirements, and Evaluation Criteria sections listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 15 single-spaced pages per program, printed on one side, with one inch margins, and unreduced font.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications provided in each application kit (CDC 2.145 A).

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG Training Grant.

Application

Submit the original and two copies of CDC 2.145 A—ERC or TPG (OMB Number 0920–00261). Forms are in the application kit. Forms and instructions are also available on the CDC home page <http://www.cdc.gov>. On or before July 3, 2000, Submit the application to:

Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office.

Announcement 01001

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, Email address: svp1@cdc.gov.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria. The initial peer review will be conducted by Special Training Review Committees by means of a panel meeting or site visit. The purpose of the initial review is to obtain basic information regarding elements of the proposed training grant program and to provide a technical report as input to the Special Emphasis Panel. The final official peer review will be conducted by a Special Emphasis Panel appointed by CDC.

In reviewing ERC grant applications, the evaluation criteria are as follows:

1. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the ''Characteristics of an Education and Research Center''.

3. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration shall be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of

specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core and component program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to ERC goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of the integration of research experience into the curriculum, and field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the DHHS Region. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

14. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

In reviewing supplements to ERC grants, consideration will be given to:

1. *Hazardous Substance Training Program in Education and Research Centers*—The evaluation criteria are as follows:

a. Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

b. Comprehensiveness and soundness of the training plan developed to carry out the proposed activities required under the NIOSH/NIEHS Interagency Agreement. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the applicable DHHS Region and current activities and training efforts.

c. Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

d. Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

e. Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities, including EPA, and cooperated with these agencies in developing and implementing this training program.

f. Suitability of facilities and equipment available for this project.

g. Appropriateness of the budget to carry out the planned activities.

2. *Agricultural Safety and Health Education Programs in Education and Research Centers*—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

j. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of a plan describing the agricultural safety and health training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. *Hazardous Substance Academic Training Program in Education and Research Centers*—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the needs of the job market, especially within the applicant's region. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy regional needs for training in the areas outlined by the application, including Program projected enrollment and recruitment and current workforce populations.

c. The extent to which the HSAT curriculum content and design includes: Formalized training objectives; minimal course content to achieve a degree or successful completion of the specialty area requirements; course descriptions; course sequence; additional related courses open to occupational safety and health students; time devoted to lecture, laboratory, and field experience; and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

d. Previous record of academic and/or short course training delivered in the hazardous substances field, including the number and type of students trained. Previous record of hazardous substances outreach activity and assistance to hazardous substance groups within the ERC's region.

e. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, student evaluations from academic and continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

f. The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

g. Institutional commitment to HSAT Program goals.

h. Academic and physical environment in which the training will be conducted.

i. Appropriateness of the budget required to support the training courses developed, including accounting for the academic staff's time.

j. Evidence of a plan describing the hazardous substances academic training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

k. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

4. *ERC Supplemental Pilot Project Research Training Programs*—The evaluation criteria are as follows:

a. Relevance of the proposed program, including objectives that are specific and consistent.

b. Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations?

c. Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

d. Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

e. Appropriateness of the proposed budget to carry out the planned activities.

f. Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

g. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects? (See Attachment 1, AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.)

In reviewing TPG applications, the evaluation criteria are as follows:

1. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, and field and clinical experiences.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope

of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need. The Committee should meet at least annually to provide advice and periodic evaluation of TPG activities.

11. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

12. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports (annual and may be incorporated as component of non-competing continuation applications);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and progress reports, no more than 90 days after the end of the project period.

Send all reports to: Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office.

Announcement 01001

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1* Human Subjects Requirements
AR–2* Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3* Animal Subjects Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
* =Applies to ERC Supplemental Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. ''Training Grants, Application and Regulations—42 CFR Part 86,'' Expiration Date 11/30/2000.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where to Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC home page is: <*http://www.cdc.gov*>.

Please refer to Program Announcement 01001 and specify ERC or TPG when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office.

Announcement 01001

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, E-mail address: svp1@cdc.gov.

For program technical assistance, contact: John T. Talty, Principal Engineer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998, telephone (513) 533–8241, E-mail address: jtt2@cdc.gov.

Dated: March 9, 2000.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6326 Filed 3–14–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CC–2000–01A]

Fiscal Year 2000 Discretionary Announcement of the Availability of Funds and Request for Applications for Field Initiated Child Care Research Projects, Child Care Policy Research Partnerships, Child Care Research Scholars, and the Child Care Research Fellowship Program, Correction

AGENCY: Administration for Children, Youth, and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Thursday, January 27, 2000, Part III (65 FR 4495). On page 4500, first column, the mailing address for submission of applications is incorrect. The correct address for applicants who intend to apply, and for the submission and delivery of applications, should be changed to the following: ACYF Operations Center, Laurel Consulting Group, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: The ACYF Operation Center at 1–800–351–2293 or send an email to *ccb@lcg.com*. You can also contact Dr. Patricia L. Divine, Program Specialist, Child Care Bureau, by email at *pdivine@acf.dhhs.gov* or by phone at (202) 690–6705.

Dated: March 7, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–6108 Filed 3–14–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Medical Child Support Working Group

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date for the eighth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group

was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The eighth meeting of the MCSWG will be held on Thursday, March 30, 2000, from 1:00 p.m. to approximately 2:30 p.m.

ADDRESSES: The meeting will be held at the Office of Child Support Enforcement, in the 6th floor Auditorium, Aerospace Building, 901 D Street SW, Washington, DC 20447. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-served basis. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement, at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register.** However, it is expected this will be the last meeting.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), (FACA), notice is given of meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105–200). The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulation; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payment, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary. The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); children potentially eligible for medical support such as child advocacy organizations; (8) State Medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for this meeting includes review and approval of the MCSWG's report to the Secretaries continuing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting, the MCSWG formed four (4) sub-committees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the sub-committees presented their draft recommmendations to the full MCSWG for further discussion and consideration. At the January, 2000, meeting, the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At this meeting, the MCSWG will review and approve the actual report.

Public Participation

Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DHHS, these documents will be available at the MCSWG Executive Director's Office, Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Building, Fourth Floor—East, 370 L'Enfant Promenade, SW, Washington, DC from 8:30 am to 5:30 pm. Questions regarding the availability of documents from DHHS should be directed to Andrew J. Hagan, OCSE (telephone (202) 401–5375). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara

Weinstein, Executive Director of the Working Group, as shown above.

Dated: March 8, 2000.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 00–6407 Filed 3–14–00; 8:45 am]

BILLING CODE 4184–01–U–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 31, 2000, 9:30 a.m. to 5:30 p.m.

Location: DoubleTree Hotel, Grand Ballroom, 1750 Rockville Pike, Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line or access the Internet at http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: There will be a brief FDA presentation of the least burdensome provisions of the FDA Modernization Act of 1997. The committee will discuss, make recommendations, and vote on a premarket approval application for a deep brain stimulator for the treatment of Parkinson's disease.

Procedure: On March 31, 2000, from 10 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 13, 2000. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 13, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 31, 2000, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information regarding pending applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 6, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–6282 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The board shall provide advice primarily to the agency's Senior Advisor for Science, and as needed, to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, formulating an appropriate research agenda, and upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on April 21, 2000, from 8:30 a.m. to 5 p.m.

Location: 5630 Fishers Lane, Rockville, MD 20852, Center for Drug Evaluation and Research Advisory Committee conference room 1066.

Contact Person: Susan M. Bond, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: Open committee discussion, 8:30 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m. The board will discuss their review of research at FDA's Center for Food Safety and Applied Nutrition (CFSAN). The board will also hear and discuss CFSAN's Dietary Supplement Strategic Plan, the Office of Women's Health research plan, joint FDA and industry training, and strategies for maintaining the quality of science at FDA.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Written submissions may be made to the contact person by April 7, 2000. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 7, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Each presenter will be limited in time and not all who request to speak may be accommodated.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–6285 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1218]

Blood Standards; Pilot Program for Licensing Gamma Irradiated Blood and Blood Components and ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing,'' dated February 2000. FDA is also announcing the establishment of a pilot program for licensed blood product manufacturers seeking to market irradiated blood components in interstate commerce. The pilot program is intended to allow self-certification in lieu of the submission of a detailed biologics licence application (BLA) supplement. FDA is initiating the pilot program to determine if streamlining the process of licensing will be more efficient and effective for both the manufacturer and FDA without compromising product safety, purity, and potency.

DATES: Written comments may be submitted at any time. The effective date for implementation of the pilot program is April 14, 2000.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing,'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit requests for participation in the pilot program to Mary Ann Denham at the address below.

FOR FURTHER INFORMATION CONTACT: About participation in the pilot program:

Mary Ann Denham, Center for Biologics Evaluation and Research (HFM–375), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2861.

About this notice:

Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing,'' dated February 2000. This guidance document is intended to assist manufacturers of gamma irradiated blood and blood components to self-certify conformance to specific criteria as part of a pilot program in lieu of the submission of a detailed BLA supplement filing. Instead of submitting a BLA supplement with supporting operating procedures and data derived from validation and quality control testing, the manufacturer may submit an application form (Form FDA 356h), a self-certification statement that provides that the manufacturer is in compliance with all applicable FDA regulations and meets the criteria for gamma irradiated blood and blood components set forth in the guidance document entitled ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing,'' dated February 2000, as well as written request to the CBER Director for an exception to filing a detailed supplement. The pilot program provides that FDA will review for completeness Form FDA 356h, the self-certification, and written request for an exception to filing a detailed supplement, and at FDA discretion, will schedule a prelicense inspection within 90 days of receipt of the self-certification to confirm conformance with applicable Federal regulations and the recommended criteria contained in the guidance document.

This guidance document finalizes the draft guidance entitled ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing'' that was announced in the **Federal Register** of January 27, 1999 (64 FR 4118).

To participate in the program a manufacturer should already be licensed for nonirradiated blood components and should be ready for a prelicense inspection at the time it forwards Form FDA 356h, self-certification, and request for exception to FDA. If, during the prelicense inspection, FDA finds significant deficiencies in quality assurance, manufacturing facilities, or product safety, purity, potency, or effectiveness, FDA may withdraw the manufacturer from the pilot program, and the manufacturer will be required to submit a BLA supplement with complete supporting documentation prior to marketing irradiated blood components in interstate commerce.

FDA intends the pilot program to span approximately 1 year, but the actual length of the program depends on the number of manufacturers participating in the program. FDA will begin the pilot program on April 14, 2000. At the end of the pilot program, FDA will evaluate the program for efficiency and effectiveness and will make this evaluation available to the public. If the program proves to be efficient and effective, FDA will consider extending the program to other blood products.

This guidance document represents the agency's current thinking on gamma irradiation of blood and blood components intended for transfusion or for further manufacturing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. If a manufacturer chooses to participate in this voluntary program, it should conform to the specific criteria set forth in this guidance. Manufacturers who want to use an alternative approach must submit a detailed BLA supplement under 21 CFR 601.12 or otherwise satisfy FDA that an exemption from that requirement is justified under 21 CFR 640.120. As with other guidance documents, FDA does not intend this guidance document to be all-inclusive and cautions that not all information may be applicable to all situations.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be

identified with the docket number found in the brackets in the heading of this guidance document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document using the Internet. For Internet access, connect to CBER at http://www.fda.gov/cber/guidelines.htm.

Dated: March 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6283 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3032–N]

Medicare Program; Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—April 12 and 13, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee (MCAC). The panel provides advice and recommendations to the agency about clinical coverage issues. The panel will hear and discuss presentations from interested persons regarding the treatment of non-neurogenic urinary incontinence in adults. The meeting will focus on two treatment options: biofeedback and pelvic floor electrical stimulation. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* The meeting will be held on April 12, 2000 from 8:00 a.m. until 5:15 p.m. and on April 13, 2000, from 8:00 a.m. until 3:00 p.m. E.S.T.

Deadline for Presentations and Comments: March 22, 2000, 5 p.m.

Special Accommodations: Persons attending the meeting who are hearing impaired and require sign language interpretation, or have a condition that requires other special assistance or accommodations, are asked to notify the Executive Secretary by March 31, 2000.

ADDRESSES:

The Meeting: The meeting will be held at The Baltimore Convention Center, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5699 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) to describe the MCAC, which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the MCAC:

Current Panel Members:

Alan M. Garber, M.D.; Michael D. Maves, M.D.; Angus M. McBryde, M.D.; H. Logan Holtgrewe, M.D.; Kenneth P. Brin, M.D.; Les J. Zendle, M.D.; Bruce Sigsbee, M.D.; Linda D. Bradley, M.D.; James P. Rathmell, M.D.; Arnold M. Epstein, M.D.; Phyllis E. Greenberger, M.S.W.; Marshall S. Stanton, M.D.

Meeting Topic:

The Panel will hear and discuss presentations from interested persons regarding the treatment of non-neurogenic urinary incontinence in adults. The meeting will focus on two treatment options: biofeedback the first day and pelvic floor electrical stimulation the second day.

Procedure and Agenda:

This meeting is open to the public. The panel will hear oral presentations from the public for approximately 2 hours and 30 minutes on each day of the meeting. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations you must notify the For Further Information Contact person, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Panel. After our presentation, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. At the end of the Panel deliberations each day, the Panel will allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. After which, the members will vote and the Panel will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 29, 2000.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 00–6421 Filed 3–14–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding the Section 340B Drug Pricing Program—Program Guidance Clarification

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' enacted section 340B of the Public Health Service Act, ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible (covered) entities must sign a pharmaceutical pricing agreement with the Secretary of HHS in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

The purpose of this notice is to clarify section 340B program guidance related to the mechanism to prevent duplicate discounts (i.e., the generation of a

Medicaid rebate on a section 340B discounted drug). Any covered entity that purchases its non-Medicaid drugs through the 340B program but its Medicaid drugs through other avenues must provide the Office of Drug Pricing (ODP) notice of this type of dual purchasing activity. The ODP will place a notation ''non-applicable'' (N/A) by the covered entity name on the eligibility list so that any reimbursement requests for its Medicaid drugs will continue to generate manufacturer rebates. For appropriate Medicaid drug reimbursement procedures, the Health Resources and Services Administration (HRSA) refers the covered entity to its respective State Medicaid agency for guidance.

FOR FURTHER INFORMATION CONTACT: Captain Robert Staley, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, East-West Towers, 4350 East-West Highway, Bethesda, MD 20814; Phone (800) 628–6297; Fax (301) 594–4982.

SUPPLEMENTARY INFORMATION: Section 340B(a)(5)(A) required HHS to develop a mechanism to prevent a section 340B drug discount and a Medicaid rebate on the same drug (*i.e.,* prevention of double discounting). HRSA, together with the Medicaid Rebate Program, Health Care Financing Administration, developed a process to prevent this potential double price reduction and published the final notice of this mechanism on June 23, 1993, at 58 FR 34058. The mechanism, which focuses only on 340B covered outpatient drugs, requires a covered entity that bills Medicaid on a cost basis (e.g., community health centers using fee for service and not all inclusive rates) to submit to ODP its Pharmacy Medicaid Number (*i.e.,* the number used to bill Medicaid for the drugs). This information is placed by the name of the covered entity on the master electronic eligibility list. Using this Medicaid number, the State Medicaid agency creates a separate provider file for claims from that covered entity. This computer file then excludes data from this provider file when generating the rebate bills to the manufacturers. In this way, the mechanism prevents double discounting.

An entity which utilizes a Medicaid billing system that includes pharmacy in an all-inclusive rate or does not submit Medicaid claims for covered outpatient drugs would not generate Medicaid rebates. Consequently, these entities do not have to provide their pharmacy numbers (58 FR 34059). However, such entities were instructed to provide ODP with notice of such purchasing practices so that this information could be provided to participating manufacturers and appropriate State Medicaid agencies (59 FR 25112, May 13, 1994).

It has come to our attention that there may be some confusion concerning the appropriate reporting procedures for an entity not participating in the 340B Program for its Medicaid drugs (i.e., purchasing its non-Medicaid drugs through the 340B Program and its Medicaid drugs outside the Program). Because drugs purchased outside of the 340B Program are not considered covered 340B outpatient drugs, an entity that only purchases non-Medicaid drugs through the 340B Program would not request Medicaid reimbursement for its covered outpatient drugs (i.e., non-Medicaid drugs discounted through the 340B program). Consequently, the covered entity would not provide ODP its Medicaid Pharmacy number. However, this entity still must notify ODP of this type of purchasing practice. ODP will place N/A by the name of the covered entity, signaling no Medicaid reimbursement requests on drugs purchased with discounts under section 340B. In this way, Medicaid rebates will continue to be generated on its Medicaid drugs purchased outside the 340B program.

Covered entities that have submitted Medicaid Pharmacy provider numbers now included in the covered entity database but are purchasing drugs for their Medicaid patients on the open market should contact ODP as soon as possible to request that their Medicaid Pharmacy numbers be replaced by N/A in the covered entity database. An entity that has purchased Medicaid drugs outside of the 340B Program but submitted its Medicaid provider number to ODP should attempt to preserve any documentation of such purchasing activity. The entity should contact its State Medicaid agency about these past drug purchases so that the agency can bill manufacturers for rebates that were excluded from past rebate claims.

On behalf of the Medicaid Drug Rebate Program, HRSA provided notice to covered entities regarding appropriate procedures for requesting Medicaid reimbursement for covered outpatient drugs (58 FR 27293 and 59 FR 25112 regarding ''actual acquisition cost''). Currently, HRSA is reviewing that portion of the guidance and recommends that covered entities refer to their respective Medicaid State agency drug reimbursement guidelines for applicable billing limits.

Dated: March 9, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–6287 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 2000.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: April 20, 2000; 8 a.m.–5:30 p.m.; April 21, 2000; 8 a.m.–3:00 p.m.

Place: Hilton Washington and Towers, 1919 Connecticut Avenue, NW, Washington, DC 20009.

The meeting is open to the public.

Purpose: The Advisory Committee shall (1) Provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning activities under section 747 of the Public Health Service (PHS) Act; and (2) Prepare and submit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Advisory Committee, including findings and recommendations made by the Committee concerning the activities under section 747 of the PHS Act. The Advisory Committee will meet twice each year and submit its first report to the Secretary and the Congress by November 2001.

Agenda: Discussion of the focus of the programs and activities authorized under section 747 of the PHS Act; responses to questions on the programs under section 747 of the PHS Act; project requirements; funding priorities; outcomes data; and the peer review process. Strategic planning for the Committee.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Barbara Brookmyer, Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry,

Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1468, e-mail bbrookmyer@hrsa.gov. The web address for the Advisory Committee is http://158.72.83.3/bhpr/dm/new__advisory__committee__on__primar.htm.

Dated: March 9, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–6286 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on Each of 2 Lots in the Circle D Country Acres Subdivision and One Single Family Residence on 0.5 Acres (Lots 953 and 954) in the Tahitian Village Subdivision, Bastrop County, Texas

SUMMARY: CHR Real Estate Venture/Cook Classic Homes (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–023593–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of a single family residence on 0.5 acres on each of 2 lots [Lot 9, Section 8 (1.03 acres) and Lot 50, Section 5(1.02 acres)] and one single family residence on 0.5 acres [Lots 953 and 954 (0.25 acres each) Block 10, Unit 2] in the Tahitian Village Subdivision in Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before April 14, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number TE–023593–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Englehard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

CHR Real Estate Venture/Cook Classic Homes plans to construct a single family residence on 0.5 acres on each of 2 lots [Lot 9, Section 8 (1.03 acres) and Lot 50, Section 5 (1.02 acres)] in the Circle D Country Acres Subdivision and a single family residence on 0.5 acres [Lots 953 and 954 (0.25 acres each) Block 10, Unit 2] in the Tahitian Village Subdivision in Bastrop County, Texas. This action will eliminate less than 1.5 acres of habitat (0.5 acres or less per homesite) and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $4,000 ($1,500 for each of the 2 homesites in Circle D Country Acres and $1,000 for one homesite in Tahitian Village) to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–6327 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Burns-Paiute Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983). I certify that by Resolution No. 99–12, the Burns-Paiute Liquor Ordinance, was duly adopted by the Burns-Paiute Tribe on September 25, 1999. The Ordinance regulates the control of, the possession of, and the sale of liquor on Burns-Paiute tribal trust lands, and is in conformity with the State of Oregon.

DATES: This Ordinance is effective as of March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Burns-Paiute Tribe Liquor Ordinance, Resolution No. 99–12, is to read as follows:

Burns-Paiute Tribal Liquor Ordinance

Section 1—Title

This Ordinance shall be the Liquor Ordinance of the Burns-Paiute Indian Tribe and shall be referenced as the Tribal Liquor Ordinance.

Section 2—Findings and Purpose

1. The introduction, possession, and sale of liquor on Indian reservations has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor on reservations remains exclusively subject to their legislative enactments.

2. Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), leaving tribes the decision regarding when and to

what extent liquor transactions, sales, possession and service shall be permitted on their reservation (18 U.S.C. 1161).

3. The Burns-Paiute General Council discussed and approved a resolution to permit the sale and service of liquor at the Old Camp Casino, but at no other location, at the General Council meeting held in June 1999.

4. The enactment of this Tribal Ordinance to govern liquor sales and service on the Burns-Paiute Reservation, and the limitation of such liquor sales and service at the Old Camp Casino, will increase the ability of the tribal government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation of tribal government and the delivery of governmental services, as well as provide an amenity to customers at the Old Camp Casino.

5. In order to authorize limited liquor sales and service at the Old Camp Casino, to facilitate increased tribal control over liquor distribution on the Burns-Paiute Reservation, and to provide for urgently needed additional revenues for the Burns-Paiute tribal government, the Burns-Paiute Tribal Council adopts this Liquor Ordinance.

6. The Burns-Paiute Tribe has entered a Memorandum of Understanding (MOU) with the Oregon Liquor Control Commission to deal with governmental issues associated with the licensing and regulation of liquor sales on the Burns-Paiute Indian Reservation.

Section 3—Definitions

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

Alcohol: Is that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of those substances.

Casino Manager: That person appointed by the Tribal Council to manage the Old Camp Casino.

Liquor or Liquor Products: Includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer) and all fermented, spirituous, vinous, or malt liquor, or a combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor or otherwise intoxicating in every liquid or solid or semi-solid or other substance patented or not containing alcohol, spirits, wine, or beer, and all drinks of potable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than 1 percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.

Old Camp Casino: Shall be the gaming facility located on the 10-acre Old Camp site located on the Burns-Paiute Indian Reservation which is more specifically described in Exhibit 1 to the Tribal-State Compact between the Burns-Paiute Tribe and the State of Oregon.

Sale and Sell: Includes exchange, barter, and traffic; and also the supplying or distribution by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or wine, by any person to any other person; and also includes the supply and distribution to any other person.

Spirits: Any beverage which contains alcohol obtained by distillation, including wines exceeding 17 percent (17%) of alcohol by weight.

Wine: Any alcoholic beverage obtained by fermentation of fruits, grapes, berries, or any other agricultural product containing sugar, to which any saccharin substances may have been added before, during, or after fermentation, and containing not more than 17 percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent (17%) of alcohol by weight.

Section 4—Relation to Other Tribal Laws

All prior Ordinances and Resolutions of the Burns-Paiute Indian Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor are hereby repealed and are of no further force or effect to the extent they are inconsistent or conflict with the provisions of this Ordinance. No tribal business licensing law or other tribal law shall be applied in a manner inconsistent with the provisions of this Ordinance.

Section 5—Authorized Sale and Service of Liquor

Liquor may be offered for sale and may be served on the Burns-Paiute Indian Reservation only in the Old Camp Casino. The sales and service of liquor in the Old Camp Casino may only be permitted in the following areas: liquor lounge, restaurant, and bingo hall when used for entertainment, food service, or convention/meeting purposes. All such sales and service of liquor in the Old Camp Casino shall be consistent with the Tribal-State Compact and applicable Federal and state law.

The Burns-Paiute Tribal Council hereby authorizes the Manager of the Old Camp Casino to apply for a Dispenser Class A License from the Oregon Liquor Control Commission (OLCC) for the sales and service of liquor at the Old Camp Casino as provided in this Ordinance. The casino Manager is further authorized to treat as a casino expense any license fees associated with the OLCC Liquor License.

Section 6—Prohibitions

A. General Prohibitions

The introduction of liquor, other than by the Burns-Paiute Tribe through its Old Camp Casino is prohibited within the Burns-Paiute Indian Reservation, and is hereby declared an offense under tribal law. Possession, sales, and service of liquor by any person prohibited by Federal law at 18 U.S.C. 1154 shall be lawful so long as the possession is in conformity with this Ordinance.

Federal Indian liquor laws shall remain applicable to any person, act, or transaction which is not authorized by this Ordinance and violators of this Ordinance shall be subject to Federal prosecution as well as to legal action in accordance with tribal law.

B. Age Restrictions

No person shall be authorized to serve liquor to casino patrons unless they are at least 21 years of age. No person may be served liquor unless they are 21 years of age.

C. No Consumption of Liquor Outside of Casino Premises

All liquor sales and service permitted by this Ordinance shall be fully consumed within the lounge or restaurant area within the Old Camp Casino. No open containers of liquor, or unopened containers of liquor in bottles, cans, or otherwise may be permitted outside of the casino premises.

D. No Credit Liquor Sales

The sales and service of liquor authorized by this Ordinance shall be upon a cash basis only. Payment for liquor shall be by cash, credit card, or check.

Section 7—Conformity With State Law

Authorized liquor sales and service on the Burns-Paiute Indian Reservation shall comply with Oregon State liquor law standards to the extent required by 18 U.S.C. 1161. The casino Manager shall be responsible for insuring that all

OLCC license requirements are satisfied, that the license is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor to casino patrons in a manner consistent with this Ordinance, applicable state law, and the Tribal-State Compact. The casino Manager shall also be authorized to purchase liquor from the State or other source for sale and service within the Old Camp Casino.

Section 8—Penalty

Any person or entity possessing, selling, serving, bartering, or manufacturing liquor products in violation of any part of this Ordinance shall be subject to a civil fine of not more than $500 for each violation involving possession, but up to $5,000 for each violation involving selling, bartering, or manufacturing liquor products in violation of this Ordinance, and violators may be subject to exclusion from the Burns-Paiute Indian Reservation. In addition, persons or entities subject to the criminal jurisdiction of the Burns-Paiute Tribe who violate this Ordinance shall be subject to criminal punishment as provided in the Burns-Paiute Law and Order Code. All contraband liquor shall be confiscated by the Burns-Paiute Police Department.

Section 9—Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Burns-Paiute Indian Tribe. No Manager or employee of the Old Camp Casino shall be authorized, nor shall they attempt, to waive the sovereign immunity of the tribe.

Section 10—Effective Date.

This Ordinance was passed at a duly held, noticed, and convened meeting of the Burns-Paiute Tribal Council by a vote of 4 to 0, which vote constitutes a quorum held on the 25th day of September 1999, as attested to and certified by Cecil Dick, Acting Secretary of the Burns-Paiute Tribal Council and Wanda Johnson, Burns-Paiute Tribal Chairperson and shall be effective upon approval by the Secretary of Interior or his designee as provided by Federal law.

Dated: March 3, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6288 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–DC]

Notice of Public Hearing

AGENCY: White River Field Office, Bureau of Land Management, Department of the Interior.

SUMMARY: A public hearing regarding the use of motorized vehicles and helicopters; and the removal of wild horses from the Oil Springs Mountain Wilderness Study Area will be held at the White River Field Office, Bureau of Land Management.

DATES AND ADDRESSES: Hearing will be held in Meeker, Colorado at the White River Field Office, 73544 HWY 64, on April 20, 2000 at 7:00 P.M.

FOR FURTHER INFORMATION CONTACT: Robert Fowler; White River Field Office; 73544 HWY 64, Meeker, Colorado, 81641; Telephone (970) 878–3601.

John J. Mehlhoff,

White River Field Manager.

[FR Doc. 00–4793 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–65656]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive Sale of Public Lands in Lincoln County, Nevada.

SUMMARY: The below listed public land near Hiko, Lincoln County, Nevada has been examined and found suitable for sale utilizing direct non-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Act of October 21, 1976; 43 U.S.C. 1713 and U.S.C. 1719.

DATES: On or before May 1, 2000, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Brenda Linnell, Realty Specialist, at the above address or telephone (775) 289–1808.

SUPPLEMENTARY INFORMATION: The following described parcel of land situated in Lincoln County is being offered as a direct sale to Mr. Ramon Schmutz.

Mount Diablo Meridian, Nevada

T. 4 S., R. 60 E.,
Section 23, W½W½NE¼,
W½SE¼SW¼NE¼,
SW¼NE¼SW¼NE¼.
Containing 47.5 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for the conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the sodium, potassium, oil and gas mineral deposits, and geothermal resources in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittees, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations. Unless otherwise provided by separate agreement with surface owner, permittee, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface

owner under the regulations above referred to shall be instituted against permittee, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees.

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 leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

On or before May 1, 2000, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least May 15, 2000.

Dated: March 2, 2000.

James M. Perkins,

Assistant Field Manager, Renewable Resources.

[FR Doc. 00–6412 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 4, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by March 30, 2000.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Valdez-Cordova Borough-Census Area, Million Dollar Bridge, Mile 48, Copper River Highway, Cordova, 00000293

ARKANSAS

Garland County, Joplin, Peter, Commercial Block, 426–432 Ouachita Ave., Hot Springs, 00000294

CALIFORNIA

Santa Barbara County, Virginia Hotel, 17 and 23 W. Haley St., Santa Barbara, 00000295

CONNECTICUT

Fairfield County, Huntington Center Historic District, Roughly along Church and Huntington Sts., from Ripton Rd. to the Farmill River, Shelton, 00000296
Middlesex County, Hartlands, 50 Hartlands Dr., Old Saybrook, 00000298
New Haven County, Castle, Dr. Andrew, House, 555 Amity Rd., Woodbridge, 00000299
Wolcott Green Historic District, Roughly bounding Wolcott Green, Wolcott, 00000297

GEORGIA

De Kalb County, Emory Grove Historic District, Centered on N. Decatur Rd. bet. the CSX RR and the University Park-Emory Highlands-Emory Estates HD, Decatur, 00000300
Jackson County, Hoschton Depot, 4276 GA 53, Hoschton, 00000304
Putnam County, Terrell—Sadler House, 122 Harmony Rd., Harmony, 00000303
Stephens County, Eastanollee Auditorium, NE corner of Eastanolle School Rd. and Red Hollow Rd., Eastanollee, 00000301
Walton County, Briscoe House and Mill Site, 1109 New Hope Church Rd., Between, 00000302

INDIANA

Marion County, Town of Crows Nest Historic District, Roughly bounded by Kessler Blvd., White R., and Questover Circle, Indianapolis, 00000305

IOWA

Woodbury County, Florence Crittenton Home and Maternity Hospital, 1105–1111 28th St., Sioux City, 00000306

LOUISIANA

Natchitoches Parish Fredericks Site, Address Restricted, Clarence, 00000307

MISSOURI

Jackson County, Keith, Charles S., House, 1214 W. 55th ST., Kansas City, 00000308
Pike County, Barnard, Capt. George and Attella, House, 2009/2109 Georgia St., Louisiana, 00000309

NEW YORK

Westchester County, Asbury United Methodist Church and Bethel Chapel and Cemetery, 19 Old Post Rd. and Old Post Rd. S, Croton-on-Hudson, 00000310

VIRGINIA

Bedford County, New Prospect Church, 4445 Sheep Creek Rd., Bedford, 00000312
Brunswick County, Lawrenceville Historic District, Roughly bounded by W. Sixth Ave., Maria St., Lawrenceville townline, Rose Creek, and Thomas St., Lawrenceville, 00000313
Franklin County, Bowman Farm, 1605 Cahas Mountain Rd., Boones Mill, 00000314
Goochland County, Ben Dover, 661 River Rd. W #36, Manakin-Sabot, 00000311
Norfolk Independent City John T. West School, 1435 Bolton St., Norfolk, 00000315

WISCONSIN

Jefferson County, Telfer Site, Address Restricted, Milford, 00000316
Marathon County, Edgar Village Hall, 107 W. Beech St., Edgar, 00000317

After meeting all the requirements, a waving of the fifteen day comment period has been made for the following resource:

NEW YORK

Cayuga County, Schines Auburn Theatre, 12–14 South St., Auburn, 94001333

[FR Doc. 00–6296 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Review)]

Aramid Fiber From The Netherlands

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on aramid fiber from the Netherlands.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on aramid fiber from the Netherlands would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), if necessary. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office

of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: On March 3, 2000, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (64 FR 67302, December 1, 1999) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6404 Filed 3–14–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Review)]

Fresh Garlic From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on fresh garlic from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), if necessary. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On March 3, 2000, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent [1] interested party group responses to its notice of institution (64 FR 67315, December 1, 1999) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6406 Filed 3–14–00; 8:45 am]

BILLING CODE 7020–02–U

[1] Commissioner Hillman dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–355 (Review) and 731–TA–659–660 (Review)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), if necessary. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On March 3, 2000, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of

institution (64 FR 67318, December 1, 1999) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6405 Filed 3–14–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 17, 2000 at 11:00 a.m.

STATUS: Open and closed to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv Nos. 701–TA–267–268 and 731–TA–297–299 and 304–305 (Review) (Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan; and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 30, 2000.)
5. Outstanding action jackets:

(1) Document No. (E)GC–00–001: Administrative matters.

Pursuant to 5 U.S.C. 552b(c) and Commission rule 19 CFR 201.36(b), the Commission has unanimously determined to close agenda item 5 of the meeting of Friday, March 17, 2000, to public observation, in order to avoid disclosure of information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. The General Counsel has certified that a portion of the meeting is being properly closed to the public by the Commission. Persons permitted to attend this closed portion of the meeting include Commissioners, their staff, and other Commission personnel who need to be available for the discussion or to conduct the meeting. The Commission determined that earlier announcement of this meeting was not possible

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: March 13, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6531 Filed 3–13–00; 2:08 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application to Register permanent Residence or Adjust Status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 15, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be used to request and determine eligibility for adjustment of permanent residence status. This application allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents is 265,097 at 5.25 hours per response; I–485 Children respondents is 208,291 at 4.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Form I–485 annual burden hours are 2,329,069.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 16, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–6416 Filed 3–14–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,000 and NAFTA–3402]

Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, NJ; Notice of Negative Determination on Reconsideration

On January 24, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioners presented information regarding company imports of chocolate products and related ingredients and a shift in production of certain articles from Jersey City, New Jersey to Canada. The notice was published in the **Federal Register** on February 4, 2000 (65 FR 5690).

The Department initially denied TAA to the workers of Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, New Jersey, because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the layoffs at the Jersey City plant were attributable to a consolidation of operations and transfer of plant production to other domestic affiliated plants. Company wide domestic sales and production increased during the relevant time period.

The Department initially denied NAFTA–TAA for the workers of Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, New Jersey, because criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act were not met. Layoffs at the Jersey City plant were attributable to a consolidation of operations and transfer of plant production to other domestic affiliated plants. Company wide domestic sales and production increased during the relevant time period. There was no shift of production from Jersey City, New Jersey to Canada or Mexico, nor any significant company imports of chocolate products from Canada or Mexico.

The petitioners claim that more than 30 percent of production and sales have been lost to Belgium and to the Canadian Barry Callebaut plants. On reconsideration, the Department contacted the company official to address petitioners' claims. The company has responded that it expects to shift some production from Jersey City to Canada in the near future, but to date, no shift has occurred. None of the production at the Jersey City plant has been shifted to Belgium. As found in the TAA petition investigation for workers of Barry Callebaut USA, Pennsauken, New Jersey (TA–W–35,971), the company does import cocoa powder. The Jersey City plant, however, is not impacted by increased imports of cocoa powder because workers rely on cocoa (raw material) to make their products. Cocoa powder production at the subject firm plant in Jersey City was relatively low in relation to total production at the subject plant and therefore, the Jersey City, New Jersey workers cannot be linked to the Pennsauken, New Jersey certification.

Since there was no decline in sales in the time period relevant to the investigation, a customer survey would serve no purpose.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance and NAFTA–TAA for workers and former workers of Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, New Jersey.

Signed at Washington, D.C., this 6th day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6381 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,568]

The Boeing Company, Commercial Aircraft Production, Long Beach, CA; Notice of Revised Determination on Reconsideration

On October 20, 1999 the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance with respect to workers producing commercial aircraft at The Boeing Company, Long Beach, California. Based upon its review of information regarding subject facility production through mid-1999 and a survey of the facility's domestic customers, the Department concluded that the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, had not been met.

Following receipt of a request for reconsideration from United Aerospace Workers Local 148 and in recognition of an ongoing investigation on behalf of workers producing commercial aircraft at other Boeing locations, the Department determined that a comprehensive review of all production and scheduled deliveries of commercial aircraft by the Boeing Company, including aircraft produced at Long Beach, was warranted. On January 6, 2000, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the Long Beach facility. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2435).

The Department's investigation revealed that employment declines have occurred at the Long Beach facility and that scheduled deliveries of aircraft produced at Long Beach have declined in the year 2000 compared to actual deliveries in 1999. The investigation further revealed that, although a decline in the total commercial aircraft market in the year 2000, as well as increased production efficiencies being experienced by the subject firm, are significant contributing factors to reduced employment levels at the subject facility, imports of commercial aircraft—as measured by scheduled deliveries to U.S. carriers by the subject firm's foreign competitor—are increasing in the year 2000 both absolutely and relative to scheduled deliveries to U.S. carriers by the subject firm. Although not necessarily the most significant factor contributing to the separations of workers, for purposes of the certification of such workers for trade adjustment assistance, this increase in domestic market share for the year 2000 by the firm's foreign competitor is an important factor contributing to worker separations.

A certification applicable to workers of McDonnell Douglas Corporation, Douglas Aircraft Company, Long Beach, California was issued on August 14, 1997 and remained in effect for two years from its date of issuance (TA–W–33, 300). That certification, which expired on August 14, 1999, applied to all employees producing aircraft at Long Beach for The Boeing Company following the acquisition of McDonnell Douglas Corporation by the Boeing Company.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with commercial aircraft contributed importantly to the declines in sales or production and to the total or partial separation of workers of the Boeing

Company, Long Beach, California. In accordance with the provisions of the Act, I make the following certification:

All workers of The Boeing Company, Long Beach, California who became totally or partially separated from employment on or after August 15, 1999 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 24th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6368 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,704]

Centrilift, Division of Baker Hughes; Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Centrilift, Division of Baker Hughes, Denver, Colorado. 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–36,407; Centrilift Division of Baker Hughes Denver, Colorado (February 22, 2000)

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6379 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,732 and NAFTA–3418]

F.G. Montabert, Midland Park, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the F.G. Montabert, Midland Park, New Jersey. 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–36,732 and NAFTA–3418; F.G. Montabert, Midland Park, New Jersey (March 1, 2000).

Signed at Washington, D.C. this 2nd day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6374 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,087]

Gaudette Leather Goods, Incorporated, North Attleboro, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 22, 1999, in response to a worker petition which was filed on behalf of former workers at Gaudette Leather Goods, Incorporated, located in North Attleboro, Massachusetts (TA–W–37,087).

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, D.C. this 28th day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6369 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,262]

London International Group, LLC, Centre Plant, Dothan, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 24, 2000, in response to a petition filed by a company official on the same date on behalf of workers at London International Group, LLC, Centre Plant, Dothan, Alabama

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 in Washington, D.C. this 29th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6370 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,247]

On Semiconductor Phoenix, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 18, 2000, in response to a worker petition which was filed on behalf of workers at ON Semiconductor, Phoenix, Arizona.

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, D.C. this 2nd day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6376 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,988 and NAFTA–3521]

Siebe Automotive, Robertshaw Division, Carthage, Tennessee; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Siebe Automotive, Robertshaw Division, Carthage, Tennessee. 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–36,988 and NAFTA–3521; Siebe Automotive, Robertshaw Division, Carthage, Tennessee (February 23, 2000)

Signed at Washington, DC, this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6378 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,143]

The William Carter Co., Brownsville, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 6, 1999, in response to a worker petition which was filed on the same date on behalf of workers at The William Carter Co., Brownsville, Texas.

A certification applicable to this group of workers was issued on December 16, 1999, and remains in effect (TA–W–37,122). The certification is currently being amended to include ''Employees of William Carter Co., employed at Williams Cutting Service.'' Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6384 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Registered Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. Laws 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Federal Committee on Registered Apprenticeship (FCRA).

TIME AND DATE: The meeting will begin a 9 a.m. on Thursday, March 30, 2000 and continue until approximately 5 p.m. The meeting will reconvene at 9 a.m. on Friday, March 31, 2000, and continue until approximately 12 noon.

PLACE: The Federal North Ballroom of the Holiday Inn on the Hill, DC, 415 New Jersey Avenue, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5921 (this is not a toll-free number)

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics:

(1) Reports on the FCRA Work Groups; Marketing, Quality, Diversity, Resources/Data, Legislative.

(2) National Military Apprenticeship Program Update.

(3) New Areas for Apprenticeship.

(4) Update Report on Apprenticeship Impact Project.

(5) Draft of White Paper.

(6) Report of National Association of State and Territorial Apprenticeship Directors (NASTAD) and Report of National Association of Government Labor Officials.

(7) Update on BAT Activities.

(8) Next Meeting Dates and Location.

(9) Public Comment.

STATUS: Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 219–5921 no later than March 23, 2000, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending it to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW., Washington, DC 20210. Such submissions should be sent by March 24, 2000, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal official by March 24. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 9th Day of March 2000.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 00–6385 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03315]

Justin Boot Company, Justin Management Company, Fort Worth, TX; 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 U.S.C 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 21, 1999, applicable to workers of Justin Boot Company, Fort Worth, Texas. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of western boots. New information received from the company shows that some workers separated from employment at Justin Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Management Company.

The intent of the Department's certification is to include all workers of Justin Boot Company who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–03315 is hereby issued as follows:

All workers of Justin Boot Company, Justin Management Company, For Worth, Texas who became totally or partially separated from employment on or after July 21, 1998 through September 21, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6373 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3554]

Marathon Ashland Pipe Line LLC, Bridgeport, IL; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated December 22, 1999 and January 3, 2000 Petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers of the subject firm to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA—TAA). The denial notice applicable to workers of Marathon Ashland Pipe Line LLC, transporting crude oil and petroleum products via pipeline in Bridgeport, Illinois, was signed on December 2, 1999 and published in the **Federal Register** on December 28, 1999 (64 FR 72693).

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 petitioners assert that the workers in Bridgeport were gaugers for the subject firm and tested the oil before it could be transported into the pipeline. The petitioners also assert that the crude oil acquisition department of Marathon Oil Company (the parent company of the subject firm) worked directly with and set the perimeters for the acceptance or rejection of the crude oil. The petitioner also states that layoffs at the subject firm were caused by a reduced demand for services by the parent company.

The denial of NAFTA–TAA for workers of Marathon Ashland Pipe Line LLC, Bridgeport, Illinois, was based on the finding that the workers provided a service and did not produce an article within the meaning of Section 250(a) of the Trade Act of 1974, as amended. The petition investigation revealed that the primary reason for the worker layoffs was attributable to the asset sale to another company.

Service workers may be certified for NAFTA–TAA only if there is a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. There are no NAFTA–TAA certifications for Marathon Oil Company workers.

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, D.C. this 16th day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6380 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03741]

McMoran Exploration Company Culberson Mine, Pecos, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 15, 2000 in response to a petition filed on behalf of workers and former workers at the Culberson Mine of McMoRan Exploration Company, located in Pecos, Texas (NAFTA–03741).

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 28th day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6377 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03476]

Smurfit-Stone Container Corp.; a/k/a Stone Container Corp.; El Paso, TX; 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 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 18, 2000, applicable to workers of Smurfit-Stone Container Corp., El Paso, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of non-corrugated folding boxes, a.k.a. paperboard. New information provided by the State shows that some of the claimants' wages are being reported under the Unemployment Insurance (UI) tax account for Stone Container Corp., El Paso, Texas.

The intent of the Department's certification is to include all workers of Smurfit-Stone Container Corp., who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of Smurfit-Stone Corp., also known as Stone Container Corp., El Paso, Texas.

The amended notice applicable to NAFTA—03476 is hereby issued as follows:

''All workers of Smurfit-Stone Container Corp., also known as Stone Container Corp., El Paso, Texas who became totally or partially separated from employment on or after September 27, 1998 through January 18, 2002 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6382 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3690]

Tweco Products, Thermadyne Industries, Inc., Wichita, KS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 31, 2000, in response to a worker petition which was filed by a company official on behalf of workers at Tweco Products, Thermadyne Industries, Inc., Wichita, Kansas.

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 in Washington, D.C. this 7th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6371 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3570]

The William Carter Co., Brownsville, TX; Notice of Termination of Investigation

Pursuant to Section 250 of the Trade Act of 1974, an investigation was initiated on November 18, 1999, in response to a worker petition filed on the same date on behalf of workers at The William Carter Co., Brownsville, Texas.

A certification applicable to this group of workers was issued on December 16, 1999, and is currently in effect (NAFTA–3588). That certification is currently being amended to include ''Employees of William Carter Co., employed at Williams Cutting Service.'' Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 22nd day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6375 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03588]

Williams Cutting Service, Inc., Brownsville, TX; Including Workers of William Carter Co. Employed at Williams Cutting Service, Inc., Brownsville, TX; 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 U.S.C 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 16, 1999, applicable to workers of Williams Cutting Service, Inc., Brownsville, Texas. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2433).

Upon receipt of a petition from workers of Williams Carter Company who were employed at Williams Cutting Service, Inc., the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of William Carter Company, Harlingen, Texas were employed by Williams Cutting Service, Inc. to perform quality control for infants' apparel produced at the Brownsville Texas location of Williams Cutting Service, Inc. Separations of workers of William Carter Company employed at Williams Cutting Service, Inc. occurred for the same reasons as separations of workers employed by Williams Cutting Service, Inc.

Based on these findings, the Department is amending the certification to include workers of William Carter Company, Harlingen, Texas employed at Williams Cutting Service, Inc., Brownsville, Texas.

The intent of the Department's certification is to include all workers of Williams Cutting Service, Inc. adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03588 is hereby issued as follows:

All workers of Williams Cutting Service, Inc., Brownsville, Texas including workers of William Carter Company employed at Williams Cutting Service, Inc., Brownsville, Texas who became totally or partially separated from employment on or after November 16, 1998 through December 16, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6372 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,122]

Williams Cutting Service, Inc., Brownsville, TX; Including Workers of William Carter Company Employed at Williams Cutting Service, Inc.; Brownsville, TX; 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 Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 1999, applicable to workers of Williams Cutting Service, Inc., Brownsville, Texas. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2432).

Upon receipt of a petition from workers of William Carter Company who were employed at Williams Cutting Service, Inc., the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of William Carter Company, Harlingen, Texas were employed by Williams Cutting Service, Inc. to perform quality control for infants' apparel produced at the Brownsville, Texas location of Williams Cutting Service, Inc. Separations of workers of William Carter Company employed at Williams Cutting Service, Inc. occurred for the same reasons as separations of workers employed by Williams Cutting Service, Inc.

Based on these findings, the Department is amending the certification to include workers of William Carter Company, Harlingen, Texas employed at Williams Cutting Service, Inc., Brownsville, Texas.

The amended notice applicable to TA–W–37,122 is hereby issued as follows:

All workers of Williams Cutting Service, Inc., Brownsville, Texas including workers of William Carter Company employed at Williams Cutting Service, Inc., Brownsville, Texas who became totally or partially separated from employment on or after November 16, 1998 through December 16,

2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6383 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Federal Mine Safety and Health Review Commission

Sunshine Act Meeting; Meeting Cancellation Notice

The following Commission meeting has been canceled. No earlier announcement of the cancellation was possible.

Time and Date: 10:00 a.m., Thursday, March 9, 2000.

Place: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

Status: Open.

Matters to be Considered: Proposed Settlement Judge Rule (Notice of proposed rulemaking was published at 64 FR 61236 (Nov. 10, 1999)).

Contact Person for More Info: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. 00–6511 Filed 3–13–00; 2:08 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: April 6, 2000; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF for Environmental Technology Engineering POWRE & SBIR/STTR Phase II as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6357 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: April 6, 2000; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, VA; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF for Environmental Technology Engineering CAREER Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6358 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date & Time: March 22–24, 2000.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Jane Silverthorne, Program Director, Plant Genome Research Program, Room 615, Division of Biological Infrastructure, NSF, 4201 Wilson Boulevard, VA 22230, Telephone: (703) 306–1470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Plant Genome Research Program proposals submitted in response to the program announcement (NSF 99–171).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6355 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting:

Name: Division of Biological Infrastructure Committee of Visitors Meeting (1754).

Date/Time: March 28–30, 2000, 9:00 a.m.–6:00 a.m.

Place: Room 680, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Machi F. Dilworth, Division Director, Division of Biological Infrastructure, Room 615, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial.

Agenda: To review and evaluate proposals submitted to the NSF for the Division of Biological Infrastructure.

Reason of Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6359 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis panel in Chemical and Transport Systems (1190).

Date and Time: April 24, 2000, 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Stefan T. Thynell, Program Director for Thermal Transport & Thermal Processing, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2000 POWRE Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6356 Filed 3–14–00 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation; Notice of Cancellation of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the following meetings have been cancelled:

Name: Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation (61).

Date/Time; March 15, 16, 24, & 31, 2000; 8:30 a.m.–5:00 p.m.

Contact Person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone (703) 306–1395, extension 5283.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6360 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, March 29, 2000, 7:00 p.m. to 10:00 p.m., Thursday, March 30, 2000, 8:00 a.m. to 5:00 p.m., Friday, March 31, 2000, 8:00 a.m. to 5:00 p.m.

Place: The Government House, 1615 Rhode Island Avenue, NW, Washington, DC 20036

Type of Meeting: Closed.

Contact Person: George Bright, Program Officer, Centers for Teaching and Learning, Teacher Enhancement Program, Education and Human Resources Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/306–1613.

Purpose of Meeting: To provide advice and recommendations concerning proposals for the Centers for Teaching and Learning, Teacher Enhancement Program, submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6362 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, March 22, 2000, 7:00 p.m. to 10:00 p.m., Thursday, March 23, 2000, 8:00 a.m. to 5:00 p.m.

Place: Arlington Hilton and Towers, 950 North Stafford Street, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Bright, Program Officer, Centers for Teaching and Learning, Teacher Enhancement Program, Education and Human Resources Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/ 306–1613.

Purpose of Meeting: To provide advice and recommendations concerning proposals for the Centers for Teaching and Learning, Teacher Enhancement Program, submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6363 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and Time: April 13, 2000—8:20 AM–5:00 PM; April 14, 2000—8:30 AM–2:00 PM.

Place: 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Adriaan de Graaf, Executive Officer, MPS, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1800.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on the development of MPS education themes; provide advice on building the MPS intellectual core; advise on methods of achieving overall program excellence in MPS; opportunities for collaboration with the Education and Human Resources (EHR) Directorate, and evaluate the Division of Physics Committee of Visitors' Report.

Agenda:

April 13, 2000

AM—
Introductory Remarks
Review and Approval of Division of Physics Committee of Visitors' Report
MPS Education Themes

PM—
MPS Education Themes
Opportunities for Collaboration with EHR

April 14, 2000

AM—
Building the Intellectual Core of MPS

PM—
Meeting Wrap-up/Future Business

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6361 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date/Time: May 11–12, 2000; 8:00 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Alvin I Thaler, Program Director, Infrastructure Program, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning Scientific Computing Research Environments for the Mathematical Sciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6364 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meetings of the Advisory Panel for Social and Political Science (#1761), Committee of Visitors;

Date/Time: April 2, 3, and 4, 2000; 8:00 am to 6:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 130, 340, 365, 920, and 970, Arlington, VA 22230.

Contact Person: Dr. Frank Scioli and Dr. Marianne Stewart, Program Directors for Political Science, National Science Foundation. (703) 306–1761.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date/Time: April 2, 3, and 4, 2000; 8:00 am to 6:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 130, 340, 365, 920, and 970, Arlington, VA 22230.

Contact Person: D. Marie Provine, Program Director, Law and Social Science, National Science Foundation. (703) 306–1762.

Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Date/Time: April 2, 3, and 4, 2000; 8:00 am to 6:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 130, 340, 365, 920, and 970, Arlington, VA 22230.

Contact Person: Patricia White and Murray Webster, National Science Foundation. (703) 306–1756.

Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6365 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 4, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 4, 2000—1:30 P.M. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 9, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–6337 Filed 3–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 13, 20, 27, April 3, 10, and 17, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 13

There are no meetings scheduled for the Week of March 13.

Week of March 20—Tentative

Wednesday, March 22

9:25 a.m. Affirmative Session (Public Meeting) (if needed).

Friday, March 24

9:30 a.m. Briefing on Evaluation of the Requirement for Licensee to Update Their Inservice Inspection and Inservice Testing Program Every 120 Months (Public Meeting) (Contact: Tom Scarbrough, 301–415–2794).

Week of March 27—Tentative

Thursday, March 30

8:55 a.m. Affirmation/Discussion and Vote (Public Meeting) (If needed).

9:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380).

Friday, March 31

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790).

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

Week of April 10—Tentative

There are not meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on March 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of the Intragovernmental Issues'' (Closed-Ex. 9) be held on March 8, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 10, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–6496 Filed 3–13–00; 11:10 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in March 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2000.

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

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in March 2000 is 5.30 percent (*i.e.,* 85 percent of the 6.23 percent yield figure for February 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between April 1999 and March 2000.

For premium payment years beginning in	The assumed interest rate is
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16
October 1999	5.16
November 1999	5.32
December 1999	5.23
January 2000	5.40
February 2000	5.64

For premium payment years beginning in	The assumed interest rate is
March 2000	5.30

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 3rd day of March 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6313 Filed 3–14–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24335; 812–11442]

Nations Fund Trust, et al.; Notice of Application

March 9, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain common trust funds and a collective investment fund to transfer their assets to certain series of registered open-end management investment companies in exchange for shares of the series.

APPLICANTS: Nations Fund Trust, Nations Fund, Inc., Nations Reserves, Bank of America, N.A. (''Bank of America'') and Banc of America Advisors, Inc. (''BAAI'').

FILING DATES: The application was filed on December 23, 1998, and amended on December 23, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 30, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, One Bank of America Plaza, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney at (202) 942–0634, or George J. Zornada, Branch Chief at (202) 942–0564; Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Nations Fund Trust, Nations Fund, Inc., and Nations Reserves (the ''Nations Funds'') are registered under the Act as open-end management investment companies. BAAI is an investment adviser registered under the Investment Advisers Act of 1940, and serves as the investment adviser to each series of the Nations Funds. BAAI is a wholly-owned subsidiary of Bank of America, which is in turn a wholly-owned subsidiary of Bank of America Corporation (''BAC''), a publicly-held bank holding company. Certain employee benefit plans maintained for the benefit of employees of BAC and entities controlling, controlled by, or under common control with BAC (collectively, ''Bank of America Group'') (the ''Benefit Plans'') hold five percent or more of the outstanding voting shares of certain series of the Nations Funds.

2. Bank of America acts as trustee for a number of common trust funds, as defined in section 584(a) of the Internal Revenue Code of 1986, as amended (''Code'') (the ''CTFs''). Bank of America also acts as trustee for a collective investment fund sponsored by Bank of America as an investment vehicle for employment benefit retirement plans qualified under section 401 of the Code (the ''CIF,'' and together with the CTFs, the ''Common/Collective Funds''). The CTFs and the CIF are excluded from the definition of ''investment company'' under section 3(c)(3) and section 3(c)(11), respectively, of the Act.[1]

3. Applicants propose that substantially all of the assets of each Common/Collective Fund be transferred in-kind to a designated series of the Nations Funds in exchange for Primary A Shares of that series, which will have at the time of the transfer an aggregate net asset value equal to the value of the assets transferred by the corresponding Common/Collective Fund (the ''CF Conversion'').[2] The investment objectives and policies of each of the Common/Collective Funds and its corresponding series of the Nations Funds are generally similar. The Common/Collective Fund assets to be transferred will be valued in accordance with the provisions of rule 17a–7(b) and the shares of the Nations Funds exchanged in the CF conversion will be credited to the account of each participant in the Common/Collective Funds (''Participant''), pro rata, according to the Participant's interest in the relevant Common/Collective Fund immediately prior to the CF Conversion. Following the CF Conversion, the CTFs will be terminated. The CIF may be terminated following the conversion. Applicants state that the CF Conversion is expected to commence on or about March 31, 2000. BAAI will pay all expenses incurred in connection with the CF Conversion.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any

[1] Applicants also request that the relief apply to future transactions in which a terminating Common/Collective Fund for which Bank of America Group, acting as trustee or in another fiduciary capacity, transfers it assets to a registered open-end management investment company advised by BAAI, or Bank of America Group, which investment company has 5% or more ot its outstanding voting securities owned by a defined benefit pension plan or other employee benefit plans (qualified or non-qualified) sponsored by Bank of America Group, or which employee benefit plan sponsored by Bank of America Group has a 5% or more participation in the terminating Common/Collective Fund (''Future Relief''). Applicants state that they will rely on the Future Relief only in accordance with the terms and conditions in the application.

[2] In the CF Conversion, the assets of the following Common/Collective Funds will be transferred to designated series of the Nations Funds: BCA Retail Fund, Equity Value Fund, Kansas Stock Fund, Equity Index Fund, Managed Small Cap Fund, International Equity Fund, and LargeCap Index Fund.

affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property, Section 2(a)(3) of the Act, in relevant part, defines ''affiliated person'' to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser of the investment company. Applicants state that, because the Common/Collective Funds may viewed as acting as principals in the CF Conversion and because the Common/Collective Funds and the Nations Funds may be viewed as being under the common control of Bank of America within the meaning of section 2(a)(3)(C) of the Act, the CF Conversion may be subject to the prohibitions contained in section 17(a).

2. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. Applicants may not rely on rule 17a–7 for the CF Conversion because the ownership of more than five percent of the outstanding voting shares of the Nations Funds by the Benefit Plans may be deemed to create an affiliation ''not solely by reason of'' having a common investment adviser, directors, and/or common officers.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied. Although applicants state that the CF Conversion will be a sale of substantially all of the assets of the Common/Collective funds, applicants may not rely on rule 17a–8 for the CF Conversion because the Common/Collective Funds are not registered investment companies, and because the Common/Collective Funds and the Nations Funds have affiliations other than those covered by the rule.

4. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act 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.

5. Applicants seek an order under section 17(b) of the Act to permit the CF Conversion and under sections 6(c) and 17(b) to permit the Future Relief. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the securities to be acquired by the Nations Funds are consistent with the investment policies of the participating Nations Funds. With respect to the Nations Funds, the CF Conversions will be executed in accordance with procedures previously adopted by the Nations Funds' respective boards of directors/trustees (the ''Boards'') in accordance with 17a–7(e) of the Act, and the provisions of rule 17a–7(b), (c), and (d), and (f) also will be satisfied with respect to the Nations Funds. The Boards, including a majority of the directors/trustees who are not interested persons are defined in section 2(a)(19) of the Act (''Disinterested Members''), have determined that participation by each series of the Nations Funds in the CF Conversion is in the best interests of each series and that the interests of existing shareholders of each series will not be diluted as a result of the CF Conversion. These findings, and the basis upon which they were made, will be recorded in the books of the Nations Funds. With respect to the Common/Collective Funds, Bank of America will have determined in accordance with its fiduciary duty as trustee and fiduciary for the Common/Collective Funds and the Participants that the CF Conversion is in the best interest of the Participants in each of the Common/Collective Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The CF Conversion will comply with the terms of rule 17a–7(b) through (f).

2. The CF Conversion will not occur unless and until each relevant Board, including a majority of such Board's Disinterested Members, finds that participation by each individual series of the Nations Funds in the CF Conversion is in the best interests of each such series of the Nations Funds and that the interests of existing shareholders of such series of the Nations Funds will not be diluted as a result of the CF Conversion. These findings, and the bases upon which they are made, will be recorded in the minute books of the Nations Funds.

3. The CF Conversion will not occur unless and until Bank of America, as trustee and fiduciary in accordance with its fiduciary duties as trustee and fiduciary for each of the Common/Collective Funds and the Participants thereof, has determined that the CF Conversion is in the best interests of Participants in each of the Common/Collective Funds.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6366 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

eConnect; Order of Suspension of Trading

March 13, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current, adequate and accurate information concerning the securities of eConnect, a Nevada corporation. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, a purported licensing agreement with Palm, Inc., a strategic alliance with a registered broker-dealer and certain Internet referrals and revenue.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 13,

2000, through 11:59 p.m. EST, on March 24, 2000.

By the Commission.

Johnathan G. Katz,

Secretary.

[FR Doc. 00–6507 Filed 3–13–00; 12:02 pm]

BILLING CODE 8010–N–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

U.N. Dollars Corporation; Order of Suspension of Trading

March 13, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.N. Dollars Corporation (''UNDR'') because of questions regarding the accuracy of assertions made by UNDR, and by others, in documents sent to and statements made to market makers of the stock of UNDR, other broker dealers, and to investors concerning among other things: (1) Contracts entered into by UNDR, (2) sources of financing claimed by UNDR, and (3) possible artificial manipulation of the market for the stock of UNDR.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 13, 2000 through 11:59 p.m. EST, on March 24, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6508 Filed 3–13–00; 12:02 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42503; File No. SR–CHX–99–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Specialist Retention Periods for Nasdaq National Market Securities Traded on the Exchange Pursuant to Unlisted Trading Privileges

March 8, 2000.

I. Introduction

On August 19, 1999, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify co-specialist retention periods for securities listed on the Exchange and to eliminate co-specialist retention periods for Nasdaq National Market (''Nasdaq/NM'') securities traded on the Exchange pursuant to unlisted trading privileges.[3] The **Federal Register** published the proposed rule change for comment on October 12, 1999, and the portion related to listed securities was approved, on an accelerated basis, at that time.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

The Exchange proposes eliminating retention periods for co-specialists in Nasdaq/NM securities provided that at least five calendar days notice is given to order sending firms. Because the number of Nasdaq/NM securities that the Exchange can trade pursuant to unlisted trading privileges (''UTP'') is limited,[5] stock allocation issues relating to Nasdaq/NM securities that are distinct from allocation issues relating to other securities traded on the Exchange have developed. Specifically, because the existing 1,000 security limit on the total number of Nasdaq/NM securities that can be traded UTP on an Exchange-wide basis has been largely filled, co-specialists in Nasdaq/NM securities cannot acquire a new Nasdaq/NM issue until they deregister in an issue they currently trade and that security is removed from the list of Nasdaq/NM securities traded on the Exchange. The current specialist deregistration rules, however, do not provide the flexibility to quickly complete this procedure.[6] In addition, the current rules do not provide Nasdaq/NM specialist firms sufficient flexibility to reallocate stocks awarded in competition between co-specialists within the same specialist unit when a co-specialist's stocks become active and volatile.[7]

To address these concerns, the Exchange is proposing to eliminate the retention restrictions on co-specialists for Nasdaq/NM securities governed by Interpretation and Policy .01 to Rule 1. The amended interpretation will permit co-specialists in Nasdaq/NM issues to deregister in an issue more quickly, to allow them to respond to market developments. In addition, and, subject to the continuing authority of the Exchange's Committee on Specialist Assignments and Evaluation, the proposal permits co-specialists in Nasdaq/NM securities to deregister at any time after providing at least five calendar days notice to order sending firms, and allows intra-firm transfers of Nasdaq/NM securities awarded in competition without a mandatory retention period.[8]

The Exchange will ensure that there will be no disruption to the marketplace as a result of relaxed stock retention requirements.[9] The Exchange believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41922 (Sept. 26, 1999), 64 FR 55324 (Oct. 12, 1999).

[4] *Id.* The order permanently approved a pilot program relating to the time periods for which a co-specialist must trade a security listed on the Exchange prior to deregistering as the specialist for that security as set forth in CHX Rules, Article XXX, Rule 1, Interpretation and Policy .01.

[5] Securities Exchange Act Rel. No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[6] Interpretation and Policy .01 to Article XXX, Rule 1 of the CHX Rules requires two years to elapse before an intra-firm transfer of an issue awarded in competition (*i.e.*, transfer of the issue to another co-specialist within the same specialist unit) is permitted without posting. No time period is required before an intra-firm transfer of an issue awarded without competition is allowed. Before a co-specialist is able to deregister in a security if no other specialist would be assigned to the security after posting and deregistration, a co-specialist was required to trade the security for three months for securities awarded without competition, and one year for securities awarded in competition.

[7] In such a situation, a specialist unit might deem it to be in the best interests of customers and the Exchange to transfer the stock to another co-specialist within the same specialist unit that is assigned to a fewer number of issues or is more experienced.

[8] There is currently no minimum retention period for intra-firm transfers of securities awarded without competition. *See* Article XXX, Rule 1, Interpretation and Policy .01.

[9] The Exchange represents that the proposed rule change will have no ramifications on the UTP Plan governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NM securities. Telephone call between Paul O'Kelly, Executive Vice President, CHX, and Sonia Patton, Attorney, Division, Commission, on March 8, 2000.

that the $2,000 fee it charges for such transfers will prevent disruptive serial transfers and deregistrations that have not been carefully contemplated by the specialist.[10]

The proposed amendments relating to Nasdaq/NM securities will only be effective for as long as the number of Nasdaq/NM issues that can be traded UTP on the Exchange is limited. If the Commission eliminates this limitation, Nasdaq/NM issues and the co-specialist maintaining Nasdaq/NM issues will be subject to the regular retention periods applicable to all other issues traded on the Exchange.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act [11] and the rules and regulations thereunder [12] applicable to a national securities exchange. Section 6(b) of the Act [13] states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that eliminating retention periods for co-specialists in Nasdaq/NM securities will enable the Exchange and specialist firms to more quickly respond to market developments. The Commission believes the proposed rule change will serve the public interest by allowing the transfer of a security to a co-specialist that is more experienced or is assigned to a fewer number of issues if trading in one or more of the securities handled by another co-specialist becomes unusually high or volatile. Finally, in approving the proposed rule change, the Commission notes that the Exchange, through its Committee on Specialist Assignments and Evaluation, will monitor the turnover of co-specialist assignments to avoid possible abuses.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the portion of the proposed rule change relating to specialist retention periods for Nasdaq/NM securities (File No. SR–CHX–99–11) is approved.

[10] *See* Securities Exchange Act Release No. 41569 (June 28, 1999), 64 FR 36726 (July 7, 1999).

[11] 15 U.S.C. 78f.

[12] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6367 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42504; SR–DTC–00–04]

Self-Regulatory Organizations; The Depository Trust Corporation; Notice of Filing of Proposed Rule Change Relating to Profile Modification Feature of the Direct Registration System

March 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 28, 2000, The Depository Trust Corporation (''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 from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish the Profile Modification System (''Profile'') feature of the Direct Registration System (''DRS'') facility administered by DTC.[2] As described more fully below, Profile will allow a DTC participant to electronically submit to a transfer agent who is a DRS limited participant an investor's instruction that its share positions be moved from the investor's DRS account with the DRS limited participant to the investor's broker-dealer's participant account a DTC. Using Profile, a DRS limited participant may also submit an investor's instruction for the movement of its share position from the investor's broker-dealer's participant account at DTC to an account maintained by the DRS limited participant. Profile may also be used to append information to DRS limited participant's records. Profile will be governed by DTC procedures [3] substantially in the form attached as Exhibits 3 and 4 to DTC's filing. The fees connected with Profile are specified below.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if 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 such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1996, the New York Stock Exchange, Inc. (''NYSE'') and the National Association of Securities Dealers, Inc. modified their listing criteria to permit listed companies to issue securities in book-entry using DRS in lieu of certificates (*i.e.*, securities are registered in the name of the investor on the books of the issuer but no certificate is issued). Since then there has been a steady growth of securities issued in DRS, primarily through corporate actions and initial public offerings. By completing the appropriate information on the transaction advice and submitting the hard copy paper instructions to a DRS limited participant, and investor may update broker-dealer information with a DRS limited participant and may instruct the DRS limited participant to move the investor's share positions to the investor's broker-dealer's participant account at DTC. In 1999, the volume of DRS free delivery order activity moving positions from DRS limited participants to DTC participants exceeded 183,000 transactions. DTC believes that these free deliver order transactions are the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For a description of DRS, see Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) [File No. SR–DTC–99–16].

[3] In addition, DTC understands that certain DRS limited participants are developing guidelines relating to their use of DRS. Once such guidelines have been approved by the Guidelines Subcommittee of the DRS Committee and the DRS Committee, DTC will work with the Guidelines Subcommittee to ensure that the guidelines are distributed to the appropriate parties. The DRS Committee is an industry committee responsible to designing DRS. Its members include the Securities Transfer Association, the Securities Industry Association, the Corporate Transfer Association, the American Society of Corporate Secretaries, and DTC. The staff of the SEC attends meetings of the DRS Committee.

[4] A copy of DTC's proposed rule change and the attached exhibits is available at the Commission's Public Reference Section or through DTC.

[5] The Commission has modified the text of the summaries prepared by DTC.

direct result of DRS limited participants processing thousands of hard copy transaction advises based on investors' instructions.

DTC believes that there is substantial evidence to currently indicate that the transfer of DRS positions, which is presently a multistep, paper-based process, is labor intensive and slow. For an investor to move a DRS position from a DRS limited participant to a participant, the investors must have its transaction advice (i) medallion signature guaranteed and (ii) physically delivered to the DRS limited participant. When the transaction advice is received, the DRS limited participant enters the information into its system to process the instructions. Only after the DRS limited participant completes its processing is the investor's DRS position moved to the participant's account at DTC. In addition, because the information required to be supplied on the transaction advises is not standardized throughout the industry, investors (or participants sending the transaction advises on behalf of their customers) do not always provide the correct or complete information necessary to process the instructions.

The DRS Committee, the industry committee responsible for designing DRS,[6] has been working through the various legal and processing issues to reduce if not eliminate the handling of hard copy transaction advises. In January, 1999, the DRS Committee approved Profile's system specifications and authorized DTC to proceed with the development of Profile. DTC completed production of Profile on June 15, 1999, and it has been available for use since then.

Under the proposed rule change, participants using Profile will send standardized information, which, DTC believes, will reduce the possibility that the instruction will be rejected due to errors or incomplete information. Because Profile is an electronic system that eliminates the need for the information to be physically delivered, it should make the processing of DRS instructions more efficient and should give investors the ability to execute transactions using their DRS positions in a time frame that is at least as fast as when using certificates. In short, Profile should reduce the time it takes for the DRS limited participant to receive and process DRS instructions.

As proposed, Profile will satisfy all of the hard copy requirements listed on the transaction advice and will allow a participant to submit the investor's instructions electronically to the DRS limited participant via DTC's Participant Terminal System (''PTS'') or via the Computer-to-Computer Facility (''CCF''). The required information will include the investor's account registration, tax identification number, the DRS account number assigned by the DRS limited participant, a CUSIP number, and the number of shares to be transferred. The account registration and the account number must be entered exactly as they appear on the investor's transaction advice or statement. DRS limited participants and participants will use the information provided in Profile to help ensure that beneficial ownership does not change when there is a share movement.

Profile will accommodate an electronic medallion indemnification if such a program is ever established. The electronic medallion numbers will be assigned by the administrators of the electronic medallion programs. DTC will perform an automated review to ensure that the participant is entering its correct electronic medallion number. The DRS limited participant, however, will remain responsible for the verification of the medallion and it surety limits for each transaction.

The electronic medallion program described in the preceding paragraph will not be in effect as part of DRS until such time as the NYSE, the Securities Transfer Association Medallion Program (''STAMP''), or the Securities Exchange Medallion Program (''SEMP'') adopts such a program and the DRS Committee approves the program, and the program is in effect. Until that time, a participant submitting a Profile instruction to a DRS limited participant must agree to a PTS screen indemnity substantially in the following form:

(1) Participant represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the participant's records or (b) a third party who has actual authority to act on behalf of the registered owner on the participant's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete; and

(2) Participant indemnifies the issuer, its transfer agent and their respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

If an electronic medallion program administered by NYSE, STAMP, or SEMP is not in effect or it has not been approved by the DRS Committee, references in DTC's procedures will be modified to reflect the existence of the screen indemnity rather than an electronic medallion.

Participants will be able to access Profile via PTS by CUSIP number to view the status of all Profile instructions submitted to DRS limited participants for processing. DRS limited participants will indicate whether a transaction is approved or rejected. Profile will provide an aging status of up to thirty business days for all unapproved instructions in an effort to avoid duplicate submissions.

If a participant submits an instruction for the movement of an investor's share position and the DRS limited participant approves the move, the DRS limited participant will process the instruction through the DRS limited participant's Limited Participant Account utilizing the DRS deliver order with a designated reason code. Similarly, all rejected instructions will have reject reason codes that will indicate the reason for the project.

Under the proposed rule change, a DRS limited participant may also submit a Profile instruction requesting the movement of an investor's DRS position from the investor's broker-dealer's participant account at DTC to a DRS limited participant's Limited Account. If the participant approves the move, then a withdrawal by transfer (''WT'') must be submitted using the ''S'' indicator for a DRS withdrawal.[7] This withdrawal will move the share position from the participant's account at DTC to the DRS limited participant's Limited Participant Account at DTC. DTC contemplates that these Profile instructions will be covered by an electronic medallion indemnification analogous to the electronic medallion program described above.

The electronic medallion program described in the preceding paragraph will not be in effect as part of DRS until such time as the NYSE, STAMP, or SEMP adopts such a program, the DRS Committee approves the program, and the program is in effect. Until that time, a DRS limited participant submitting a Profile instruction to a participant will agree to a PTS screen indemnity substantially in the following form:

[6] *Supra* note 3.

[7] An ''S'' indicator is a code that instructs the DRS limited participant to establish a DRS account for the investor.

(1) Transfer agent represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the transfer agent's records or (b) a third party who has actual authority to act on behalf of the registered owner on the transfer agent's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of transfer agent, such information is accurate and complete; and

(2) Transfer agent indemnifies the participant and its respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

If the electronic medallion program administered by NYSE, STAMP, or SEMP is not in effect or it has not been approved by the DRS Committee, references in DTC's procedures will be modified to reflect the existence of the screen indemnity rather than an electronic medallion.

DTC proposes to charge participants a fee of 31 cents for each instruction submitted through Profile initiating a DRS share movement or appending information to an investor's DRS account, and charge the DRS limited participant receiving the instruction a fee of 9 cents for that transactions.[8] DTC also proposes to charge DRS limited participants a fee of 40 cents for each instruction submitted through Profile initiating a DRS share movement.[9]

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will provide participants more efficient use of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of the function.

[8] The STA representatives on the DRS Committee requested that DTC develop CCF capability in DRS for transfer agents. The DRS Committee approved the 9 cent fee to reimburse DTC for the cost of systems development to accommodate the STA request.

[9] In this type of transaction, there is no CCF development fee, as no CCF development was requested. Participants bear a fee for WT instructions when a share position is moved to a DRS limited participant's Limited Participant Account.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with several participants and DRS limited participants. Written comments from participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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. section 553, 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 offices of DTC. All submissions should refer to File No. SR–DTC–99–04 and should be submitted by April 5, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6314 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42497; File No. SR–Phlx–00–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration and Annual Fees for Off-Floor Traders

March 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to require all current and future off-floor traders to pay an initial registration fee and an annual fee thereafter of $1,000.00 for all off-floor traders registered as of April 1 of each year.[4]

Specifically, the Exchange seeks to require associated persons of member organizations for which the Exchange is the Designated Examining Authority

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The Phlx states that their Examinations Department checks the member firms on a monthly basis to determine the number of traders to whom these fees apply. The Phlx, in turn, bills the member firm an amount based on the number of traders who are new registrants. *See* telephone conversation of March 6, 2000, between Richard S. Rudolph, Counsel, Phlx, and Joseph P. Morra, Attorney, SEC.

(''DEA''), but who are not themselves Exchange members, who engage in proprietary trading of equities and options, including, but not limited to, persons who execute such trades or make trading decisions with respect to such trades, to pay an increased $1,000.00 registration fee and thereafter an increased annual fee of $1,000.00. The proposed increases would apply to those persons who are not Exchange members registered in a trading capacity on the floor of the Exchange. The proposed increases in the registration and annual fee are to be effective as of March 1, 2000.

The text of the proposed change to the Phlx fee schedule is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Phlx's fee schedule to increase the annual fee to $1,000.00 for registered proprietary traders, *i.e.*, persons who are currently associated with member organizations for which the Exchange is the DEA, but who are not themselves Exchange members, who engage in proprietary trading of equities and options from off-the-floor of the Exchange by filing a Form U–4 and a fingerpint card as well as provide proof of successful completion of the Uniform Registered Representative Examination, Series 7. At this time, the Exchange charges such traders an initial registration fee of $200.00 and an annual fee of $200.00. The initial registration fee applies to persons currently trading from off-the-floor and to persons who register to trade from off-the-floor in the future. The payment of the increased initial registration fee of $1,000.00 will be prerequisite to engaging in trading from off-the-floor of the Exchange.

All such persons who are registered with the Exchange as of April 1st, of each year will be assessed an annual fee of $1,000.00. The fees are proposed to be increased from $200.00 in recognition of the increased costs of administration that the Exchange has been and will be incurring. The Exchange has experienced increased administration costs incurred in conducting background checks on the individuals to whom the fees apply; processing of forms; fingerprint charges; requests for disciplinary history of all current and future off-floor traders to the Central Registration Depository; as well as conducting on-site examinations of the home and branch offices of the various member firms with which off-floor traders associate. During the course of 1999, the Exchange experienced an increase in the number of member organizations utilizing off-floor traders who would be subject to the increased annual charge. Additionally, the Exchange undertook increased administrative and regulatory responsibilities associated with such member organizations and their off-floor traders, including scheduling more frequent compliance inspections.

2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(4), in that it provides for the equitable allocation of resasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder,[6] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-Phlx 00–09, and should be submitted by April 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6315 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3246 (Amendment #1)]

Commonwealth of Kentucky

In accordance with a notice received from the Federal Emergency Management Agency dated March 2, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on February 18, 2000 and continuing through March 2, 2000.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is

April 28, 2000 and for economic injury the deadline is November 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 7, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–6351 Filed 3–14–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3246]

Commonwealth of Kentucky

As a result of the President's major disaster declaration on February 28, 2000, I find that Bath, Boyd, Carter, Fleming, Greenup, Lewis, Mason, Nicholas, Robertson, and Rowan Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe storms and flooding beginning on February 18, 2000 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 28, 2000 and for economic injury until the close of business on November 28, 2000 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bourbon, Bracken, Elliott, Harrison, Lawrence, Menifee, Montgomery, and Morgan Counties in Kentucky and Adams, Brown, Lawrence, and Scioto Counties in Ohio.

Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
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 CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 324606. For economic injury the numbers are 9G8300 for Kentucky and 9G8400 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 2, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–6352 Filed 3–14–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3245]

State of West Virginia

As a result of the President's major disaster declaration on February 28, 2000, and an amendment thereto on the same date, I find that the following counties in the State of West Virginia constitute a disaster area due to damages caused by flooding, severe storms, and landslides beginning on February 18, 2000 and continuing: Barbour, Braxton, Cabell, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Lincoln, Marion, Mason, Monongalia, Putnam, Ritchie, Roane, Tyler, Upshur, Wetzel, and Wirt. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 28, 2000, and for loans for economic injury until the close of business on November 28, 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.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Clay, Fayette, Logan, Marshall, Mingo, Nicholas, Pleasants, Preston, Raleigh, Randolph, Taylor, Tucker, Wayne, Webster, and Wood Counties in West Virginia; Gallia, Lawrence, Meigs, Monroe, and Washington Counties in Ohio; and Fayette and Greene Counties in Pennsylvania.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
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 CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 324506. For economic injury the numbers are 9G8000 for West Virginia, 9G8100 for Ohio, and 9G8200 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 2, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–6350 Filed 3–14–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3255]

Bureau of Economic and Business Affairs; Finding of No Significant Impact: Dakota Gasification Company at Bismarck, North Dakota

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, operate and maintain a pipeline to transport carbon dioxide across the U.S.-Canada border.

SUMMARY: The Department of State has conducted an environmental assessment of the proposed construction by Dakota Gasification Company of a pipeline for the transport of carbon dioxide crossing the international boundary near Crosby, North Dakota. In the course of the Department of State's review of the Environmental Assessment, the

applicant was requested to provide additional information on the issues of environmental justice and alternative pipeline routes. A number of the other U.S. Government agencies involved in the approval process also requested additional information. Dakota Gasification Company provided this information which has been included in the environmental assessment package. This information may be viewed upon request in the Office of International Energy and Commodity Policy at the Department of State.

Based on this information, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the pipeline will not have a significant effect on the existing vegetation and wildlife, water resources, land use, air quality and human population within the United States. In reaching this conclusion, the Department of State considered several alternatives, including a no-action alternative. In accordance with the National Environmental Policy Act, 42 U.S.C. section 4321 *et seq.*, Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13 and Department of State Regulations, 22 CFR 161.8 (C), an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Bill Memler, Office of International Energy Policy, Room 3535, U.S. Department of State, Washington, DC, 20520, (202) 647–4557.

SUPPLEMENTARY INFORMATION: Dakota Gasification Company is a corporation formed under the laws of the State of North Dakota, with its principal place of business in Bismarck, North Dakota. On July 7, 1999, the Department of State published a Notice of Application for a Presidential Permit in the **Federal Register**. No public comments were received and concerned agencies expressed no opposition to issuing the permit. A finding of no significant impact is adopted, and an environmental impact statement will not be prepared.

Dated: March 7, 2000.

Peter E. Bass,

Deputy Assistant Secretary of State for Energy, and Commodities.

[FR Doc. 00–6410 Filed 3–14–00; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF STATE

[Public Notice 3253]

Universal Postal Union Reform Survey

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Wednesday, April 19, 2000, to discuss matters related to its on-going participation in the work of the Universal Postal Union (UPU).

Within the UPU, a ''High Level Group on the Future Development of the UPU'' is reviewing various reform initiatives. The Group has created a questionnaire to solicit the individual opinions of ''stakeholders'' in UPU operations. This questionnaire was sent to about 30 government and private sector agencies in the United States, with the request that the responses be returned to the UPU by March 30, 2000.

The central purpose of this briefing will be to discuss with the U.S. stakeholders the variety of opinions of the UPU that have been expressed, especially in the context of responses to the UPU questionnaire. This briefing will also provide information on other aspects of the High Level Group's work, the March 9 Congressional hearing on international postal policy, and the recent GAO report on this issue. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

The briefing will be held from 2:00 pm until approximately 4:00 pm, on April 19, 2000, in Room 1207 of the Department of State, 2201 C Street, NW, Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on April 18, 2000, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–2752. This request applies to both government and non-government individuals.

All attendees must use the Department of State diplomatic entrance at 22nd and C Streets, NW. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card. Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–2752.

Dated: March 7, 2000.

Lynne Lambert,

Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 00–6408 Filed 3–14–00; 8:45 am]

BILLING CODE 4710–19–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Pike County, KY and Mingo County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pike County, Kentucky and Mingo County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Jesse Story, Division Administrator, Federal Highway Administration, 330 West Broadway, Frankfort, Kentucky, 40601, (502) 223–6721, e-mail: jesse.story@fhwa.dot.gov; or John Bowlin, Project Manager, Kentucky Transportation Cabinet, District 12 Pikeville, P.O. Box 2468, Pikeville, Kentucky, 41502, (606) 785–9466, e-mail: jbowlin@mail.kytc.state.ky.us.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov.nara.*

Background

The FHWA, in cooperation with the Kentucky Transportation Cabinet (KYTC) and the West Virginia Division of Highways (WVDOH), will prepare an environmental impact statement (EIS) on a proposed highway project to construct a segment of Interstate Highway I–66 (Transamerica Transportation Corridor) between western Pike County, Kentucky and eastern Mingo County, West Virginia. The proposed project would involve the construction of a 4-line, controlled access highway on new location between US 23/119 southwest of Pikeville, Kentucky to the proposed

Interstate Highway I–73 (King Coal Highway) in Mingo County, West Virginia. The proposed project is approximately 30 miles (48 kilometers) in length. This Interstate highway construction project is considered necessary to improve and promote economic development opportunities in a severely depressed area of Appalachia, improve regional accessibility and east-west National Highway System connectivity, reduce travel time and distance, improve highway safety for the traveling public, increase tourism, and provide for National defense objectives throughout the region.

Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; and (3) constructing a 4-lane, controlled access highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade, typical sections, and alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal during the previous project planning phase. Project scoping meetings will be held in the project area in the Spring of 2000 and a series of public meetings and public hearings will be held in conjunction with preliminary design and EIS phase activities. Public notice of the time and place of all public meetings and hearings will be given in accordance with FHWA, KYTC, and WVDOH policies and regulations. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.) (23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 9, 2000.

Jesse A. Story,

Kentucky Division Administrator, Frankfort.

[FR Doc. 00–6334 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6269; Notice 2]

IMPCO Technologies; Grant of Application for Decision of Inconsequential Noncompliance

IMPCO Technologies (IMPCO), of Irvine, California, has determined that a number of model year (MY) 1997 and (MY) 1998 bi-fueled compressed natural gas (CNG) Chevrolet/GMC C2500 and Sierra model pickup trucks that it altered do not meet the requirements of S5.3 and S5.4 of 49 CFR 571.303, Federal Motor Vehicle Safety Standard (FMVSS) No. 303, ''Fuel System Integrity of Compressed Natural Gas Vehicles.'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published, with a 30-day comment period, on October 7, 1999, in the **Federal Register** (64 FR 54726). NHTSA received one comment from General Motors Corporation (GM) during the 30-day comment period. GM agreed with IMPCO that the labels and owner's manual supplement information provided with the vehicles were responsive to and consistent with the rationale and intent of FMVSS No. 303.

FMVSS No. 303, S5.3, requires that CNG vehicles shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2.

S5.3.1 requires the statement: ''Service pressure _____ kPa (_____ psig),'' and S5.3.2 requires the statement ''See instructions on fuel container for inspection and service life.''

S5.4 requires that, when a motor vehicle is delivered to the first purchaser, for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document.

IMPCO notified the National Highway Traffic Safety Administration that it altered 400 MY 1997 and 285 MY 1998 Chevrolet/GMC C2500 and Sierra model pickup trucks that did not fully comply with the labeling requirements specified in 49 CFR 571.303. IMPCO stated that, as altered, the noncompliance consists of deviations from the wording required on the CNG vehicle label and in the owner's manual.

IMPCO explained that an out-of-date version of FMVSS No. 303, which did not contain specific requirements, was used by the supplier that prepared the label and owner's manual supplement. As a result, the CNG vehicle label applied near the refueling connection, and the owner's manual for the subject vehicles, did not contain the exact statements required by FMVSS No. 303, S5.3 and S5.4.

The required words and actual words used by IMPCO are shown as follows:

FMVSS paragraph	Required label wording	1997 and 1998 bi-fuel truck label wording
S5.3.1	SERVICE PRESSURE 24820 kPa (3600 psig)	3600 PSI SYSTEM OPERATING PRESSURE
S5.3.2	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	SEE CNG OWNERS MANUAL SUPPLEMENT FOR FUEL TANK SERVICE LIFE.

FMVSS paragraph	Required owner's manual wording	CNG truck owner's manual wording	1997 manual	1998 manual
S5.4	SERVICE PRESSURE 24820 kPa (3600 psig).	This system operates at pressures up to 3600 PSI (24.8 MPa). (p. iv).	X	X
		The CNG fuel system is designed to use a fill pressure of 3,600 psi (24.8 Mpa) at 70°F (21°C) (P. 6–3).	.....	X
		13.2 gallons (equivalent) (50 L) at 3600 psi (24.8 Mpa) and 70°F (21°C) (page 6–6).	X	.....
		13 GGE (Gasoline Gallon Equivalent) (49 L) at 3600 psi (24.8 Mpa) and 70°F (21°C). (page 6–6).	.....	X
		3600 PSI SYSTEM PRESSURE (page 7–7)	X	X

FMVSS Paragraph	Required owner's manual wording	CNG truck owner's manual wording	1997 manual	1998 manual
S5.4	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	A trained technician must remove the tank cover and perfrom a CNG fuel tank and mounting bracket inspection every three years or 36,000 miles (60,000 km) whichever comes first. (Page 7–6).	X	X
		The CNG fuel tank has a service life of 15 years. After the tank expiration date, the tank must be replaced by an authorized GM dealer. (Page 7–7).	X	X
		This (expiration) date is listed on the fuel tank and the fuel tank cover label. (Page 7–7).	X	.....
		This (expiration) date is listed on the fuel tank and the fuel tank, the fuel fill door label and the under-hood bi-fuel information label. (Page 7–7).	.....	X
		CNG Fuel Tank Inspection Record (page 7–8)	X	X

IMPCO supported its application with the following arguments:

IMPCO believes that the labels and owner's manual supplement information provided with these vehicles are responsive and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used. The actual labels and the owner's manual supplement provide equivalent information required by FMVSS 303, S5.3 and S5.4. The CNG refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. Both the refueling valve and the under-hood labels include the service expiration date and the owners manual indicates the service life, inspection information, and provide a form to record the expiration date.

Virtually all CNG refueling stations incorporate an overfill protection system. Granted, a few CNG fill stations exist that are capable of providing a fill greater than 3,000 psi, however, the vehicle fill valve is designed to be incompatible with fill stations that have a fill pressure greater than the vehicle's rated service pressure. For example, a vehicle with a fill valve rated at 3,600 psi would be capable of filling at a 3,600, 3,000 or 2,400 psi fill station. However, it would be incapable of filling at a 5,000 psi fill station.

Also, the subject vehicles are equipped with a CNG container validated up to 200 percent of the service pressure without leakage as required by FMVSS 304, S7.2.2 for such containers. Thus, even in the unlikely event of an overfill, the CNG containers are designed to provide adequate protection. IMPCO has not received any reports of injuries or property damage associated with overfilling of these vehicles and believes it is extremely remote that these deviations from FMVSS 303 label and owner's manual requirements could contribute to an injury or property damage incident.

For all of these reasons, IMPCO believes that this noncompliance is inconsequential to motor vehicle safety. Accordingly, IMPCO petitions that it be exempted from the remedy and recall provisions of the Motor Vehicle Safety Act in this case.

We have reviewed IMPCO's arguments. The primary safety purpose of labeling requirements in FMVSS No. 303 is to ensure that the vehicle owner is aware (1) of the service pressure during refueling operations and (2) that the CNG fuel container has a recommended inspection period and a service life. NHTSA concludes that the labels and owner's manual supplement information provided with these vehicles are consistent with the rationale and intent of the labeling requirements in FMVSS No. 303, even though the exact words required by the standard are not used.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described above 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, 30120, with delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 7, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–6061 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20962]

Tedesco Family ESB Trust–Control–Funaway Tours of New Jersey, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving Finance Application.

SUMMARY: Tedesco Family ESB Trust, Francis Tedesco and Mark Tedesco, settlers, of Hoboken, NJ (Tedesco Trust), a noncarrier, and Franmar Logistics, Inc., of Hoboken, NJ (Franmar), its noncarrier subsidiary, seek approval under 49 U.S.C. 14303(a) for their control of Franmar's noncarrier subsidiary, Consolidated Bus Service, Inc. (Consolidated), upon Consolidated's acquisition of the operating authority and other property of Funaway Tours of New Jersey, Inc., of New York, NY (Funaway), a motor carrier of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 1, 2000. Applicants may file a reply by May 16, 2000. If no comments are filed by May 1, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20962 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD

for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Tedesco Trust is a noncarrier, which directly controls Academy Bus Tours, Inc. (MC–165004) and Academy Lines, Inc. (MC–106207), and which, through Franmar, controls Academy Bus Tours, Inc. (PA) (MC–215354), Academy Express, Inc. (MC–228481), Commuter Bus Line, Inc. (MC–162133), and No. 22 Hillside Corp. (MC–182453). The six carriers controlled directly or indirectly by Tedesco Trust (which include the four carriers controlled by Franmar) provide either local commuter bus service and other regular-route service or conduct special or charter operations, or a combination of both. Collectively, these carriers operate between New York, NY, and various points in New Jersey and Pennsylvania.

Franmar also controls Consolidated, a noncarrier, which is proposing to acquire the property of Funaway, including its operating authority. Funaway holds federally issued operating authority in Docket No. MC–174942 authorizing it to provide regular-route service between New York, NY, and Atlantic City, NJ, and to conduct special and charter operations. Funaway also holds New York intrastate authority to conduct special and charter operations.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2 to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges, or adversely impact the interests of the employees. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from the applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 1, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: March 6, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–5918 Filed 3–14–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–18]

Geographic Boundaries of Customs Brokerage, Cartage, and Lighterage Districts

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document informs the public of the geographic areas covered for purposes of customs broker permits and for certain cartage and lighterage purposes where the word ''district'' appears in the Customs Regulations.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Office of Regulations and Rulings (202) 927–2320.

SUPPLEMENTARY INFORMATION:

Background

In Treasury Decisions 95–77 and 95–78 published in the **Federal Register** on September 27, 1995, at 60 FR 50008 and 60 FR 50020, respectively, Customs amended its regulations to reflect its new organizational structure. Concerning this reorganization, Customs pointed out that, although the concepts of districts and regions would, for the most part, be eliminated, they would still exist for certain limited purposes concerning customs broker permits and cartage and lighterage licensing. In addition, in the same issue of the **Federal Register** Customs published a general notice (60 FR 49971) that informed the public of the geographic areas covered for purposes of those customs broker permit and cartage and lighterage licensing purposes where the word ''district'' appears in the Customs Regulations. This document republishes the information contained in that 1995 notice.

In the table set forth below, which is arranged alphabetically by State or other geographic location, each of the service ports listed in the left column represents a ''district'' for purposes of §§ 111.1 and 112.1 of the Customs Regulations (19 CFR 111.1 and 112.1), and the ports of entry listed to the right of each service port represent the ports within that ''district.''

Service ports	Ports of entry
Alabama	
Mobile	Birmingham. Gulfport, MS. Huntsville. Mobile. Pascagoula, MS.
Alaska	
Anchorage	Alcan. Anchorage. Dalton Cache. Fairbanks. Juneau. Ketchikan. Sitka. Skagway. Valdez. Wrangell.
Arizona	
Nogales	Douglas. Lukeville. Naco. Nogales. Phoenix. San Luis. Sasabe.

Service ports	Ports of entry
	Tucson.
California	
Los Angeles	Los Angeles-Long Beach. LAX. Las Vegas, NV. Port Hueneme. Port San Luis.
San Diego. Andrade. Calexico. Tecate..	
San Francisco. Eureka. Fresno. Reno, NV. San Francisco-Oakland..	
District of Columbia	
Dulles	Alexandria, VA. Dulles, VA.
Florida	
Miami	Key West. Miami. Port Everglades. West Palm Beach.
	Tampa. Boca Grande. Fernandina Beach. Jacksonville. Orlando. Panama City. Pensacola. Port Canaveral. Port Manatee. St. Petersburg. Tampa.
Georgia	
Savannah	Atlanta. Brunswick. Savannah.
Hawaii	
Honolulu	Hilo. Honolulu. Kahului Nawilliwili-Port Allen.
Illinois	
Chicago	Chicago. Davenport, IA-Moline and Rock Island. Des Moines, IA. Omaha NE. Peoria. Rockford.
Louisiana	
New Orleans	Baton Rouge. Chattanooga, TN. Gramercy. Greenville, MS. Knoxville, TN. Lake Charles. Little Rock-North Little Rock, AR. Memphis, TN. Morgan City. Nashville, TN. New Orleans. Shreveport-Bossier City. Vicksburg, MS.
Maine	
Portland	Bangor. Bar Harbor. Bath. Belfast. Bridgewater. Calais. Eastport. Fort Fairfield. Fort Kent. Houlton. Jackman. Jonesport. Limestone. Madawaska. Portland. Portsmouth, NH. Rockland. Van Buren. Vanceboro.
Maryland	
Baltimore	Annapolis.
	Baltimore. Cambridge.
Massachusetts	
Boston	Boston.
	Bridgeport, CT. Fall River. Gloucester. Hartford, CT. Lawrence. New Bedford. New Haven, CT. New London, CT. Plymouth. Salem. Springfield. Worcester.
Michigan	
Detroit	Battle Creek.
	Detroit. Grand Rapids. Muskegon. Port Huron. Saginaw-Bay City-Flint. Sault Ste. Marie.
Minnesota	
Duluth	Ashland, WI. Duluth and Superior, WI. Grand Portage. International Falls-Ranier.
Minneapolis.	Minneapolis-St. Paul.
Missouri	
St. Louis	Kansas, City St. Joseph. St. Louis. St. Wichita.
Montana	
Great Falls	Butte. Del Bonita. Denver, CO. Eastport, ID. Great Falls. Morgan. Opheim. Piegan. Porthill, ID. Raymond. Roosville. Salt Lake City, UT. Scobey. Sweetgrass. Turner. Whitetail. Whitlash.
New York	
Buffalo	Buffalo-Niagara Falls. Oswego. Rochester. Sodus Point. Syracuse. Utica.
Champlain	Alexandria Bay. Cape Vincent. Champlain-Rouses Point. Clayton. Massena. Ogdensburg. Trout River.
JFK/New York/Newark.	Albany.
	New York/Newark, NJ. JFK. Perth Amboy, NJ.
North Carolina	
Charlotte	Beaufort-Morehead City.

Service ports	Ports of entry
	Charlotte.
	Durham.
	Reidsville.
	Wilmington.
	Winston-Salem.
North Dakota	
Pembina	Ambrose.
	Antler.
	Baudette, MN.
	Carbury.
	Dunseith.
	Fortuna.
	Hannah.
	Hansboro.
	Maida.
	Neche.
	Noonan.
	Northgate.
	Noyes, MN.
	Pembina.
	Pinecreek, MN.
	Portal.
	Roseau, MN.
	Sarles.
	Sherwood.
	St. John.
	Walhalla.
	Warroad, MN.
	Westhope.
Ohio	
Cleveland	Ashtabula/Conneaut.
	Cincinnati-Lawrenceburg, IN.
	Cleveland.
	Columbus.
	Dayton.
	Erie, PA.
	Indianapolis, IN.
	Louisville, KY.
	Owensboro, KY-Evansville, IN.
	Toledo-Sandusky.
Oregon	
Portland	Astoria.
	Boise, ID.
	Coos Bay.
	Longview.
	Newport.
	Portland
Pennsylvania	
Philadelphia	Harrisburg.
	Lehigh Valley.
	Philadelphia-Chester, PA and Wilmington, DE.
	Pittsburgh.
	Wilkes-Barre/Scranton.
Puerto Rico	
San Juan	Aquadilla.
	Fajardo.
	Guanica.
	Humacao.
	Jobos.
	Mayaguez.
	Ponce.
	San Juan.
Rhode Island	
Providence	Newport.
	Providence.
South Carolina	
Charleston	Charleston.
	Columbia.
	Georgetown.
	Greenville-Spartenburg.
Texas	
Dallas	Amarillo.
	Austin.
	Dallas/Fort Worth.
	Lubbock.
	Oklahoma City, OK.
	San Antonio.
	Tulsa, OK.
El Paso	Albuquerque, NM.
	Columbus, NM.
	El Paso.
	Fabens.
	Presidio.
	Santa Teresa, NM.
Houston	Houston-Galveston.
Port Arthur*	Port Arthur.
Laredo	Brownsville.
	Del Rio.
	Eagle Pass.
	Hidalgo.
	Laredo.
	Progreso.
	Rio Grande City.
	Roma.
Vermont	
St. Albans	Beecher Falls.
	Burlington.
	Derby Line.
	Highgate Springs-Alburg.
	Norton.
	Richford.
	St. Albans.
Virginia	
Norfolk	Charleston, WV.
	Front Royal.
	Norfolk-Newport News.
	Richmond-Petersburg.
Virgin Islands, U.S.	
Charlotte Amalie	Charlotte Amalie, St. Thomas.
	Christiansted, St. Croix.
	Coral Bay, St. John.
	Cruz Bay, St. John.
	Frederiksted, St. Croix.
Washington	
Seattle	Aberdeen.
	Blaine.
	Boundary.
	Danville.
	Ferry.
	Frontier.
	Laurier.
	Lynden.
	Metaline Falls.
	Nighthawk.
	Oroville.
	Point Roberts.
	Puget Sound.
	Spokane.
	Sumas.
Wisconsin	
Milwaukee	Green Bay.
	Manitowoc.
	Marinette.
	Milwaukee.
	Racine.
	Sheboygan.

*Not a Service Port

Dated: March 9, 2000.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 00–6263 Filed 3–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds-Terminations: Arkwright Mutual Insurance Company and Protection Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 15 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304—9308, to qualify as acceptable

sureties on Federal bonds are terminated effective today.

The Companies were last listed as acceptable sureties on Federal bonds at 64 FR on pages 35868 and 35886, July 1, 1999.

With respect to any bonds currently in force with above listed companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies.

In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 3, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6299 Filed 3–14–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds-Name Change: Allendale Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Allendale Mutual Insurance Company, a Rhode Island corporation, has formally changed its name to Factory Mutual Insurance Company, effective July 1, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35865, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Factory Mutual Insurance Company, Johnston, Rhode Island. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $114,720,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35874 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 3, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6298 Filed 3–14–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal; Western Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 and 9308. Federal Bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35893 to reflect this addition:

Western Insurance Company. Business Address: P.O. Box 21030, Reno, NV 89515. Phone: (775) 829–6650.
Underwriting Limitation b/: $291,000. Surety Licenses *c*/: NV. Incorporated in: Nevada.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 3, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6297 Filed 3–14–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8288–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by Code section 1445.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,079.

Estimated Time Per Respondent: 5 hr., 5 min.

Estimated Total Annual Burden Hours: 25,852.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6270 Filed 3–14–00; 8: 45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8288 and 8288–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288) and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).

OMB Number: 1545–0902

Form Number: 8288 and 8288–A

Abstract: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Current Actions: An optional box for the phone number of the buyer or other transferee was added in Part I and Part II at the request of the FIRPTA Unit in Philadelphia.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,918.

Estimated Time Per Respondent: 22 hr., 36 min.

Estimated Total Annual Burden Hours: 111,161.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6271 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4797, Sales of Business Property.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545–0184.

Form Number: 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 1,396,388.

Estimated Time Per Respondent: 59 hr., 46 min.

Estimated Total Annual Burden Hours: 83,462,111.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6272 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–p

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582, Passive Activity Loss Limitations.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Loss Limitations.

OMB Number: 1545–1008.

Form Number: 8582.

Abstract: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 4,500,000.

Estimated Time Per Respondent: 4 hr., 49 min.

Estimated Total Annual Burden Hours: 21,660,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6273 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506–A, Request for Public Inspection or Copy of Exempt Organization Tax Form.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Public Inspection or Copy of Exempt Organization Tax Form.

OMB Number: 1545–0495

Form Number: 4506–A

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 36 min.

Estimated Total Annual Burden Hours: 12,000

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6274 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5452, Corporate Report of Nondividend Distributions.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Report of Nondividend Distributions.

OMB Number: 1545–0205.

Form Number: 5452.

Abstract: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Responses: 1,700.

Estimated Time Per Response: 31 hrs., 51 min.

Estimated Total Annual Burden Hours: 54,145.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6275 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8271

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8271, Investor Reporting of Tax Shelter Registration Number.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investor Reporting of Tax Shelter Registration Number.

OMB Number: 1545–0881.

Form Number: 8271.

Abstract: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their tax return from a tax shelter required to be registered under Internal Revenue Code section 6111 must report the tax shelter registration number to the IRS. Form 8271 is used for this purpose. The IRS uses the information provided on Form 8271 to identify the tax shelter from which the benefits are claimed and to determine if any compliance actions are needed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Responses: 297,500.

Estimated Time Per Respondent: 41 minutes.

Estimated Total Annual Burden Hours: 205,275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6276 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5213

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5213, Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

OMB Number: 1545–0195.

Form Number: 5213.

Abstract: Section 183 of the Internal Revenue Code allows taxpayers to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,730.

Estimated Time Per Respondent: 46 minutes.

Estimated Total Annual Burden Hours: 8,262.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6277 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545–0865.

Form Numbers: 8264.

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Numbered Time Per Respondent: 34 hours, 58 minutes.

Estimated Total Annual Burden Hours: 34,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6278 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8827

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8827, Credit for Prior Year Minimum Tax—Corporations.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Prior Year Minimum Tax—Corporations.

OMB Number: 1545–1257.

Form Number: 8827.

Abstract: Internal Revenue Code Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year. Form 8827 is used by corporations to compute the minimum tax credit, if any, for alternative minimum tax incurred in prior tax years and to compute any minimum tax credit carryforward.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

ESTIMATED NUMBER OF RESPONDENTS: 25,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6279 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
March 15, 2000

Part II

Department of the Interior

Minerals Management Service

30 CFR Part 206

Establishing Oil Value for Royalty Due on Federal Leases; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations regarding valuation, for royalty purposes, of crude oil produced from Federal leases. MMS is changing the way that oil not sold under an arm's-length contract is valued; providing optional ways for lessees to value their crude oil production if they sell it at arm's length following one or more arm's-length exchanges or one or more transfers between affiliates; changing the way that actual transportation costs are calculated; changing the definition of ''affiliate'' because of a recent judicial decision; clarifying that it will issue binding value determinations; and adding specific regulatory language regarding the issue of ''second-guessing'' a sale under an arm's-length contract. These amendments are intended to assure that royalties on Federal oil production are based on a fair value and to otherwise simplify and improve the rule.

EFFECTIVE DATE: This rule is effective June 1, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, phone (303) 231–3432, FAX (303) 231–3385, e-Mail david.guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are David A. Hubbard and Deborah Gibbs Tschudy of the Royalty Management Program (RMP) and Peter Schaumberg and Geoffrey Heath of the Office of the Solicitor in Washington, DC.

I. Background

This final rule establishes new royalty valuation procedures for crude oil produced from Federal onshore and offshore leases. This rule does not apply to oil produced from Indian leases. It replaces valuation rules in 30 CFR part 206 that have been in effect since March 1, 1988 (the 1988 rules).

The 1988 rules were developed based on the concept that gross proceeds received under an arm's-length contract represented the best measure of the value of production for royalty purposes. Further, those rules implicitly assumed the existence of a competitive and transparent market at the lease (or in the field or area) that could be used to determine the value of production not sold at arm's length.

Based on our research, we believe the main general characteristics of competitive markets include: (1) A large number of sellers, no one of whom commands a large share of the total market; (2) functional identity of different sellers' products; (3) a large enough number of buyers that sellers and buyers do not establish personal relationships with one another and no one buyer commands a large share of the total market; and (4) buyers who are well informed about the prices of different sellers. In fact, the Federal crude oil market today is dominated by large integrated producers/refiners who do command a large share of the total market. Further, because of the proprietary nature of individual contract sales of crude oil, clearly there is no sharing of price data at the lease, and none of the other conditions for a competitive domestic oil market may exist. The comments submitted throughout this 4-plus-year rulemaking effort did not demonstrate that as a general rule a competitive market exists at the lease.

The overall lack of a truly competitive market at the lease has been compounded by the significant changes that occurred in the domestic industry during the 1980's and early 1990's, which had a profound effect on how crude oil is marketed today. These changes included: (1) The major oil companies' creation of separate affiliates for production, marketing and refining; (2) overall decline in domestic production and increased dependence on foreign imports and influence of international trading practices on domestic supply; (3) sharply increased volatility of oil prices marked by the price collapse in early 1986 (the last year in which posted prices exceeded spot market prices), and the rapid rise and decline in prices in late 1990 and early 1991 in response to the Gulf War; (4) entry and expansion of resellers, traders, and brokers who bought, transported, and sold domestic crude oil, taking advantage of pricing and location discrepancies in much the same way such entities operated on the international market; and (5) development of a futures market for crude oil which alleviated many of the risks of spot trading. While many of these factors may be seen as increasing the level of competition, none of them served to increase the level of price transparency (*i.e.*, the ability to discern the prices actually paid) at the lease or field or to simplify application of the existing oil valuation rules.

The 1988 rules placed heavy emphasis on posted prices as a measure of royalty value, particularly when valuing oil disposed of non-arm's-length and under no-sales conditions. Posted prices historically were the primary mechanism for pricing domestic crude oil before the 1980's. However, with the disruption of global petroleum supplies in the 1970's and decontrol of domestic crude oil prices in 1981, the domestic petroleum industry began moving away from posted prices and towards the spot and futures markets to buy and sell crude oil. In fact, studies commissioned by States and advice from MMS consultants (Innovation & Information Consultants, Inc.; Micronomics, Inc.; Reed Consulting Group; and Summit Resource Management, Inc.) found that: (1) Sales prices often are above posted prices and are linked, in some form, to market prices, such as spot or futures prices, or represent premiums over posted prices; (2) major producers have few truly outright sales; (3) most major producers use buy/sell exchanges; (4) there are regional differences in the domestic crude oil market, particularly on the West Coast and in the Rocky Mountain Region (RMR), owing to differences in market concentration and availability of transportation options; and (5) posted prices have become a progressively less reliable indicator of the market value of crude oil since the late 1980s.

Development of the futures market and comprehensive publication of spot prices increased the market transparency of crude oil clearing prices. As a result, market participants became less willing to accept long-term sales contracts at fixed prices and instead negotiated short-term contracts with sales prices linked to spot or futures prices or to premia over posted prices. Major oil companies, however, generally continued to pay royalties on their production transferred non-arm's-length based on posted prices.

Recognizing that posted prices no longer reflected market value, State and private royalty owners in Alaska, California, Louisiana, New Mexico, and Texas brought lawsuits against several major oil companies over improper oil valuation and underpaid royalties. These lawsuits resulted in several oil companies paying additional royalties and some adjusting their posted prices to better reflect market value.

The majority of Federal lease oil production is not sold at arm's length at or near the lease. Most oil production

from Federal leases is either moved directly to a refinery without a sale or disposed of under an exchange agreement (*e.g.*, buy/sell agreements) in which the lessee exchanges oil at one location for oil at another location. Exchange agreements frequently do not reference a price, but rather only the relative difference in the value of crude oils exchanged and thereby obscure the oil's actual market value. When the agreement does state a price but is conditioned upon the lessee's purchase of crude oil at a subsequent exchange point, the price specified in the exchange agreement does not necessarily represent the value of the oil. In a buy-sell exchange, the parties may state any base price they wish, because their primary concern is the difference in value between the oil sold and the oil purchased.

This rulemaking amends the current regulations by eliminating posted prices as a measure of value and relying instead on arm's-length sales prices and spot market prices as market value indicators. Today, spot prices are readily available to industry participants via price reporting services, and these and similar indicators play a significant role in crude oil marketing in terms of negotiating deals and prices.

Comments received during the rulemaking process made it apparent that regional differences exist in the domestic crude oil market. These differences are due in large part to geographic isolation of markets. Accordingly, the new rules establish different valuation procedures for three different regions: California and Alaska, the RMR, and the rest of the country.

MMS is adopting large portions of the February 1998 proposal, with certain modifications arising from:

(1) The outline published in the March 12, 1999 notice of reopening of public comment period and notice of workshops;

(2) The supplementary proposed rule published on December 30, 1999; and

(3) Our responses to public comment.

II. History of This Rulemaking

MMS published an advance notice of its intent to amend the 1988 rules on December 20, 1995 (60 FR 65610). The purpose of that notice was to solicit comments on new methodologies to establish the royalty value of Federal (and Indian) crude oil production in view of the changes in the domestic petroleum market and particularly the market's move away from posted prices as an indicator of market value. The comment period on this advance notice closed on March 19, 1996.

Based on comments received on the advance notice, together with information gained from a number of presentations by experts in the oil marketing business, MMS published its initial notice of proposed rulemaking on January 24, 1997 (62 FR 3742). That proposal, applicable both to Federal and Indian leases, set out specific valuation procedures that focused on New York Mercantile Exchange (NYMEX) prices and Alaska North Slope (ANS) spot prices as value indicators, depending on the location of the production. It also clarified the lessee's duty to market the production at no cost to the Federal Government and required the lessee to use actual transportation costs instead of FERC tariffs for transportation allowances. The comment period for that proposal was to expire March 25, 1997, but was twice extended—first to April 28, 1997 (62 FR 7189), and then to May 28, 1997 (62 FR 19966). MMS held public meetings in Lakewood, Colorado, on April 15, 1997, and Houston, Texas, on April 17, 1997, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, MMS published a supplementary proposed rule on July 3, 1997 (62 FR 36030). That proposal expanded the eligibility requirements for valuing oil disposed of under arm's-length transactions. The comment period on that proposal closed August 4, 1997.

Because of the substantial comments received on both proposals, MMS reopened the rulemaking to public comment on September 22, 1997 (62 FR 49460). MMS specifically requested comments on five valuation alternatives arising from the public comments. The initial comment period for that request was to close October 22, 1997, but was extended to November 5, 1997 (62 FR 55198). During the comment period MMS held seven public workshops to discuss valuation alternatives: in Lakewood, Colorado on September 30 and October 1, 1997 (62 FR 50544); Houston, Texas, on October 7 and 8, 1997, and again on October 14, 1997 (62 FR 50544); Bakersfield, California, on October 16, 1997 (62 FR 52518); Casper, Wyoming, on October 16, 1997 (62 FR 52518); Roswell, New Mexico, on October 21, 1997 (62 FR 55198); and Washington, DC on October 27, 1997 (62 FR 52518).

As a result of comments received on the proposed alternatives and comments made at the public workshops, MMS published a second supplementary proposed rule on February 6, 1998 (63 FR 6113), applicable to Federal leases only. The comment period for this second supplementary proposed rule was to close on March 23, 1998, but was extended to April 7, 1998 (63 FR 14057). MMS held five public workshops (63 FR 6887) on the second supplementary proposed rule, as follows: Houston, Texas, on February 18, 1998; Washington, DC on February 25, 1998; Lakewood,Colorado on March 2, 1998; Bakersfield, California, on March 11, 1998; and Casper, Wyoming, on March 12, 1998. In April 1998, before MMS could fully consider comments on the revised proposal and publish a final rule, Congress added a rider to a Fiscal Year 1998 emergency supplemental spending measure that barred MMS from implementing the rule until October 1, 1998.

Based on a request by Senator Breaux (Louisiana) to hold a meeting between industry and the Department of the Interior (DOI) to explain the direction DOI was going in the final rule, MMS once again opened the public comment period, from July 9 through July 24, 1998 (63 FR 36868). MMS participated in an initial meeting with various Senators and oil industry representatives on July 9, 1998.

On July 16, 1998, as a result of comments during the prior comment period and feedback from the July 9 meeting, MMS published a further supplementary proposed rule (63 FR 38355) that clarified some of the changes MMS intended to make when the proposed rule became final.

On July 21, 1998, Representatives Miller (California) and Maloney (New York) sponsored a meeting between DOI, States, the Indian community, and multiple special interest groups. In that meeting DOI received a variety of comments in support of its efforts to move forward with the rule and against some of the changes promoted by industry.

On July 22, 1998, MMS participated in a second meeting with U.S. Senators and oil industry representatives. That meeting involved further discussion of industry's issues and recommendations regarding the proposed rule. MMS immediately developed written responses to each industry issue and recommendation based on its published statements in prior proposed rules. MMS also extended the comment period for the proposed rule from July 24 until July 31, 1998 (63 FR 40073), to permit comment on the industry recommendations and MMS's responses.

On July 28, 1998, MMS and Departmental officials met with Senate staff members to further explain the content and rationale of the proposed rule. The notes from all of these

meetings were posted on MMS's Internet Homepage for interested parties to review during the comment period.

On August 31, 1998, the Assistant Secretary for Land and Minerals Management wrote a letter to members of the Senate outlining the direction the final rule might take on several of the major issues. On October 8, 1998, the President signed the FY 1999 Department of the Interior Appropriations Act that contained language extending the moratorium prohibiting MMS from publishing a final rule until June 1, 1999. On March 4, 1999, the Secretary announced a reopening of the comment period in response to requests by members of Congress and parties interested in moving the process forward to publish a final rule. The MMS published a **Federal Register** Notice on March 12, 1999 (64 FR 12267), reopening the comment period through April 12, 1999 (64 FR 17990), and announced that it would hold public workshops in Houston, Texas; Albuquerque, New Mexico; and Washington, DC to discuss specific areas of the rule. The MMS extended the comment period through April 27, 1999, to provide commenters adequate time to provide comments following the workshops.

In a supplemental appropriations bill in May 1999, Congress extended the moratorium on publishing a final rule until October 1, 1999. In the FY 2000 Department of the Interior Appropriations Act, Congress further extended the moratorium until March 15, 2000. On December 30, 1999, MMS published a further supplemental proposed rulemaking (64 FR 73820) that proposed changes and otherwise addressed comments received during the comment period that ended April 27, 1999. The comment period for the further supplemental proposed rule closed January 31, 2000. During this comment period, MMS held three public workshops on the new proposal: in Denver, Colorado on January 18, 2000; Houston, Texas on January 19, 2000; and Washington, DC on January 20, 2000. Comments received during this latest comment period are addressed in this preamble.

The February 6, 1998, proposal, as modified by the July 16, 1998, further supplementary proposed rule, the December 30, 1999 further supplementary proposed rule, and through consideration of all comments received during the rulemaking process, led to the rule adopted here.

In the following discussion, we use the conventions shown in the following table:

When we say—	We mean—
The January 1997 proposal.	The January 24, 1997, proposed rule.
The July 1997 proposal.	The July 3, 1997, supplementary proposed rule.
The September 1997 notice.	The September 22, 1997, notice reopening the public comment period.
The February 1998 proposal.	The February 6, 1998, supplementary proposed rule.
The July 1998 proposal.	The July 16, 1998, supplementary proposed rule.
The March 1999 notice.	The March 12, 1999, notice of reopening of public comment and notice of workshops.
The December 1999 proposal.	The December 30, 1999, supplementary proposed rule.

III. Responses to Public Comments on January 1997 Proposal

Summary of Proposed Rule

The January 1997 proposal retained the concept of using gross proceeds as a valid measure of royalty value, but limited the application of gross proceeds valuation to those producers who sell their production at arm's length and otherwise do not purchase crude oil. Where oil is not disposed of at arm's length, new methods would apply. For sales to non-refiner affiliates, the valuation method would be the affiliate's arm's-length resale. Alternatively, the lessee could base value on NYMEX prices or, in California, ANS spot prices. For affiliated refiners for oil not produced in California, value would be based on a monthly average of daily NYMEX settle prices adjusted for location and quality differences. For affiliated refiners in California, value would be the ANS spot price less appropriate location/quality differentials. Differentials would be derived from published data and information collected by MMS. All oil subject to exchange agreements or crude oil calls would be valued under the non-arm's-length and no-sales procedures.

The January 1997 proposal also:

- Reiterated the lessee's duty to market the produced oil at no cost to the Federal Government consistent with implied lease covenants.
- Eliminated the specific language permitting lessees to apply for use of FERC- or State-approved tariffs for transportation allowances in lieu of their actual costs.
- Required the submittal of a new Form MMS–4415, Oil Location Differential Report, to support location and quality differentials when valuing oil under the index price (NYMEX and ANS) methods.

MMS received more than 2,000 pages of comments on this initial proposed rule. The comments fell into 18 topical categories (a through r below). Each topic begins with a description of the issue and is followed by a summary of comments and MMS's response.

(a) MMS's Rationale for Proposed Rule

Summary of Comments: Twenty-seven respondents, mostly from industry, commented on MMS's premises for the proposed rules. All except one challenged the proposed rule's rationale and concepts to one degree or another. Comments were lengthy, with several commenters making similar observations. The comments had the following themes:

- MMS does not show a need to depart from existing rules or disclose any material foundation for the proposed rule. Nor does MMS show that lease markets no longer exist or that wellhead sales don't represent market value. Reciprocal or other oil-purchase transactions do not indicate that lessees are manipulating contract prices; MMS offers no proof of lessee misconduct or price collusion. MMS's consultants were allied on one side of a vigorous debate over lease market pricing.
- Index prices are not comparable to transactions in the lease market and do not reflect the same supply and demand factors. There is an active and viable lease market with many arm's-length sales to establish value.
- The limitation on arm's-length valuation is too severe and unfounded. Almost all producers buy oil for reasons unconnected with pricing schemes (*e.g.,* for lease use or blending purposes).
- It is still feasible to value non-arm's-length sales by comparison to arm's-length sales. The existing valuation rules remain workable; they provide adequate safeguards for cases where gross proceeds don't reflect total consideration.

MMS Response: MMS's reasons for issuing new rules are given in the Background section of this preamble. The need for new rules arises not only from changes in the petroleum industry's marketing practices, but also from the facts that: (1) The old rules were developed on the premise that posted prices fairly represented market value and that there were competitive local markets; (2) exchange agreements and other oil disposal transactions have become more and more problematic to use as the basis of royalty value; and (3) transactions based on spot prices, premiums above posted prices, and other index prices dominate the manner in which crude oil is sold today. For all of these reasons, the old rules were

becoming less effective in determining fair value for royalty purposes. The new rules attempt to bring the valuation procedure in step with actual market practices.

MMS does not assert that no local markets exist. Rather, due to the frequent lack of competitive local markets, there often are insufficient local arm's-length transactions to reliably determine the value of production not disposed of at arm's length. Also, the actual proceeds to the lessee often are difficult to determine due to the prevalence of exchange agreements or reciprocal purchases. In many cases, the apparent arm's-length transactions in a field or area are so limited as to be of no use in establishing royalty value. There is no need for MMS to offer proof of lessee misconduct or price collusion, because the rule's intent is simply to obtain fair, reasonable royalty values that have been difficult to obtain under the existing regulations.

(b) Use of Posted Prices

Summary of Comments:

Eighteen respondents commented on MMS's abandonment of oil postings as a measure of value. Proponents of posted prices, mainly industry commenters, maintained that oil postings were still indicative of market value because: (1) The majority of pricing provisions in oil sales contracts remain postings-related; (2) a relationship exists between NYMEX and posted prices; and (3) oil postings are used as a starting point in negotiating prices and premiums. Few commenters argued that MMS hadn't supported its claim that posted prices no longer reflect value of production at the lease. Some commenters, while still advocating posted prices, suggested that MMS resolve the problem by eliminating reference to postings in the benchmarks in its current regulations.

Opponents of posted prices, primarily State and local governmental agencies, maintained that oil postings are not a valid measure of value. To support their position, they pointed to the common payment of bonuses, or premiums, over posted prices (sometimes called the ''postings-plus'' market), to litigation settlements paid to make up for low postings, to actual sales of oil above posted prices, and to spot prices higher than postings.

MMS Response: By all accounts, the domestic petroleum industry generally no longer relies on posted prices to set arm's-length contract prices unless premiums are attached. Commissioned studies indicate that posted prices are artificially low and are used by oil companies largely for accounting purposes in effecting crude oil exchanges between themselves.

Continuing changes in oil market pricing further demonstrate the need for moving away from posted prices as a value determinant. For example, industry recently began to use a new pricing tool called Calendar MERC. It is calculated much like the ''P-plus'' price quoted in trade periodicals, and factors in assessments for both the prompt (nearest) month and the second-forward month. It is quoted as a differential off the New York Mercantile Exchange price. Although it is not clear how widely the Calendar MERC price is used at present, its development is further evidence of industry's move not only away from the direct use of posted prices in their trades, but also away from developing prices that build on posted prices in some fashion.

Further, MMS auditors have found that sales prices often are pegged to spot or futures prices. To maintain valuation procedures based on posted prices would understate the true market value of oil and diminish royalties. Consistent with the stated purposes of the proposed rule, the final rule eliminates posted prices as a measure of value.

(c) Definitions (Proposed § 206.101)

Marketing Affiliate—Summary of Comments: Two commenters recommended MMS retain the definition of ''marketing affiliate'' until the numerous administrative and legal actions concerning the affiliate issue are resolved.

MMS Response: MMS removed this definition because it is not used in the final rule. Under the 1988 rules, a ''marketing affiliate'' was defined as an affiliate of the lessee whose function was to acquire only the lessee's production and market that production. The royalty value of oil transferred non-arm's-length to the marketing affiliate then became the affiliate's gross proceeds, provided the marketing affiliate sold the oil at arm's length. Very few, if any, marketers met the strict definition of a marketing affiliate, thus making this provision of the 1988 rules almost inconsequential. The final rule adopted here does not distinguish between ''marketing affiliates,'' as defined in 1988, and other affiliates, because the value of oil transferred to any affiliate is determined by the affiliate's ultimate disposition of that oil (or, at the lessee's option, at an index price or benchmark value as discussed later). Therefore, the term ''marketing affiliate'' is no longer needed.

Gross Proceeds—Summary of Comments: Two commenters recommended changing the word ''must,'' in reference to services that must be performed at no cost to the lessor, to a more neutral term, because ''must'' implies that there never will be a situation where the costs of these services would be deductible. One commenter recommended that the definition include gross proceeds accruing to an entity affiliated with the lessee.

MMS Response: MMS maintains that the lessee must place production in marketable condition and market the production at no cost to the Federal Government. Legal decisions have long held that such costs are not deductible from royalty value. With respect to marketing costs, see, e.g., Walter Oil and Gas Corp., 111 IBLA 260 (1989); ARCO Oil and Gas Co., 112 IBLA 8 (1989); Taylor Energy Co., 143 IBLA 80 (1998) (motion for reconsideration pending); Yates Petroleum Corp., 148 IBLA 33 (1999); Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending); Texaco Exploration and Production Inc., No. MMS–92–0306–O&G (1999) (concurrence by the Secretary)(action for judicial review pending, *Texaco Exploration and Production, Inc.* v. *Babbitt,* No. 1:99CV01670 (D.D.C.)). (The lessee's duty to market is discussed further below.) With respect to the costs of putting production into marketable condition, see, e.g., *Mesa Operating Limited Partnership* v. *Department of the Interior,* 931 F.2d 318 (5th Cir. 1991), cert. denied, 502 U.S. 1058 (1992); Texaco, Inc. v. Quarterman, Civil No. 96-CV–08–J (D. Wyo. 1997). It follows that any payments the lessee receives for performing such services are part of the value of the production and are royalty bearing.

The final rule extends gross proceeds valuation to any oil disposed of under an arm's-length contract, regardless of whether the seller is the lessee or its affiliate. Accordingly, there is no need to include gross proceeds accruing to an entity affiliated with the lessee in the definition.

Index Pricing—Summary of Comments: Two commenters recommended using more generic language in case the NYMEX or ANS index prices become unusable. One commenter suggested the definition specifically refer to the monthly average spot prices for ANS crude oil delivered in California.

MMS Response: The final rule modifies the index price definition to include spot prices for ANS, West Texas Intermediate (WTI) at Cushing, Oklahoma, and other appropriate spot prices. We also included a provision that if MMS determines that any of the

index prices is unavailable or no longer represents reasonable royalty value, MMS may establish value based on other relevant matters. The final rule does not use NYMEX futures prices. For applying ANS prices in California and Alaska, the valuation rules specify the daily mean spot prices published during the production month, as explained more fully below. This method does use monthly spot prices for ANS crude.

Exchange Agreement—Summary of Comments: Three commenters believed the definition of exchange agreement was too narrow. They recommended the definition be broadened to include exchanges in which the receipt and delivery take place at the same location, multi-party exchanges, transportation exchanges, net-out and other overall balancing agreements, and exchanges involving crude for products. On the other hand, one commenter believed the definition was overly broad and should be restricted to exchanges occurring at the lease.

MMS Response: MMS modified the exchange agreement definition from that originally proposed by deleting the statement that exchange agreements do not include agreements whose principal purpose is transportation (63 FR 6116, February 6, 1998). For further clarification, the definition in the final rule also includes examples of several specific types of exchange agreements. However, in the final rule we removed the examples included in the December 1999 proposal of exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP) and exchanges of produced oil for similar oil produced in different months (Time Trades). These trades or exchanges involve different time periods and may not reflect reliable location/quality differentials applicable to royalty payment for a particular production month. We believe the definition in the final rule is sufficient to implement the valuation rules.

Field—Summary of Comments: One commenter pointed out that ''field'' has no relevance under the proposed rule and should be deleted.

MMS Response: ''Field'' remains a term used in the second benchmark for valuing production not disposed of under an arm's-length contract in the RMR.

(d) Gross Proceeds Valuation (Proposed Paragraph 206.102(a))

The January 1997 proposal retained the concept of using a lessee's gross proceeds to value oil sold under an arm's-length contract. However, there were five exceptions to this provision: (1) A sales contract that does not reflect the total consideration for the value of the oil; (2) a breach of the duty to market for the mutual benefit of the lessee and the lessor; (3) oil disposed of under an exchange agreement; (4) oil subject to a call; and (5) when a lessee or its affiliate purchased crude oil from a third party in the United States within a 2-year period preceding the production month. If any of these exceptions applied, value would be determined under the index pricing methods.

Summary of Comments: Forty persons commented on arm's-length gross proceeds valuation. Most commenters (primarily industry but including the States of Louisiana and Wyoming) believed the exceptions were too restrictive. Industry argued that there are active, competitive crude oil markets at the wellhead. Accordingly, arm's-length sales at the lease properly determine value. Any application of the exceptions (*i.e.*, valuation under the index price methods) would derive a different, likely higher, value. Many objected to the requirement to use the index pricing methods when oil is purchased within the 2-year period, indicating that most producers routinely buy oil for lease operations.

Two commenters indicated that gross proceeds should not be a valuation factor for any production in California, because gross proceeds have never reflected the true value of oil in that State. They also recommended that if the arm's-length gross proceeds provision remains, it be limited to non-integrated, independent producers. Another commenter believed that the gross proceeds provision should be limited to: (1) Sales by independent producers to third parties without repurchase agreements, and (2) sales by independent producers to major oil companies without repurchase or buy/sell agreements.

MMS Response: In response to the general theme of these comments, MMS modified the eligibility requirements for oil valuation under arm's-length transactions in the July 1997 proposal. Changes included: (1) The expansion of gross proceeds valuation to situations involving competitive crude oil calls; (2) the addition of the option to use gross proceeds or index pricing if the lessee exchanges its oil at arm's length and sells the oil received in exchange at arm's length; and (3) elimination of the ''two-year rule'' (*i.e.*, the requirement to value oil using index prices for lessees who purchase oil within a 2-year period).

To address the concern about reciprocal purchasing that MMS previously handled in the ''two-year purchase provision,'' the July 1997 proposal added a provision that if the buyer and seller maintained an overall balance, the corresponding production would be valued under index pricing. MMS removed the language regarding overall balances as a separate, specific provision in the February 1998 proposal and in the final rule. However, oil subject to overall balance situations will be subject to audit and examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in overall balancing agreements thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

In the final rule, there are two exceptions to gross proceeds valuation, both of which are contained in the existing rule: a sales contract that does not reflect the total consideration for the value of production and a breach of the lessee's duty to market for the mutual benefit of the lessee and the lessor. (The final rule also provides the lessee the option of using the index value after one or more arm's-length exchanges, or one or more inter-affiliate transfers, even when the oil is then sold at arm's length, as discussed further below.) MMS maintains that gross proceeds under truly arm's-length sales are a reliable measure of market value. MMS does not believe that California production warrants a different valuation philosophy for arm's-length transactions.

(e) Valuing Oil Disposed of Under Exchange Agreements (Proposed Paragraph 206.102(a)(4))

In the January 1997 proposal, MMS excluded exchange agreements from arm's-length transactions because such agreements may or may not specify prices for the oil involved. Instead, they frequently specify dollar amounts only for location, quality, or other differentials. Where exchange agreements do specify prices, those prices may be meaningless because the contracting parties' concern is the relative parity in the value of oil production traded. MMS included buy/sell agreements in its definition of exchange agreements.

Summary of Comments: Thirteen respondents commented on the exchange agreement issue. Industry commenters generally objected to the inclusion of buy/sell agreements with exchange agreements, arguing instead that buy/sell agreements should be treated as arm's-length sales contracts or transportation contracts. They argued that there is often no real distinction between a buy/sell agreement, which is

treated as an exchange agreement, and a transportation agreement, which is not treated as an exchange agreement. They argued that this is particularly so in California where companies owning proprietary pipelines require independent producers to enter into a transportation agreement that looks exactly like a buy/sell agreement.

With regard to exchanges in general, State and local government agencies supported MMS's proposed exclusion of exchange agreements from arm's-length valuation, but recommended broadening the definition of exchange agreement (discussed above). Several industry commenters recommended valuing oil transferred under exchange agreements by reference to comparable sales.

MMS Response: Buy/sell agreements are vulnerable to the same flaws as other exchange agreements in which the exchange terms involve only relative differentials rather than stated unit prices. Work done by the MMS-sponsored Interagency Task Force investigating California oil undervaluation, advice from several consultants, and ongoing work by MMS auditors, led MMS to its conclusion that exchange agreements, including buy/sells, may not be reliable as value indicators. However, in the July 1997 proposal, MMS modified the valuation procedures for oil involved in exchanges. This modification permitted a choice of using either the gross proceeds from the sale of the acquired oil (provided the acquired oil is sold at arm's length) or an index price to value the exchanged oil. This option applied only to single exchanges before the arm's-length sale of the acquired oil. As discussed below in Section VI at (b), in the February 1998 proposal, MMS extended the concept of applying the gross proceeds after a single exchange to multiple exchanges, but without the option to use an index price. The final rule offers the option of using the arm's-length gross proceeds after one or multiple arm's-length exchanges, or applying the index price or benchmarks appropriate to the region where the production occurs.

MMS is not relying on a comparable sales approach, except in limited circumstances in the RMR as discussed below, primarily because of the lack of transparent markets at the lease.

(f) Crude Oil Calls (Proposed Paragraphs 206.102(a)(4) and (c)(2))

Under the January 1997 proposal, MMS did not recognize oil disposed of under a crude oil call as sold at arm's length, regardless of whether the buyer and seller are affiliated; such oil would be valued under proposed 30 CFR 206.102(c), using the index price method.

Summary of Comments: Twelve respondents commented on crude oil calls. Most commenters believed that the proposed rule was too restrictive, claiming that crude oil call agreements usually include the best price and therefore should be considered arm's-length. Commenters indicated that when calls are not exercised, the oil is sold at arm's length anyway. Two State respondents suggested that oil subject to crude oil calls should be valued as non arm's length only when the call is actually exercised.

MMS Response: MMS recognized in the July 1997 proposal that not all crude oil calls are exercised and that some calls are subject to competitive bid. In the February 1998 proposal, MMS modified the rules regarding competitive crude oil calls to accept arm's-length gross proceeds as value in these situations. In the final rule, MMS removed the language regarding noncompetitive crude oil calls as a separate, specific provision. However, oil subject to a noncompetitive crude oil call will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

(g) NYMEX Pricing (Proposed Paragraph 206.102(c)(2)(i))

For oil produced outside California and Alaska and not sold by the lessee or its affiliate under an arm's-length contract, MMS proposed in January 1997 that value be determined as the average of the daily NYMEX futures settle prices for WTI crude oil at Cushing, Oklahoma, for the prompt month (the month following the month of production). MMS proposed NYMEX prices because they were perceived to best reflect the current domestic crude oil market value on any given day, and there is minimal likelihood that any one party could influence them. To establish royalty value, the NYMEX prices would be reduced by location and quality differentials. (See also Form MMS–4415 at m below.)

Summary of Comments: A total of 54 respondents commented on the NYMEX pricing proposal. Industry commenters unanimously opposed the idea, whereas States and other governmental agencies were divided, with some supporting the proposal and others opposing it. Opposing comments generally revolved around the asserted difference between the NYMEX market and the lease market. Comments included:

- NYMEX is a futures market that bears little relation to the market at the lease. Lease prices are driven by local supply and demand factors, not by NYMEX pricing; the NYMEX market is not synchronized with lease-market factors. NYMEX is not influenced by factors present at the lease, such as operational and transportation costs; the ease of oil futures trading gives the oil more value than it has at the lease.
- NYMEX prices are speculative and artificial. Those purchasing oil futures in the NYMEX market buy a right to obtain certain types of oil in the future at specified prices; NYMEX does not represent current sales. NYMEX is used to hedge against financial risks; only 30 percent of participants are industry, and 70 percent are speculators. Trade volumes are 10 to 20 times actual U.S. production, but only 3.1 percent of trades are carried out. NYMEX is mainly a paper market. Profits are made in successfully guessing the optimal timing of trades. Prices can be distorted by changing perceptions of risk, activities of speculators, and world events, such as wars and natural catastrophes. The settlement price is computed from transactions that occur only in the last few minutes of each day's trading.
- NYMEX-based valuation is contrary to the royalty provisions of the leasing statutes and lease terms, which require valuation at the lease at the time of production; NYMEX pricing does not provide contemporaneous valuation because the prompt month does not coincide with the production month.
- NYMEX does not represent the crude oil market in the RMR, which is driven by refinery-product prices, not the NYMEX.

One commenter suggested using adjusted spot prices instead of the NYMEX method to value production, particularly for the Gulf of Mexico.

Proponents of NYMEX pricing believed it is a valid measure of the market value of crude oil. Reasons included (1) the large volume of oil traded; (2) invulnerability to manipulation or control (however, a few of the opponents of NYMEX pricing indicated that the NYMEX market is indeed vulnerable to manipulation); and (3) the opportunity for arbitrage to mediate the differences between the values of paper barrels and actual barrels of oil.

MMS Response: The final rule does not use NYMEX as a measure of value. However, the body of evidence regarding actual marketing practices indicates that index prices play a significant role in setting contract

prices. In considering the numerous comments, MMS dropped its NYMEX pricing approach in the February 1998 proposal except for the third benchmark in valuation of crude oil produced in the newly-defined RMR and not disposed of at arm's length. In the final rule, MMS also dropped NYMEX as a valuation basis in the RMR.

For leases outside California, Alaska, and the RMR, in February 1998 MMS proposed to use spot, rather than NYMEX, prices to value oil not disposed of at arm's length. We made this change because spot prices nearly duplicate NYMEX prices when NYMEX prices are properly adjusted for location and quality differentials. Moving to spot prices at the market center thus saves one step in the adjustment of NYMEX prices back to the lease, namely the adjustment between Cushing, Oklahoma, and the market center. Spot prices are valid indicators of market value because they and similar prices play a significant role in sales contracts and they are readily available to lessees via commercial price reporting services.

For the RMR, the final rule uses the WTI spot price at Cushing, Oklahoma, adjusted for location and quality, as the third valuation benchmark for oil not disposed of at arm's length. We believe that this valuation mechanism is appropriate for the RMR because the only published spot price for this region at this point in time—at Guernsey, Wyoming—is derived from a survey of the few trades occurring at that location. The price, therefore, is not a reliable measure of value.

(h) ANS Spot Prices (Proposed Paragraph 206.102(c)(2)(ii))

For oil produced in California and Alaska and not sold by the lessee or its affiliate under an arm's-length contract, MMS proposed, in January 1997, that value be the average of the daily mean ANS spot prices for the month of production published in an MMS-approved publication. MMS chose ANS spot prices because they represent large volumes of oil delivered into the California market and used as refinery feedstock. In contrast, the other spot prices published for local California crude oil (including, for example, Kern River and Line 63), like those published for Guernsey, Wyoming, do not involve large enough volumes to justify their use for royalty valuation. To establish royalty value, the ANS spot prices would be adjusted for location and quality differentials.

Summary of Comments: Fifteen industry commenters opposed the ANS pricing proposal, while two California governmental agencies supported it. Opposing arguments included:

- The reported ANS spot prices are unreliable because transaction volumes are small; only 10 percent of ANS production is sold on the spot market, all of it by only one company.
- The ANS price quotes are indicative of the value of ANS crude delivered in waterborne cargo volumes and not of the value of California crude oils delivered by pipeline.
- The method used by the trade press to determine spot prices is unclear, and many of the transactions reported to the trade press involve buy/sell exchanges which MMS believes to be unreliable.
- The quality of ANS crude is very different from California crude. ANS crude is relatively light compared to crude oil produced in California. Much of California crude is heavy and contains heavy metals and other impurities that cause refining difficulties. Accordingly, California crude prices are discounted relative to ANS crude.

In summary, industry believed that the ANS method would not reflect the value of California crude oil. A few commenters asserted that the calculated values would be much higher than those realized in actual sales or through local spot prices.

California governmental agencies (the State and one municipality) endorsed the ANS method. They stated that ANS crude directly competes with California crude as refinery feedstock—often accounting for more than one-third of the oil refined in California—and thus should form the basis for a competitive price for California crude. In support of this, one commenter indicated that the major California oil companies evaluated the actual value of California crudes by comparing them to the ANS spot prices; this commenter concluded that the major oil companies viewed the ANS price as the market value of California crudes. The other commenter was concerned that the published ANS prices might become unavailable or fail to yield a reasonable value. This commenter recommended a safety net for ANS pricing at no less than 20 percent below the NYMEX price to guard against these situations.

MMS Response: California, and the West Coast in general, has long been recognized as a separate crude oil market isolated from the rest of the country. ANS crude is competitive with California crudes. While it may be true that only 10 percent of ANS crude is sold on the spot market, over 30 percent of the oil refined in California is ANS oil. An interagency study has found that companies engaged in buying and selling California crude oil commonly use ANS spot prices as the benchmark for determining California crude values (Final Interagency Report on the Valuation of Oil Produced from Federal Leases in California, May 16, 1996; Long Beach litigation). These companies apparently have no difficulty in adjusting the ANS prices for quality differences to derive the prices, including premia over postings, they are willing to pay for California crude oils. MMS believes ANS spot prices are a recognized benchmark for valuing California crudes and a reliable indicator of the market value of California crude oils.

Comments alleging that ANS spot prices are unreliable because ANS crude is thinly traded were analyzed for MMS by Innovation & Information Consultants, Inc. (Memorandum to MMS file, September 25, 1997). They report that it is the spot market for local California crude oils, not ANS crude, that is thinly traded and thus leads to unreliable price indices. They also report that there is a high degree of correlation between ANS spot prices and prices actually paid for California crudes. They indicate that the major oil companies in California regularly make comparisons between California crude oils and ANS with the understanding and expectation that a California crude should equate to ANS in value after accounting for location and quality differences.

(i) Duty to Market (Proposed Paragraph 206.102(e)(1))

The January 1997 proposal restated the lessee's duty to market the oil for the mutual benefit of the lessee and lessor at no cost to the Federal Government, consistent with longstanding Departmental practice and implied lease covenants.

Summary of Comments: Nineteen respondents, all representing industry, commented on the duty-to-market provision. They all opposed the provision on the following grounds:

- Downstream marketing costs enhance the value of the oil. MMS is not entitled to claim royalties on the value added by those expenses and risks incidental to downstream activities, particularly when value is determined at a marketing center downstream of the lease.
- The lessor does not share mutually in the risks inherent in downstream marketing activities; accordingly, there is no mutual benefit when one party bears all the costs and risks.
- There is no legal foundation supporting a no-cost duty to market when the point of royalty determination

is moved to a downstream market center.

• Placing production in marketable condition (physically conditioning the production for market) is separate from a duty to market; lease terms do not require the lessee to market the production at no cost to the lessor.

MMS Response: It is a well-established principle of oil and gas law that lessees have the obligation to market lease production for the mutual benefit of the lessee and lessor, without deduction for the costs of marketing. See, e.g., Walter Oil and Gas Corp., 111 IBLA 260 (1989); Arco Oil and Gas Co., 112 IBLA 8 (1989); Taylor Energy Co., 143 IBLA 80 (1998) (motion for reconsideration pending); Yates Petroleum Corp., 148 IBLA 33 (1999); Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending); Texaco Exploration and Production Inc., No. MMS–92–0306–O&G (1999) (concurrence by the Secretary) (action for judicial review pending, *Texaco Exploration and Production Inc.* v. *Babbitt,* No. 1:99CV01670 (D.D.C.)).

In the context of Federal leases, the D.C. Circuit referred to this implied lease covenant many years ago in *California Co.* v. *Udall,* 296 F.2d 384, 387 (D.C. Cir. 1961), stating that ''the lessee was obliged to market the product.'' The duty to market at no cost to the lessor is not unique to Federal leases. See, e.g., Merrill, Covenants Implied in Oil and Gas Leases (2d Ed. 1940), section 84–86 (Noting ''[n]o part of the costs of marketing or of preparation for sale is chargeable to the lessor''); ''Direct Gas Sales: Royalty Problems for the Producer,'' 46 Okla. L. Rev. 235 (1993); *Amoco Production Co.* v. *First Baptist Church of* Pyote, 579 S.W.2d 280 (Tex. Civ. App. 1979), writ ref'd n.r.e., 611 S.W.2d 610 (Tex. 1981), and cases cited in these authorities.

This duty to market means that the lessee must act as a prudent marketer. The duty to market is an implied covenant of virtually all oil and gas leases, whether the leases are private, Federal, or State leases. MMS as lessor has never shared in the ''risks'' of marketing and has never allowed deductions from royalty value for marketing costs. This rulemaking makes no change to the lessee's duty to market.

The decisions cited above establish several principles. First, the lessee has an implied duty to prudently market the production at the highest price obtainable for the mutual benefit of both the lessee and the lessor. The creation and development of markets is the essence of that obligation, as the IBLA expressed it ten years ago in Arco Oil and Gas Co., supra:

> The creation and development of markets for production is the very essence of the lessee's implied obligation to prudently market production from the lease at the highest price obtainable for the mutual benefit of the lessee and lessor. Traditionally, Federal gas lessees have borne 100 percent of the costs of developing a market for gas. Appellant has cited no authority, nor do we find any, which supports an allowance for creation and development of markets for the royalty share of production.

112 IBLA at 11.

Because of industry's repeatedly-expressed concerns in the comments and workshops, MMS emphasizes that this does not imply that lessees are somehow prohibited from marketing at the lease and must market production ''downstream.'' Lessees may market at the lease without breaching the duty to market. However, if a lessee chooses to market downstream, the choice to do so is for the mutual benefit of itself and the lessor, and does not affect the lessee's relationship to the lessor. The choice to market downstream does not make marketing costs deductible or permit the lessee to disregard part of the sales price obtained at a downstream market.

In addition, lessees have always borne all of the marketing costs. The Department has not knowingly permitted an allowance or deduction from royalty value for marketing costs. As the Board held a decade ago in Walter Oil and Gas Corp., supra:

> The only allowances recognized as proper deductions in determining royalty value are transportation allowances for the cost of transporting production from the leasehold to the first available market, which has been considered a relevant factor pursuant to 30 C.F.R. 206.150(e) * * * and processing allowances for processed gas authorized by 30 C.F.R. 206.152(a)(2) (1987). * * * Walter's unsupported assumption that it is somehow entitled to deduct its marketing costs from royalty value fails in the face of contrary regulatory requirements * * * .

111 IBLA at 265.

Lessees may deduct from value only those costs allowed by the regulations, especially in light of the gross proceeds minimum value requirement. The only deductible costs are transportation costs and, in the case of ''wet'' gas with heavier entrained liquid hydrocarbons, processing costs.

Further, marketing costs are not deductible, regardless of whether the lessee bears them directly or transfers the marketing function or costs to a contractor or an affiliate.

Moreover, the fact that marketing arrangements enhance the lessee's ability to obtain a higher price does not imply that marketing costs are deductible. It also follows that a lessee may not deduct or disregard for royalty purposes the additional benefits it gains or value it receives through obtaining a higher price through its marketing skill or expertise. If the lessee manages to obtain a higher price for its oil through skillful marketing efforts, that higher price is the minimum royalty value under the gross proceeds rule.

At the same time, the location of the market at which the lessee chooses to sell its production does not change the lessee's obligation. Much of industry's opposition to the duty-to-market provision in the proposed and final rules revolves around the argument that when royalty value is based on the sale of production at a downstream location, the downstream transportation, risks, and related services add more value to the oil than is reflected in the transportation allowances (or location differentials) MMS permits.

The industry commenters' argument is contrary to established principles and uniform longstanding practice. Valuation based upon a ''downstream'' sale or disposition of production has been commonplace for many years. For sales at distant markets, the lessee is entitled to an allowance for transportation costs, but not for marketing costs. Sales away from (or ''downstream'' from) the lease often are the starting point for determining royalty value, and the costs of transportation always have been allowed in order to ascertain value at or near the lease. A lessee who transports production to sell it at a market remote from the lease or field is entitled to an allowance for the costs of transportation. See 30 C.F.R. 206.104, 206.105 (crude oil), 206.156 and 206.157 (gas) (1988–1997). Before the 1988 regulations, transportation costs were allowed under judicial and administrative cases. See, e.g., *United States* v. *General Petroleum Corp.,* 73 F. Supp 225 (S.D. Cal. 1946), aff'd, *Continental Oil Co.* v. *United States,* 184 F.2d 802 (9th Cir. 1950); *Arco Oil and Gas Co.,* 109 IBLA 34 (1989); *Shell Oil Co.,* 52 IBLA 15 (1981); *Shell Oil Co.,* 70 I.D. 393, 396 (1963).

An illustrative example is *Marathon Oil Co.* v. *United States,* 604 F. Supp.. 1375 (D. Alaska 1985), aff'd, 807 F.2d 759 (9th Cir. 1986), cert. denied, 480 U.S. 940 (1987). In that case, Marathon produced natural gas from Federal leases in Alaska, and sold it in Japan after overseas transportation in liquid form by tanker. The court held that MMS properly deducted Marathon's costs of transportation (including liquefaction) from the sales price in

Japan to derive the royalty value (gross proceeds) at the lease.

Indeed, transportation allowances have been common for decades precisely because the initial basis for establishing value often is a ''downstream'' sales price. Industry's argument that MMS is somehow improperly trying to ''tap into'' the benefits industry derives from its marketing expertise clouds the real issue. If a lessee can obtain a better price by selling away from the lease, then it will do so. How the lessee markets its production is its decision. The lessor is entitled to its royalty share of the total value derived from the production regardless of how the lessee chooses to dispose of it. The United States as lessor always has shared in the ''benefit'' of ''downstream'' marketing away from the lease, and has allowed deductions for the cost of transportation accordingly.

Moreover, these principles do not change in the event that a wholly-owned or wholly-commonly-owned affiliated marketing entity buys other production at arm's length from other working interest holders in the field at the same price it pays to its affiliated producer. The industry wants to limit royalty value to supposedly ''comparable'' sales at the lease even when the lessee receives a higher price for its production. In effect, industry wants to force MMS to adopt a ''lowest common denominator'' theory of valuation—*i.e.,* the price at which any production is sold at arm's length at the lease will be the value of production initially transferred non-arm's-length, even if the latter production nets a higher price in the open market. That position is incorrect for several reasons.

First, it would enable a lessee whose enterprise realizes more proceeds or greater value for its production than some other producers in the field to avoid paying royalty on part of those proceeds. If the lessee sells downstream, its gross proceeds are the higher price realized on the sale downstream, minus the lessee's transportation costs, regardless of the fact that other producers sold for less. The industry's position is directly contrary to *Marathon Oil Co.* v. *United States, supra.* If the lessee first transfers to a wholly-owned or wholly-commonly-owned affiliate who then resells at arm's length downstream, it is still true that the producing entity could have sold its production at the point and at the price its affiliate did, instead of using the wholly-owned affiliate arrangement. It is perfectly proper to value the production of a producer who markets through a wholly-owned affiliate at a higher level than the production that other producers sell at arm's length in the first instance, when the production marketed through the wholly-owned affiliate commands a higher price. Indeed, this is the very situation which the Third Circuit correctly anticipated in *Shell Oil Co.* v. *Babbitt,* 125 F.3d 172 (3d Cir. 1997).

Further, the industry's position would create an incentive for a lessee to sell some small percentage of its production at the lease at arm's-length for a lower price so that it can pay royalty on the rest of its production at that price. Such a result is contrary to the intent and meaning of the gross proceeds rule.

MMS agrees that the duty to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is not the same as the lessee's duty to put production into marketable condition at no cost to the lessor. However, the fact that the two duties are not identical does not support the industry commenters' position. The decision of the Secretary and the Assistant Secretary for Land and Minerals Management in Texaco Exploration and Production Inc., supra (at pp. 16–19), discusses the relationship of the two duties, and MMS adopts the reasoning of that decision in response to the commenters' argument.

(j) Differentials (Proposed Paragraph 206.105(c))

When value is based on index pricing, certain location and quality differentials are required to adjust the value of the oil at the index pricing point to obtain royalty value of the oil produced from the lease. The January 1997 proposal applied location and quality differentials to adjust the value between (1) the index pricing point and the appropriate market center and (2) the market center and the aggregation point. The first differential was the difference between the average spot prices for the respective crude oils at the index pricing point and at the market center. The second differential was either an express differential under an arm's-length exchange agreement relative to the market center/aggregation point pair or a differential calculated and published by MMS for the market center/aggregation point pair. MMS would have determined the latter differential from information reported on Form MMS–4415.

The location differentials reflect the relative differences in the value of crude oil delivered at different locations; they are not transportation cost allowances. Under the January 1997 proposal, the lessee would use transportation allowances to adjust the value of the crude oil from the aggregation point (or market center) to the lease. Comments on transportation allowances are addressed elsewhere in this preamble.

Summary of Comments: Thirty-one respondents commented on differentials. Comments generally fell into two categories:

(1) The differentials would be 1 year out of date and would not reflect market conditions at the time of production. They particularly ignore the dynamic supply and demand processes that operate on daily and seasonal bases.

(2) The differentials would not adequately adjust for quality differences between the lease and the index pricing point because of commingling. There is no gravity adjustment between the lease and the aggregation point.

In sum, many commenters believed that the differentials would not capture the value of oil produced at the lease. Other comments included:

- Differentials do not recognize all transportation costs or value added from blending, aggregation, storage, and other marketing services.
- Aggregation points with limited transactions will give statistically invalid differentials.
- Exchange agreements may not provide all the needed data or specify which lease(s) the oil came from.
- Differentials might be calculated from inaccurate and unreliable data, particularly with regard to selecting ''alternative disposal points.''
- Gathering is not adequately addressed in the calculation of differentials.
- Spot prices represent marginal barrels (small volume) to make up for refinery needs; they do not reflect the price differences between the market centers and index pricing points.
- For California, a comparison of ANS spot prices and field spot prices captures more than the price difference attributable to location. Furthermore, where spot prices are reported for a field rather than an aggregation point, and the exchange reflects a transfer at the lease or field, the differential would permit a lessee to recover the cost of transporting to an ''aggregation point'' twice.

MMS Response: In the final rule, in response to the various comments, MMS modified the previous proposals governing differentials by:

(1) Eliminating MMS-published differentials because MMS believes that lessees that would be subject to index pricing generally will have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions. As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is not part of the final rule.

Because MMS is not requiring the proposed form, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

(2) Eliminating the location differential between the index pricing point and the market center because using spot market prices has made the index pricing point and market center the same.

(3) Recognizing separate quality adjustments to reflect the differences between the oil produced from the lease and the oil at the market center or refinery or other alternate disposal point, or between intermediate exchange points. Those quality adjustments specified in exchange agreements will automatically account for those differences in quality.

Other appropriate quality adjustments would be based on pipeline quality bank specifications and related premia and penalties. MMS believes these changes will permit determination of reasonable and proper differentials.

(k) Requiring Use of Actual Transportation Costs (Amended Paragraphs 206.105 (b) and (g))

Aside from new rules at proposed paragraph 206.105(c) addressing differentials and transportation allowances under the proposed index pricing methodology, MMS's other change to the transportation allowance rules in the January 1997 proposal was the proposed deletion of existing paragraph 206.105(b)(5). That paragraph allows those lessees with non-arm's-length or no transportation agreements to apply for an exception from the requirement to compute their actual transportation costs and instead use a FERC- or State-approved tariff. Deleting this paragraph would remove the exception and require lessees to use actual transportation costs in all cases.

MMS also proposed to amend existing paragraph 206.105(f) (proposed to be redesignated as paragraph 206.105(g)), which disallows deductions for actual or theoretical losses. MMS made this change to be consistent with the deletion of paragraph 206.105(b)(5). In the final rule, the language addressing actual or theoretical losses appears at new § 206.118.

Summary of Comments: Sixteen respondents commented on the proposed change. Three commenters supported removing the exception, stating that actual costs better reflect a netted back value and that tariffs are not reviewed to determine their reasonableness.

The remaining commenters contended that FERC tariffs remain a viable measure of transportation costs in non-arm's-length movements. They argued that it is discriminatory to treat affiliated producers, who would have to use their transporting affiliate's actual costs, differently from non-affiliated producers, who may pay a FERC tariff as their arm's-length transportation cost. They particularly asserted that line losses should be an allowable cost to be comparable with costs included in FERC tariffs.

MMS Response: MMS has deleted this provision in the final rule because it continues to believe that doing so results in allowances better reflecting lessees' actual transportation costs. There is no discrimination between producers with transportation affiliates who must use their calculated actual transportation costs and non-affiliates who may apply a FERC tariff as their arm's-length transportation cost. In both instances the parties would be deducting their actual, reasonable transportation costs. Consistent with this concept, the final rule permits a deduction for oil transportation resulting from payments (either volumetric or for value) for actual or theoretical losses only under an arm's-length contract.

(l) Transportation Cost Allowances for California and Alaska (Proposed Paragraph 206.105(c)(3)(ii))

As initially proposed in January 1997, the determination of differentials and transportation allowances depends on whether the oil is (1) disposed of under an arm's-length exchange agreement with an express location differential; (2) moved directly to an alternate disposal point, such as a refinery; or (3) moved directly to a market center. For oil moved directly to an alternate disposal point, proposed paragraph 206.105(c)(3)(ii), and, similarly, proposed paragraph 206.105(c)(2)(ii), permitted deduction of a transportation allowance based on the actual costs of transporting the oil between the lease and the alternate disposal point. In addition, this section permitted deduction of a location differential, calculated as the difference between the average published spot price at the aggregation point nearest the lease and the spot prices for ANS crude at the associated market center/index pricing point.

Summary of Comments: Two commenters noted that this provision may allow for substantial ''double dipping'' of transportation cost deductions. They indicated that spot prices reflect in part the cost of moving the crude from the aggregation point to the market center. If transportation to the alternate disposal point bypasses an aggregation point, the lessee is allowed to deduct its actual transportation costs plus a location differential, which, having been computed from spot prices, has imbedded transportation costs. The transportation allowance thus will double the deduction for the location differential between the lease and the market center.

They also asserted that the proposed rule did not restrict the location of the alternate disposal point relative to the lease, meaning that crude could be shipped cross country and have a substantial transportation deduction. They recommended that MMS limit the maximum transportation cost deduction to no more than the cost of moving the crude by pipeline from the lease to the nearest market center.

MMS Response: Sections 206.105(c)(2)(ii) and (c)(3)(ii) of the January 1997 proposal were modified and reproposed as §§ 206.112 and 206.113 in the February 1998 proposal, which are now adopted as § 206.112 in the final rule with changes discussed below. In the final rule, if a lessee or its affiliate transports lease production directly to an alternate disposal point, it may adjust the index price for the actual costs of transportation under § 206.110 or § 206.111. The lessee must also adjust the index price for quality based on premia or penalties determined by pipeline quality bank specifications. This will not result in the ''double-dipping'' with which the commenter was concerned. The final rule also includes a provision at § 206.112(g) that prohibits a lessee from using any transportation or quality adjustment that duplicates all or part of any other adjustment, thus eliminating any possibility of double deduction for the location differential between the lease and the alternate disposal point or market center. MMS believes that as a practical matter, alternate disposal points will be reasonable distances from the lease and that no cost limits (beyond the 50 percent limit contained in this final rule at § 206.109(c)) are necessary.

(m) Form MMS–4415 (Proposed Paragraph 206.105(d)(3))

Under the January 1997 proposal, all lessees and their affiliates annually would have to submit proposed Form MMS–4415, Oil Location Differential Report, to enable MMS to calculate location and quality differentials under the index pricing methods. As originally proposed, information would be collected for all leases—Federal, State, private, and Indian. MMS would use the reported data to calculate and publish

acceptable differentials between market centers and aggregation points.

Summary of Comments: Twenty-eight respondents commented on the proposed form. Most comments were negative and revolved around the added cost and administrative burden of preparing the reports; many comments questioned the accuracy of the calculated differentials. Comments included:

- Data collection is time consuming, burdensome, and costly.
- The reporting requirement violates the Paperwork Reduction Act.
- MMS's cost and time estimates are inadequate. They do not reflect the actual time needed to acquire the data and complete the report; nor do they reflect the costs of systems or accounting changes needed to comply with the reporting requirement.
- Annual differentials do not reflect daily or seasonal market changes (*i.e.*, current market conditions); therefore, the differentials will be inaccurate and constantly out of date.
- Multiple crude oil grades exchanged at a given aggregation point, and other factors, mask the true value in exchange agreements.
- Transporting crude oil from the lease to a market center may involve multiple transportation segments and exchanges, thus compounding the data collection and reporting burden.
- MMS does not have the authority to collect information on non-Federal leases.
- Instructions are ambiguous or incomplete; for example, who completes the form when the payor is not the lessee, what 12-month period is used, and when is a report required when different exchange agreements apply to a lease in different months?
- The method of calculating the differentials is not clear, and industry will not be able to verify results because the information is proprietary.
- The information does not reflect exchanges that occur at the wellhead.
- The information may be duplicative and misrepresentative, such as when two payors report the same exchange.
- Determining what contracts contain crude oil calls might require considerable research, since reporting parties may not know when a call provision has been exercised.

One State recommended that instead of requiring Form MMS–4415 to calculate a transportation differential, MMS should publish a rate based on the lowest FERC tariff for which a significant amount of crude oil moves from the aggregation point to the market center. This State also recommended that information collection be limited to exchanges at the lease and market center, thus eliminating the need to calculate differentials to and from the aggregation point.

MMS Response: In the final rule, MMS will not publish location/quality differentials because MMS believes that lessees generally will have sufficient information to accurately determine them, with relatively rare exceptions. If a lessee disposes of its oil through one or more exchange agreements, it ordinarily should have the information necessary to determine adjustments to the index price. As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is not part of the final rule. Because MMS is not requiring the proposed form, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

If the oil is not disposed of through exchange agreements, then the lessee is physically transporting the oil either to a market center or to an alternate disposal point (such as a refinery.) In that event, the lessee will have the necessary information regarding actual transportation costs to claim the appropriate transportation allowance.

(n) Sale of Federal Royalty Oil (Proposed Paragraph 208.4(b)(2))

In the January 1997 proposal, MMS proposed to tie the royalty-in-kind (RIK) valuation to the index pricing provisions of 30 CFR 206.102(c)(2). MMS believed this change would provide certainty in pricing for buyers and simplify reporting for producers.

Summary of Comments: Aside from the numerous commenters that recommended MMS take all its royalty in kind and market it, five respondents provided comments relevant to the proposed regulatory change. Comments included:

- The rules should allow RIK refiners to opt in and out of contracts without terminating the contracts.
- Index pricing does not provide an incentive to RIK refiners because they can buy cheaper crude under long-term contracts. Arm's-length prices should be used for royalty value.
- RIK refiners need assurance they will not be liable for retroactive price provisions, and that the price invoiced is final and not subject to later revision; producers should be liable for any adjustments.
- RIK refiners should be billed for actual volumes delivered, not produced; MMS should penalize the producer for not delivering the RIK volume.
- RIK refiners should receive value and volume information at the same time as MMS.

One commenter recommended scrapping the RIK program because it is too difficult and costly to administer.

MMS Response: In the February 1998 proposal, MMS decided not to proceed with the proposal to modify the RIK valuation procedures. Instead, MMS decided to establish future RIK pricing terms directly within the RIK contracts. Therefore, this issue is not part of this rulemaking.

(o) Added Administrative and Economic Burdens

Summary of Comments: Twenty-five commenters thought the proposed rules would create a considerable administrative burden and add additional costs for both industry and MMS. Many comments were on the preparation of Form MMS–4415. They indicated that acquiring and compiling the needed information would take much longer than MMS's estimate of 15 minutes. (One commenter estimated 2 hours per form.) Other comments indicated there would be additional costs due to new accounting systems, new software, and additional personnel needed to administer the new rules, both for industry and MMS. A few commenters speculated that the added costs to producers, particularly small producers, might force abandonment of marginal wells or investment in other areas.

MMS Response: As discussed previously, MMS eliminated Form MMS–4415 in the final rule. We discuss other administrative costs in Section XI of this preamble.

(p) Fairness, Procedural Conduct, and Workability

Summary of Comments: Thirty-three industry respondents opposed as inequitable the valuation methods of the January 1997 proposal for oil not sold at arm's length. Their comments revolved around the index pricing method and had the following themes:

- The leasing acts and lease terms require valuation at the lease. MMS exceeds its statutory authority by implementing a valuation method away from the lease without recognizing all the downstream value-added costs and risks (such as marketing costs) as deductions. This overstates the value of production at the lease and creates ''phantom income'' to which MMS is not entitled. (Some commenters believed the index pricing method was tantamount to price fixing.)
- The proposed rule has dual standards. It discriminates between

similarly-situated lessees by requiring the integrated lessee to base value on a different methodology. It disqualifies many producers from using their gross proceeds as value when they engage in exchanges or oil purchases.

• The proposed rule is contrary to the deepwater royalty reduction program.

• The index-pricing method might force RIK refiners into paying higher prices.

Some commenters believed that MMS failed to articulate a factual basis for its conclusion that arm's-length transaction prices are no longer valid indicators of value. They also argued that MMS had not provided sufficient time for industry to analyze and comment on the proposed rule and claimed that MMS had not complied with the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 12630, or Executive Order 12866. Some commenters believed that the proposed rule is extremely complex and difficult to implement.

MMS Response: As indicated in the Background section of this preamble, the reason for this rulemaking is to assure that royalties are based on market values. The modifications adopted in this final rule strengthen the market value concept for royalty valuation.

The final rule maintains the concept of using a lessee's gross proceeds to value production sold at arm's-length. However, most Federal oil is disposed of under other than arm's-length conditions. Different standards historically have existed for dispositions not at arm's length, because such transactions are not reliable indicators of what parties will do in a competitive market. Contract prices between affiliated entities may be influenced by many factors other than market forces.

MMS also notes that the governing statutes and lease terms give the Secretary the authority to establish royalty value. The Mineral Leasing Act of 1920 (MLA), as amended numerous times, authorizes the Secretary to prescribe necessary and proper rules and regulations to carry out the purposes of the MLA. The Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended, requires the Secretary to administer the provisions of the OCSLA relating to the leasing of the OCS, and authorizes the Secretary to prescribe such rules and regulations as may be necessary to carry out such provisions. Further, the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) reemphasized the Secretary's royalty management authorities and responsibilities for Federal, OCS, and Indian oil and gas leases. Section 301(a) of FOGRMA, 30 U.S.C. 1751(a), says ''The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this Act.''

Also, the royalty clauses of Federal oil and gas leases say that the Secretary of the Interior may establish reasonable minimum royalty values (considering highest prices paid for part or a majority of like-quality production in the same field, prices received by the lessee, posted prices, and other relevant matters, and, whenever appropriate, after notice and opportunity to be heard). Thus, MMS believes this rulemaking effort complies with both the letter and spirit of the statutes and lease terms.

MMS addressed the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 12630, and Executive Order 12866 in the February 1998 proposal and does so again in Section XI of this preamble.

(q) Interim Final Rule

MMS indicated that it might publish an Interim Final Rule while it evaluated the methodology in the proposed rule. This approach would provide the flexibility to do a revision after the first year without a new rulemaking.

Summary of Comments: Twenty respondents commented on this approach. All commenters opposed the issuance of an Interim Final Rule, indicating that such a rule would be overly costly and burdensome to both industry and MMS, especially if MMS later changed the valuation standards.

MMS Response: MMS has abandoned the notion of an Interim Final Rule for this rulemaking and is publishing a Final Rule instead.

(r) Alternatives

Summary of Comments: Fifty commenters suggested one or more alternatives to the proposed rules. The leading alternative by far was the recommendation that MMS take and market its royalty share in kind. Other alternatives revolved around modifying the existing non-arm's-length valuation benchmarks.

Almost all industry commenters and some State commenters recommended that MMS expand its current RIK program. Two industry trade organizations indicated that MMS would benefit from an RIK program thus ending valuation controversies. MMS would further benefit by earning the higher rewards that the market holds for successful risk-takers. Several commenters recommended that MMS model its RIK program after that of Alberta, Canada. One State suggested using RIK sales to determine marketing/location differentials and to obtain comparable sales information to value oil not disposed of at arm's length. Commenters generally believed that an RIK program would be less burdensome on industry, would reduce MMS's administrative costs, and would ensure proper valuation. Some suggested that MMS auction the RIK oil at the lease to gain the best price.

Several commenters suggested revising the existing non-arm's-length valuation benchmarks to eliminate reliance on posted prices but still maintain benchmarks. Besides deleting references to posted prices, suggestions included arranging the benchmarks as follows:

• Prices received by the lessee under other comparable arm's-length transactions in the same field or area, including prices bid in response to tendering programs.

• Arm's-length prices received by others in the field.

• Prices from nearby fields within an area acceptable to MMS.

• Prices received by MMS, adjusted to the lease, from its sales of RIK oil from the field.

• A netback method, perhaps based on index prices, adjusted back to the lease.

One industry commenter suggested using the average of posted prices to establish the benchmark value. One State commenter indicated that netting back is the only valid indicator of market value for integrated companies.

MMS Response: MMS does not believe that taking all Federal oil in kind is in the best interests of the American public or that such a program would enhance royalties. MMS already has the authority under existing law and lease agreements to take royalty in kind when it would be beneficial to the taxpayer. We believe it would be a mistake to require all Federal oil to be taken in kind. For example, the taking of de minimus production in remote areas could lead to substantial revenue losses. MMS intends to continue its existing royalty-in-kind programs to determine where and how it can most effectively use its authority to take royalties in kind. This will result in the best overall return to the American public.

Several of the suggested revisions to the non-arm's-length valuation benchmarks revolve around finding comparable sales transactions. But commenters have not demonstrated the consistent existence or availability of such transactions for volumes sufficient to use for royalty valuation. To the contrary, MMS believes that nationwide about two-thirds of crude oil production

is disposed of non-arm's-length. As previously mentioned, the general lack of competitive and transparent markets at the lease makes the attempt to find comparable sales transactions far inferior to the use of index prices. The RMR, where reliable spot prices are not readily available, is an exception—about two-thirds of crude oil produced there is sold at arm's length. In addition, this proposal has substantial practical difficulties since companies are not privy to comparable sales transactions and such information available to MMS is unaudited for current periods. The final rule thus primarily uses index prices, adjusted for location and quality, to establish value for oil not sold at arm's length. As indicated above, MMS has concluded that posted prices no longer reflect market value, so any scheme using posted prices would not accomplish the goal of this rulemaking.

General Comment—MMS Consultants. Aside from the topical categories discussed above, we received several comments throughout the rulemaking process that MMS relied too heavily on reports by consultants with predisposed positions. However, in developing this rule, MMS sought out the best experts available to advise it on the petroleum market. These experts provided MMS with valuable information on current and past marketing practices. Further, analyses of the industry consultants' comments by MMS's consultants (Review of Selected Technical Reports on MMS's Proposed Federal Oil Rule and Supplemental Rule, Innovation & Information Consultants, Inc., September 25, 1997) suggest that many arguments have multiple perspectives and are equivocal. MMS appreciates these different viewpoints and considered them in deliberating on this rulemaking.

IV. Responses to Public Comments on July 1997 Proposal

Summary of Proposed Rule

The primary purpose of the July 1997 proposal was to revise the eligibility requirements for oil valuation under arm's-length transactions. (See (b) below.) Specifically, the supplementary proposal:

- Expanded gross proceeds valuation to dispositions involving competitive crude oil calls,
- Extended index pricing valuation to ''overall balance'' situations,
- Deleted the requirement to value oil using index prices for lessees who purchased oil in the last 2 years, and
- Added language to value oil subject to a single exchange agreement under either the arm's-length gross proceeds accruing after the exchange or the index pricing method.

MMS also asked for further comments on collecting information on proposed Form MMS–4415 and reopened the comment period on the January 1997 proposal.

We received over 270 pages of written comments from 27 entities, including independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, consultants, and futures market representatives. Comments fell into 11 topical categories ((a) through (k) below). Many of the respondents reiterated or expanded on the same comments made on the January 1997 proposal.

(a) Posted Prices

Summary of Comments: Two respondents submitted further comments on posted prices. Both agreed that posted prices no longer reflect market value. One commenter cautioned, however, that any use of gross proceeds to establish value (specifically in California) will result in royalties being paid on posted prices, since most outright sales contracts are tied to posted prices.

MMS Response: For the reasons expressed in sections I and III(b), the final rule eliminates posted prices as an indicator of crude oil value for royalty purposes. However, MMS still believes that, even in California, proceeds received by a lessee or its affiliate under an arm's-length contract represent market value. Only when oil is not sold at arm's length is it necessary to look to other reliable indicators to determine value.

(b) Revisions to Arm's-length Valuation Criteria (Revised Proposed Paragraphs 206.102(a)(4) and (a)(6))

Based on comments that the proposed rule overly restricted the use of arm's-length gross proceeds as royalty value, the July 1997 proposal expanded the arm's-length valuation criteria in proposed paragraph 206.102(a)(4) by reducing the exclusions to only those situations involving (1) a sales contract that does not reflect the total consideration for the value of production, (2) a breach in the duty of the lessee to market production for the mutual benefit of the lessee and the lessor, (3) certain exchange agreements, (4) non-competitive crude oil calls, and (5) maintenance of overall balances between buyer and seller. For oil disposed of under a single arm's-length exchange agreement, MMS offered two options (revised proposed paragraph 206.102(a)(6)): (1) the index pricing method, or (2) the gross proceeds received in an arm's-length sale of the oil acquired in the exchange. MMS also deleted the requirement that lessees use the index pricing method if they purchase oil within 2 years preceding the production month, commonly referred to as the ''two-year rule'' which was initially proposed as paragraph 206.102(a)(6).

Summary of Comments—MMS Assumptions and Rationale: Sixteen respondents commented on MMS's underlying assumptions and rationale leading to the proposed revisions. Some thought the changes were in the right direction but, along with other commenters, believed the overall concept of index pricing and valuation away from the lease remained flawed because of the prevalence of active lease markets. A few commenters noted that the index pricing method is not applicable to Rocky Mountain oil because this oil stays in the RMR and its prices are not influenced by NYMEX trades.

MMS Response: As discussed in Section III(g) and (h), index prices are often used in the negotiation of sales and settlement prices. They provide a reliable indicator of market value when oil is not sold at arm's length. For the RMR, however, the final rule contains a series of benchmarks for valuing oil not sold at arm's length. The first two of these benchmarks are not related to index prices. The third of these benchmarks is an index price—the Cushing, Oklahoma, spot price for WTI (adjusted for quality and location). MMS selected that price because it is closest to most of the RMR and is used in some exchange agreements involving oil produced in that region. However, under paragraph 206.103(b)(5) of the final rule, if the lessee believes that the first three benchmarks do not result in a reasonable value for its production, the MMS Director will establish an alternate valuation method.

Summary of Comments—Overall Balance: One commenter believed the restriction on ''overall balances'' (proposed paragraph 206.102(a)(4)(ii)) is based upon an unproven and faulty assumption that reciprocal dealings are anti-competitive. Three commenters questioned the meaning of ''market value in the field or area'' regarding the limitation on overall balances. They believed the inclusion of this phrase would create confusion and litigation because despite the requirements to use index pricing in overall balance situations, companies might reason that the contract price nonetheless represents market value. Two commenters feared that MMS's use of

this phrase would open the door to the use of a comparable sales methodology, which they opposed. One commenter recommended that MMS modify the regulatory language on overall balance situations to provide:

1. That index-based value be used where the arm's-length contract is subject to an informal or formal overall balance agreement maintained between the buyer and seller.

2. That there is a rebuttable presumption that an overall balance arrangement exists where the lessee has purchased oil (or gas or other gas or petroleum-related products) from its buyer within the last 2 years.

3. That the rule does not apply for oil purchased to meet production shortfalls or for lease operations.

Four commenters thought that a new certification to verify that a lessee is not maintaining an ''overall balance'' with its purchaser is unnecessary because Form MMS–2014 already certifies that values are true and accurate. They also suggested that ''overall balance'' be defined.

MMS Response: MMS removed the language regarding overall balances as a separate, specific provision in the February 1998 proposal and in the final rule. However, oil subject to overall balance situations will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in overall balancing agreements thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

Several commenters said in response to the February 1998 proposal that removing the overall balance provision and relying on MMS to find such agreements put an undue burden on MMS. They further stated that MMS would have great difficulty verifying the existence of such agreements. We continue to believe, however, that verification of overall balancing arrangements, and appropriate follow up, is best left to audit and the provisions of paragraphs 206.102(c)(1) and (c)(2).

Summary of Comments—Two-Year Rule: Two commenters opposed MMS's deletion of the ''two-year rule.'' One commenter argued that deleting this rule will cause difficult compliance problems because of the difficulty in tracing all two-party transactions and in determining the existence of overall balancing arrangements, many of which may be informal. To address the concerns of independent producers, two commenters recommended the 2-year rule be modified to exclude purchases of minimal amounts of crude oil for lease operations or to make up production shortfalls.

MMS Response: As discussed in Section III(d) above, MMS removed the 2-year rule because it was overly restrictive.

(c) Crude Oil Calls (Revised Paragraph 206.102(a)(4)(iii))

For oil disposed of under a crude oil call, the July 1997 proposal would recognize gross proceeds as value only if the price paid is the same as what other parties are willing to competitively bid to purchase the oil (the so-called ''Most Favored Nations'' clause). Otherwise, oil disposed of under a non-competitive crude oil call would be valued by index pricing methods.

Summary of Comments: Nine respondents commented on the crude oil call issue. There was general agreement to allow arm's-length sales of oil subject to unexercised crude oil calls to be valued based on gross proceeds. However, several commenters representing both State and industry interests expressed concern about the Most Favored Nations (MFN) clause. Four industry commenters disagreed that a crude oil call must contain a MFN clause for the sale of oil under the call to be considered arm's length. Commenters representing States, on the other hand, opposed treating contracts with crude oil calls with MFN or other escalation clauses as arm's-length, arguing that:

- The existence of an MFN clause in a contract does not mean the associated price was derived from a true arm's-length interaction.
- Acceptance of prices under MFN or other escalation clauses increases the potential to use oil postings as the basis for value.
- MMS will have difficulty in monitoring MFN transactions.

Industry commenters recommended deleting reference to MFN altogether because such clauses are more common to gas contracts and rarely, if ever, are used in oil transactions. Industry commenters also generally opposed any exclusion of crude oil calls from arm's-length consideration, arguing that calls are legitimate business transactions and that MMS has the option to use benchmarks if call prices are suspect.

MMS Response: MMS recognized in the July 1997 proposal that not all crude oil calls are exercised and that some calls are subject to competitive bid. In the February 1998 proposal, MMS modified the rules regarding competitive crude oil calls to accept arm's-length gross proceeds as value in these situations. In the final rule, MMS removed the language regarding noncompetitive crude oil calls as a separate, specific provision. However, oil subject to a noncompetitive crude oil call will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

(d) Valuing Oil Disposed of Under Exchange Agreements (Revised Proposed Paragraph 206.102(a)(6))

The July 1997 proposal extended the use of gross proceeds valuation to oil exchanged and sold at arm's length after a single exchange. In those cases where a lessee disposes of the produced oil under an exchange agreement with a non-affiliated person, and after the exchange the lessee sells at arm's length the oil acquired in the exchange, the lessee would have the option of using either its gross proceeds under the arm's-length sale or the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(i)). If the lessee chose gross proceeds under this option, the lessee would have to value oil production disposed of under all other arm's-length exchange agreements in the same manner (proposed paragraph 206.102(a)(6)(iii)). For any oil exchanged or transferred to affiliates, or subject to multiple exchanges, the lessee would have to use the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(ii)).

Summary of Comments: Ten respondents commented on the rules governing the valuation of oil disposed of under exchange agreements. Commenters supporting the amended proposal did so with reluctance. They believed the option to use gross proceeds would create compliance problems resulting from the necessity to trace and verify the nature of the exchange. One commenter suggested that MMS expand the gross proceeds option to apply to a single exchange by the lessee or its affiliate where all the oil received under that exchange is sold at arm's length. Two commenters suggested giving the lessee an option of valuing exchanged oil by using either lease-market benchmarks (rather than index prices) or the lessee's resale price less an exchange differential, regardless of the number of exchanges needed to reposition the crude oil for sale. Some commenters recommended excluding all exchange agreements from gross

proceeds valuation, as MMS initially proposed.

MMS Response: In the February 1998 proposal, MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold at arm's length, regardless of the number of exchanges involved. However, many industry comments claimed that tracing multiple exchanges would be overly burdensome, while others wanted the ability to use the ultimate arm's-length gross proceeds. As a result, and as explained in more detail in Section VI(e) of this preamble, in the final rule MMS is providing an option to use either the arm's-length gross proceeds following one or more arm's-length exchanges, or the provisions of § 206.103. The chosen option will apply for at least 2 years. The lessee must use this method to value all of its crude oil produced on a property basis—that is, from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that the lessee or its affiliate sells at arm's length following one or more exchanges. (See Section IX (i) of this preamble for the reasons why the final rule changes to a property basis for this exception.) The provisions of § 206.103 will apply for oil that is not sold at arm's length after the exchange and for oil subject to non-arm's-length exchanges regardless of whether an arm's-length sale follows such an exchange.

(e) NYMEX Pricing (Initial Proposed Paragraph 206.102(c)(2)(i))

Summary of Comments: Nine respondents submitted further comments on the NYMEX pricing methodology proposed in the January 1997 proposal. Industry commenters reiterated their opposition to the methodology. Two commenters noted that NYMEX did not represent the market in California or Wyoming. However, one commenter defended the NYMEX market as a useful pricing reference for the oil industry. Contrary to industry's allegations that the NYMEX market is dominated by speculators, this commenter indicated that commercial oil entities account for 75 to 80 percent of market participation.

MMS Response: As discussed in Section III(g), MMS has abandoned the use of NYMEX prices as an indicator of crude oil value.

(f) ANS Spot Prices (Initial Proposed Paragraph 206.102(c)(2)(ii))

Summary of Comments: Three industry commenters reiterated industry's general opposition to using ANS spot prices as the basis for crude oil valuation in California and Alaska. They argued that ANS spot prices are an invalid measure of California crude oil value because:

- The quality differences between ANS and California crudes are too great;
- ANS is a thinly-traded market; and
- ANS crude commands a higher price not only because of its superior quality but also because of its consistent availability to California refiners to satisfy marginal demands.

Commenters representing the State of California continued to support the ANS valuation method for that State.

MMS Response: For the reasons expressed in Section III(h), MMS maintains that the ANS spot price is a valid indicator of value for crude oil produced in California.

(g) Duty To Market (Initial Proposed Paragraph 206.102(e)(1))

Summary of Comments: Seven respondents, five representing industry and two representing States, submitted further comments on the rule requiring lessees to market crude oil production at no cost to the Federal Government. Industry commenters repeated their opposition to this rule using the same reasons summarized for the January 1997 proposal. However, State representatives supported the rule. One State commenter indicated that industry does not include marketing costs in determining location and quality differentials; therefore, industry should not be allowed to include marketing costs in determining the differentials for royalty purposes.

MMS Response: For the reasons expressed in Section III(i), MMS maintains its position that lessees have a duty to market production without cost to the Government.

(h) Requiring Use of Actual Transportation Costs (Amended § 206.105)

Summary of Comments: Four respondents submitted further comments on the proposed removal of the exception regarding transportation allowance calculations based on actual costs. Industry commenters reiterated their opposition, while State commenters supported the proposal.

MMS Response: As explained in Section III, in the final rule MMS has deleted the provision for a lessee to apply for an exception to use FERC tariffs in lieu of actual costs.

(i) Form MMS–4415 (Proposed Paragraph 206.105(d)(3)) and Differentials

The July 1997 proposal clarified MMS's intended use of Form MMS–4415 in two respects: (1) MMS will calculate specific differentials as the volume-weighted average of the individual differentials derived from the information reported on the form and (2) MMS will collect only information about exchanges where delivery occurs at an aggregation point and a market center (*i.e.,* lessees will not be required to report information for exchanges occurring at the lease). MMS requested comments on the usefulness of collecting information about exchanges between two aggregation points. MMS also requested comments on how lessees would allocate to Federal leases differentials from aggregation points to market centers when non-Federal production is commingled with Federal production at aggregation points.

Summary of Comments: Six respondents, five representing industry and one a local government, gave additional commentary on Form MMS–4415. Few commenters responded directly to MMS's specific requests for comments on collecting information about exchanges between two aggregation points and allocating differentials when non-Federal production is commingled with Federal production at aggregation points. None gave substantive suggestions. Comments essentially duplicated those provided in response to the January 1997 proposal. Comments ranged from outright opposition to the form (and its data collection requirement) to complaints about its administrative burden and lack of clear instructions.

MMS Response: As discussed in Section III(m), MMS eliminated Form MMS–4415 in the final rule.

(j) Fairness, Procedural Conduct, and Workability

Summary of Comments: Ten respondents commented on this topic. Industry commenters continued to oppose any valuation scheme that they assert moves the point of royalty valuation away from the lease, reiterating their arguments that the index pricing methodology would not reflect market value at the time of production, would be costly and difficult to administer, and is contrary to lease terms and statutory mandates. They maintained their position that the value of oil disposed of under non-arm's-length conditions should be based on comparable transactions in the same field or area. Two commenters representing a State's interests criticized MMS for expanding the arm's-length gross-proceeds valuation criteria.

MMS Response: We responded to these comments throughout other sections of this preamble.

(k) Alternatives

Summary of Comments: Eleven respondents (ten industry and one governmental advisory group) gave further comments on alternatives to the proposed rule. Industry commenters reiterated their position that MMS should either take its oil in kind (the most prevalent comment), modify the current benchmarks to eliminate reference to posted prices, or base value on some form of comparable sales from the same field or geographic area. However, related to an idea discussed in earlier public workshops, commenters said that a comparable sales valuation method based on data reported to MMS would be unworkable because of the limitations of MMS's computer system (MMS cannot sort the data by field nor determine significant quantities) and because much of the sales data reflects posted prices.

MMS Response: We responded to these comments in detail in Section X and in Section III(r).

V. Responses to Public Comments on September 1997 Notice

Summary of Proposed Alternatives

The September 1997 notice reopened the public comment period on the January 1997 proposal and requested comments on five alternatives to value oil disposed of under non-arm's-length conditions: (1) A value based on prices received under bid-out or tendering programs; (2) a value determined from benchmarks using arm's-length transactions, RIK sales, or a netback method; (3) a value based on geographic indexing using MMS's own system data, but excluding posted prices; (4) a value based on index (NYMEX and ANS) prices but using fixed-rate differentials; and (5) a value using published spot prices instead of NYMEX prices. With regard to Alternatives 1, 2, and 3, we asked whether the RMR should have separate and specific valuation standards.

We received written comments from 28 entities, including independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, a government oversight group, and a royalty owner. Numerous individuals provided commentary at the public workshops. We summarized the comments on the proposed alternatives in the February 1998 proposal. We repeat the comment summaries here and give our responses.

(a) Alternative 1—Bid-Out or Tendering Program

Summary of Comments: Industry and some States supported tendering as a viable method to determine royalty value. They reasoned that the prices received under tendering transactions were evidence of market value at or near the lease, which satisfies the rulemaking objective. However, industry cautioned that tendering would not be applicable in every situation (it would be too expensive for some companies to develop and administer) and should be one of the other alternatives available for valuation. In fact, two commenters noted that tendering-based valuation was not feasible in California because no one is presently engaged in tendering programs in that State. To be acceptable for valuing the lessee's non-arm's-length production, one commenter recommended that the minimum tendered volume should be MMS's royalty share plus 2 percent, or if transported by a truck or tank car, a volume equal to a full load; another commenter recommended 10 to 20 percent as the minimum volume, with a minimum of three bids.

MMS Response: MMS did not adopt this alternative as there are meaningful spot prices applicable to production in all areas other than the Rocky Mountains. Further, tendering occurs in relatively few cases now and thus generally does not reflect true market value.

With the exception of the RMR, spot and spot-related prices drive the manner in which crude oil is bought and traded in the U.S. Spot prices play a major role in crude oil marketing and are readily available to lessees through price reporting services. We believe spot prices are the best indicator of the value of production. Thus, with the exception of the Rocky Mountains, we don't believe it is necessary to use other less accurate and more administratively burdensome means of valuing production not sold at arm's length (e.g., tendering).

MMS adopted a particular tendering alternative designed with what MMS intends as safeguards against manipulation as a benchmark for the RMR for production not sold at arm's length because of the lack of a reliable spot price in that region. One of the Rocky Mountain State commenters recommended this method as the initial benchmark in that region. MMS has acquiesced in that recommendation but nevertheless has substantial concerns about the potential for manipulation of tendering programs. MMS intends to closely monitor the reliability and workability of this benchmark.

MMS's response to the comments regarding minimum volume and bid requirements is provided in Section VI below.

(b) Alternative 2—Benchmarks

Summary of Comments: Industry and some States generally supported some form of benchmark system based on actual arm's-length sales, RIK prices, or a netback method using an index price or affiliate's resale price to value oil not disposed of at arm's length. (Nonetheless, many commenters remained opposed to NYMEX- and ANS-based pricing.) Industry, however, advocated that lessees be permitted to select the valuation method best suited to their situation; in other words, they wanted the benchmarks to be a menu, rather than a hierarchy. States objected to this selection concept. Industry also urged MMS to abandon the requirement that royalty value is the greater of the lessee's gross proceeds or the benchmark value.

One State recommended separate valuation standards for lessees with affiliated refiners and those without. For lessees with affiliated refiners, value would be determined by benchmarks using tendered prices, lease-based comparable sales, and netback from spot price. (This suggestion was directed to the RMR only.) For lessees without affiliated refiners, but who have a marketing affiliate that sells the lessee's oil outright or in a buy/sell exchange, royalty would be due on the resale value less appropriate allowances. Industry objected to this affiliated-refiners distinction because not all producers in integrated companies sell or transfer their oil production to their affiliated refiner.

For netback valuation, industry urged MMS to recognize all costs associated with midstream marketing as allowable deductions from the index or resale price. However, one State commenter argued that industry has failed to demonstrate any entitlement to a marketing deduction as a matter of law or fact, citing, for example, that midstream marketing costs are already factored into transportation tariffs and location differentials.

Two commenters representing State of California interests objected to any benchmark valuation scheme for that State. They argued that the California crude oil market is not competitive. Thus, they believed that any non-arm's-length valuation scheme based on arm's-length prices would not reflect true market value. They maintained that

ANS prices are the only viable method of valuing crude oil in California.

MMS Response: In the final rule, MMS adopted a series of benchmarks for valuing RMR production not sold at arm's length. However, for the reasons explained above, the final rule does not use those benchmarks for the rest of the country; we apply spot prices in those regions. The Rocky Mountain benchmarks prescribe a first benchmark, but if it does not apply, the lessee has the choice of two other benchmarks. A lessee must use the first benchmark if it applies to the lessee's situation—that is, tendering—and if tendering does not apply, then it may choose between a weighted average of arm's-length sales and purchases, or Cushing, Oklahoma, adjusted spot prices. If the lessee demonstrates that none of the three benchmarks establish a reasonable value, MMS may establish an alternative valuation method.

MMS agreed with the industry comment that we should not require royalty value to be the higher of gross proceeds or the benchmark value. Hence, the final rule does not require royalty value to be the higher of gross proceeds or index price.

While the final rule does not make a distinction between lessees with affiliated refiners and those without, it does establish different valuation methods for oil that is sold at arm's length versus oil that is not. The distinction is based on the disposition of the oil and not a lessee's ownership of a refinery.

Comments regarding costs of midstream marketing are addressed in Section III(i).

(c) Alternative 3—Geographic Indexing

Summary of Comments: Most commenters believed a geographic fixed index method would be unworkable. They mainly objected to the time difference between the production month and publication of the index price. They argued that the published indices would always be out-of-date and require unnecessary adjustments for prior reporting months.

MMS Response: MMS agrees with commenters that a geographic fixed index would be unworkable and, therefore, the final rule does not use this method. Additional MMS responses to this alternative are contained in our detailed responses to comments in Section XI, Executive Order 12866, later in this preamble.

(d) Alternative 4—Differentials

Summary of Comments: In concert with their objections to basing value on index (NYMEX and ANS) prices away from the lease, industry commenters opposed the use of any fixed (or other) differentials that don't permit deductions for midstream marketing activities. Specifically for California, two commenters representing State interests urged MMS to use the gravity factor in the Four Corners and All American Pipeline tariffs to adjust for quality differences between ANS and California crude oils. For location differentials, they reiterated their position that the only relevant information is from ''in/out'' exchanges. As an alternative to determining separate location differentials for the various California aggregation point/market center pairs, they proposed fixed-rate differentials for given geographic zones.

MMS Response: MMS agrees with industry and most State commenters that the proposed fixed differentials would be unworkable and, therefore, the final rule does not use this method. The February 1998 proposal and the final rule added paragraph 206.112(e) allowing for the use of quality banks including the gravity factor suggested by one State commenter. The final rule uses the location and quality differentials contained in arm's-length exchange agreements (including ''in/out'' exchanges) to adjust index prices for location and quality. Additional MMS responses to this alternative are contained in our detailed responses to comments in Section XI, Executive Order 12866, later in this preamble.

(e) Alternative 5—Spot Prices

Summary of Comments: Comments on the proposed spot price methodology were mixed. Some commenters thought it was a workable approach, but indicated that the net result would be the same as starting with a NYMEX price and adjusting back to the lease. A few commenters noted that spot prices are published only for a limited number of domestic crude oils, and no spot prices are published for the RMR. One commenter questioned the accuracy of the reported prices. Industry commenters remained concerned with the disallowance of marketing costs in any netback scheme.

MMS Response: For regions other than the Rocky Mountains, the final rule uses spot prices to establish value for production not sold at arm's length. In the RMR, spot prices are used as a third benchmark. Additional MMS responses regarding use of spot prices are contained in detail in Section VI(e).

(f) Rocky Mountain Region

Summary of Comments: There was general consensus that the RMR exhibited particular oil marketing characteristics that would justify different royalty valuation standards. Some commenters, both industry and State, supported the notion of separate valuation standards for the region. Others, however, disagreed with any regional separation, preferring instead a single, nationwide valuation scheme or menu of benchmarks.

MMS Response: We agree with the general consensus that a separate valuation method is needed for the RMR. The final rule incorporates this change.

VI. Responses to Public Comments on February 1998 Proposal

Summary of Proposed Rule

In response to comments received on the prior proposed rules and comments made at the public workshops, the February 1998 proposal contained substantive changes to the valuation procedures included in the January 1997 proposal. For oil that ultimately is sold in an arm's-length transaction, the royalty value would be the gross proceeds accruing to the seller under the arm's-length sale. This procedure would apply to arm's-length exchanges where the oil received in exchange is ultimately sold at arm's length. It would also apply to oil sold in the exercise of competitive crude oil calls.

For oil (or oil received in exchange) that is refined without being sold at arm's length, for oil disposed of under non-arm's-length exchange agreements and non-competitive crude oil calls, and for all other oil not sold at arm's-length, the royalty value would be determined by measures prescribed for three geographic regions. For oil produced in California and Alaska, value would be based on ANS spot prices, adjusted for location and quality. For oil produced in the RMR, value would be determined by the first applicable of four benchmarks: (1) The highest price bid for tendered volumes, (2) the volume-weighted average of gross proceeds accruing under the lessee's or its affiliate's arm's-length contracts for the purchase or sale of crude oil from the field or area, (3) the average NYMEX futures prices, with location and quality adjustments, and (4) an MMS-established method. For oil produced outside of California, Alaska, and the Rocky Mountain Area, value would be the average of the daily mean spot prices published for the nearest market center, adjusted for location and quality differentials.

The February 1998 proposal also contained specific instructions for reporting on Form MMS–4415, modified

certain definitions, and added others. It reiterated the lessee's duty to put the production in marketable condition and to market the production at no cost to the lessor. Rules addressing transportation allowances were recodified in new sections and modified to reflect the newly-proposed valuation rules.

We received almost 700 pages of written comments from 35 entities, including independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, small refiners, and consultants. Consistent with its past comments, industry generally opposed the proposed rules, arguing that they do not offer certainty, do not reduce administrative costs, and particularly do not derive a reasonable value of production at the lease. Industry particularly maintained its advocacy of using so-called ''lease markets'' (arm's-length sales of like-quality production in the same field or area) to set value of production not disposed of at arm's length. States generally supported the rule but had suggestions for changes.

Several commenters continued to address many of the same issues. They include:

- Duty to market,
- Restrictions on gross proceeds valuation,
- Using NYMEX index prices and ANS spot prices for non-arm's-length valuation,
- Treatment of non-competitive crude oil calls,
- Eliminating the exception allowing requests to use FERC tariffs instead of actual transportation costs, and
- Use of differentials to calculate royalty value.

Comments on these issues were not substantively different from those previously summarized. Rather than repeating the issues and comments here, we refer the reader to Sections I, III, IV, and V above. Instead, we only address comments on those provisions that are new to or revised from the previous proposals. Comments are grouped into seven topical categories ((a) through (g) below).

(a) Definitions (Proposed § 206.101)

Affiliate—Summary of Comments: Eleven respondents, all representing industry, objected to the 10 percent ownership threshold for defining control and thus requiring non-arm's-length valuation. They argued that 10 percent was too low because affiliates with this small amount of ownership actually have no control over the affiliated entity. Accordingly, they believed that too many lessees would be excluded from using their gross proceeds in bona fide arm's-length transactions as value. Others suggested retaining the current definition of affiliate, as defined by the term ''arm's-length contract,'' where ownership of 10 percent through 50 percent creates a presumption of control. One commenter suggested 20 percent to 50 percent ownership as the criteria for creating a presumption of control, consistent with the definition used by the Bureau of Land Management. One commenter suggested deleting reference to partnerships and joint ventures because lessees might not have access to records of these entities and these terms could create confusion as to whether the affiliate test applies to the property, field, or corporate level.

MMS Response: In this final rule, we have made ''affiliate'' a separate definition from ''arm's length.'' We believe this clarifies and simplifies the definitions and should promote better understanding of both ''arm's length'' and ''affiliate.''

In the final rule, MMS is revising the definition of ''affiliate.'' The July 1998 proposal (63 FR at 38356) retained the criteria for determining affiliation that are contained in the existing rule. The March 1999 notice that included the August 31, 1998 letter from the Assistant Secretary for Land and Minerals Management to the Senate (64 FR at 12268) also indicated that MMS likely would retain the same criteria that are in the existing rule.

In response to the March 1999 notice, industry commenters proposed a set of criteria which lessees could use to rebut the presumption of control that arises from ownership or common ownership of between 10 and 50 percent. While MMS does not agree with the industry proposal, a judicial decision in a case decided after the close of the comment period for the March 1999 notice affects the criteria for determining control and the associated presumption in the existing rule.

In *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) (decided May 28, 1999), the United States Court of Appeals for the District of Columbia Circuit addressed the Office of Surface Mining Reclamation and Enforcement's (OSM's) so-called ''ownership and control'' rule at 30 CFR 773.5(b). That rule presumed ownership or control under six identified circumstances. One of those circumstances was where one entity owned between 10 and 50 percent of another entity. The court found that OSM had not offered any basis to support the rule's presumption ''that an owner of as little as ten per cent of a company's stock controls it.'' 177 F.3d at 5. The court continued, ''While ten percent ownership may, under specific circumstances, confer control, OSM has cited no authority for the proposition that it is ordinarily likely to do so.'' *Id.* (Emphasis added.) In a footnote, the court referred to the existing MMS rule:

> In its brief OSM referred the court to several regulations promulgated by other agencies but none of them presumes control based simply on a ten percent ownership stake, although another Department of Interior regulation does so. See 30 C.F.R. 206.101(b) [sic] (''based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: * * * (b) Ownership of 10 through 50 percent creates a presumption of control''). We do not consider the validity of section 206.101 here.

Id. The United States did not file a petition for rehearing. Nor did the United States seek Supreme Court review.

In the final rule, MMS is revising the definition of ''affiliate'' in light of the National Mining Association decision. In the event of ownership or common ownership of between 10 and 50 percent, paragraph (2) of the definition in the final rule, instead of creating a presumption of control, identifies a number of factors that MMS will consider in determining whether there is control under the circumstances of a particular case.

With respect to ownership or common ownership, the new definition identifies such factors as the percentage of ownership, the relative percentage of ownership as compared with other owners, whether a person is the greatest single owner, and whether there is an opposing voting bloc of greater ownership. All of these are relevant factors in determining whether there is control in a particular case.

For example, company A could own one third of the voting stock of company B, while no other owner owns any percentage close to that. A is the greatest single owner, and it is very likely that A has control of B. If, in addition, A manages the day-to-day operations of B and the other owners effectively are passive investors, it would be very clear that A controls B and that they are affiliates.

A different example would be if A owns 20 percent of B, at the same time that C and D each own 35 percent of B. In such a case, it would be much harder to demonstrate that A controls B, and doing so would depend on additional facts that would show that A has effective control.

Yet another example would be if A owns 12 percent of B and other owners

own roughly equivalent percentages of B. A may or may not control B, again depending on what additional circumstances are present.

We emphasize that simply because one entity is found not to control another on the basis of stock ownership and other factors, and therefore that the entities are not affiliates, that does not always mean that the relationship between the two entities is at arm's length. The entities may be engaged in a cooperative venture and therefore not have opposing economic interests. (An example is the situation in Xeno, Inc., 134 IBLA 172 (1995), in which a number of lessees in a large field combined to form another entity to purchase their gas, then gather, compress, and treat it, and then resell it to another purchaser.)

Paragraph (2) of the definition also identifies other factors in addition to ownership interests that are relevant to determining control. These include the extent of common officers or directors, operation by one entity of a lease or a facility, the extent of participation by different owners in operations and day-to-day management of an entity, and other evidence of power to exercise control or common control. These factors will be evaluated on a case-by-case basis.

Paragraphs (1) and (3) of the definition continue the existing provisions that ownership of more than 50 percent constitutes control, that ownership of less than ten percent constitutes a presumption of noncontrol, and that relatives, either by blood or marriage, are affiliates regardless of any percentage of ownership or common ownership. The National Mining Association decision does not affect these provisions.

Gross proceeds—Summary of Comments: Two industry commenters opposed the inclusion of payments made to reduce or ''buy down'' the purchase price of oil to be produced in later periods in the revised definition of ''gross proceeds.'' One commenter argued that the collection of royalty on buydowns was contrary to the decision in *IPAA* v. *Babbitt*, 92 F.3d 1248 (D.C. Cir. 1996).

MMS Response: The implications of the D.C. Circuit's ruling in the IPAA case, as well as the Sixth Circuit's decision in *United States* v. *Century Offshore Management Corp.*, 111 F.3d 443 (6th Cir. 1997), cert. denied, 522 U.S. 1090 (1998), and other subsequent court decisions regarding ''buydown'' payments (which in recent years have been part of contract settlement arrangements) are analyzed in two recent decisions of the Assistant Secretary for Land and Minerals Management in Mobil Oil Corp., Docket Nos. MMS–94–0151-OCS, 94–0668-O&G, 94–0669-O&G, 95–0063-O&G, and 95-0065-O&G (consolidated) (May 4, 1998), and Antelope Production Co., Docket No. MMS–96–0068-O&G (May 4, 1998). For the reasons explained in those decisions, the definition of ''gross proceeds'' contained in the February 1998 proposal and in the final rule is fully in accordance with law.

Rocky Mountain Area—Summary of Comments: Six respondents (five industry and one State) commented on the definition of ''Rocky Mountain Area.'' Industry commenters believed the word ''Area'' should be changed to ''Region'' to avoid confusion with the definition of ''area.'' They also suggested including northwest New Mexico (*i.e.*, the San Juan Basin) in the Rocky Mountain Area. The State commenter, however, opposed including northwest New Mexico in the definition because crudes from the San Juan Basin are regularly exchanged in midcontinent markets.

MMS Response: MMS agrees with the comment that the term Rocky Mountain ''Area'' should be changed to Rocky Mountain ''Region.'' We made this change in the final rule. We concur with the commenter from the State of New Mexico that northwest New Mexico should not be part of the RMR because crude oil from the San Juan Basin is regularly exchanged or sold in midcontinent markets. For the same reasons, the final rule excludes from the RMR definition those portions of the San Juan Basin, and other oil-producing fields in the ''Four Corners'' area (*i.e.*, near the convergence of the boundaries of New Mexico, Arizona, Utah, and Colorado) that lie within the States of Colorado and Utah. Crude oil produced from these areas typically is exchanged or sold in midcontinent markets for which dependable index prices are published. MMS therefore believes it is appropriate that the index values from those markets be used in valuing production not sold at arm's length or for which the lessee opts to use index values under other provisions of the final rule, as explained below.

Suggested ''Operating Allowance'' Definition—Summary of Comments: We received a comment that ''operating allowance'' needs to be included in the definitions section. The commenter said it is still unclear what is meant by an operating allowance, both in this section and its predecessor section.

MMS Response: The operating allowance language was added to 30 CFR 206.106 in 1996 as part of a new rule on bidding systems for leases on the OCS. Operating allowances are to be predetermined and defined at the time of a lease sale. They may be used either to effectively replace the valuation regulations to calculate net receipts subject to the nominal royalty rate, or to reduce net receipts after the valuation regulations are applied to determine receipts subject to the nominal royalty rate. In either case, the approach used would be specified in the lease sale notice. Such allowances would be in lieu of any allowances that otherwise might have applied under the valuation rules. We chose not to define ''operating allowance'' so as not to confuse the application of allowances otherwise permitted under 30 CFR part 206 with the operating allowance concept. Any lessee with an operating allowance will be fully aware of its specifics regarding the applicable lease, because it will be defined explicitly in the notice of lease sale.

(b) Tracing Exchange Transactions (Proposed Paragraph 206.102(c)(3))

The February 1998 proposal expanded gross proceeds valuation to oil that is sold at arm's length after being involved in one or more arm's-length exchanges. This provision would have required the lessee to trace the oil through all such exchanges to assure they are all arm's length and to capture all location and quality differentials. If the lessee then sold at arm's length the oil it ultimately received, the value of the oil produced from the lease would have been the gross proceeds for the oil ultimately sold after the exchanges, adjusted for any location and quality differentials incurred in the course of the arm's-length exchanges.

Summary of Comments: Seventeen respondents (fourteen industry, two States, and one municipality) commented on the tracing aspect of the rule. They all agreed that tracing oil through multiple exchanges would be impractical, if not physically impossible, because of aggregation and commingling of Federal and non-Federal crudes of different qualities and the magnitude of administering a program to track individual exchange transactions. A few commenters asserted that the sharing of information about oil exchanges might violate United States antitrust laws.

One State commenter recommended confining gross proceeds valuation to an arm's-length first sale. Another commenter was concerned that Federal royalty oil could be valued at the lowest price received when there are multiple sales at the end of a series of exchanges.

As an alternative to tracing, one company suggested that the value of oil

disposed of through arm's-length exchanges be based on the spot market price of the crude oil received, adjusted for location and quality differentials received or paid. An industry trade organization recommended replacing the tracing method with either: (1) Royalty valuation procedures (RVP's) based on arm's-length sales from nearby wells, or (2) a netback procedure. Some industry commenters were concerned that the proposed rule gave MMS too much latitude to disallow transactions under arm's-length exchange agreements, which would create uncertainty by allowing auditors to second-guess a company's marketing decisions.

MMS Response: The July 1997 proposal extended the use of gross proceeds valuation to oil exchanged and then sold at arm's length. In those cases where a lessee disposed of the produced oil under an exchange agreement with a non-affiliated person, and after the exchange the lessee sold at arm's length the oil acquired in the exchange, the lessee would have had the option of using either its gross proceeds under the arm's-length sale or the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(i)). This option would have applied only when there was a single exchange. If the lessee chose gross proceeds under this option, the lessee would have valued all oil production disposed of under all other arm's-length exchange agreements in the same manner (proposed paragraph 206.102(a)(6)(iii)). For any oil exchanged or transferred to affiliates, or subject to multiple exchanges, the lessee would have used the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(ii)).

Participants in MMS's workshops held in October 1997 indicated that they often use several exchanges to transport their production from offshore leases to market centers onshore. They believed that MMS should give the lessee an option of valuing exchanged oil either by using so-called ''lease-market'' benchmarks (rather than index prices) or by using the lessee's resale price less an exchange differential, regardless of the number of exchanges needed to reposition the crude oil for sale.

In response to those comments, in the February 1998 proposal MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold arm's length, regardless of the number of arm's-length exchanges involved. However, because many industry comments claimed that tracing multiple exchanges would be overly burdensome, while others wanted the ability to use the ultimate arm's-length gross proceeds, in the final rule, MMS is providing an option to use either the arm's-length gross proceeds following one or more arm's-length exchanges, or the provisions of § 206.103. The chosen option will apply for at least 2 years, and the lessee must use this method to value all of its crude oil produced from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that the lessee or its affiliate sells at arm's length following one or more exchanges. The provisions of § 206.103 will apply for oil that is not sold at arm's length after the exchange, as well as to oil subject to non-arm's-length exchanges. We included these qualifications to assure that lessees will not abuse the system by choosing case-specific options or time periods that best suit their situations, or by using non-arm's-length exchange differentials to determine royalty value.

As discussed elsewhere in this preamble, the final rule does not use the industry's suggested ''RVP's.'' In the RMR, however, the final rule uses a prescribed series of benchmarks similar to the suggested ''RVP's,'' for reasons explained elsewhere in this preamble. Also, as discussed elsewhere in the preamble, MMS believes that except for the RMR, spot prices are the best indicators of value.

The lessee's duty to market does not mean that MMS will second-guess a company's marketing decisions. Lessees may structure their business arrangements however they wish, and, absent misconduct or breach of the lessee's duty to market to the benefit of itself and the lessor, MMS will look to the ultimate arm's-length disposition in the open market as the best measure of value.

(c) Different Geographic Regions (Proposed § 206.103)

Based on the isolation of the West Coast petroleum market and its distinctive market conditions, the previous rulemaking proposals recognized two geographic regions for valuation: (1) California and Alaska and (2) the remainder of the country. However, from the comments received on these proposals, it became apparent that oil marketing in the RMR is significantly different. Accordingly, the February 1998 proposal recognized three regions for royalty valuation: (1) California and Alaska, (2) the RMR, and (3) the rest of the country.

Summary of Comments: Four respondents representing industry commented on the three-region approach; all opposed it. They claimed that the geographically different valuation standards will require companies to install additional computer systems or systems software and hire corresponding additional staff. One respondent recommended revising the existing non-arm's-length valuation benchmarks to provide universal valuation procedures that would determine value at the lease.

State participants at MMS's October 1997 workshops supported different valuation methods for different regions of the country.

MMS Response: There was general consensus among commenters that the RMR exhibited particular oil marketing characteristics that would justify different royalty valuation standards. Production is controlled by relatively few companies in the RMR; the number of buyers is also more limited than in the Gulf Coast and midcontinent regions; and there are limited third-party shippers, resulting in less competition for transportation services in this region. There is less spot market activity and trading in this region as a result of the control over production and refining. Finally, crude oil production in the RMR typically involves much smaller volumes and is more scattered than in the Gulf Coast and midcontinent regions.

Beginning with the January 1997 proposal, MMS has maintained a separate valuation methodology for production in California and Alaska. As explained thoroughly in previous proposals, the California and Alaska markets are unique and warrant different valuation methods. The final rule maintains this difference and thus establishes three regions including (1) California and Alaska, (2) the RMR, and (3) the rest of the country.

Industry stated that new computer systems are needed, with the possibility of three separate systems for the three regions of the country with separate valuation requirements. However, they did not provide any rationale as to why, or any specifics on how those computer systems would be different than what they need under the current regulations. The majority of payors will continue to pay on the gross proceeds received under an arm's-length sale just as they always have. This means that they will not incur any additional computer costs or time in complying with the arm's-length provisions of the new rule. For those not paying on gross proceeds, industry has not shown that the methods applicable to the three different regions of the country will require unduly complicated or costly computer systems overhaul or substantial additional staff. We

recognize, however, that the changes in valuation methodology will require some systems changes. For that reason the final rule includes a ''grace period'' for royalty adjustments necessitated by system changes. The grace period includes the first three production months following the effective date of the rule. There will be no liability for late payment interest during this period. The final rule includes three geographic regions as contained in the February 1998 proposal.

(d) Restrictions on Rocky Mountain Region Benchmarks (Proposed Paragraph 206.103(b))

Under the February 1998 proposal, the value of crude oil produced in the RMR and not sold at arm's length would be determined by the first applicable of the following benchmarks:

(1) For lessees with an MMS-approved tendering program, value of production from leases in the area covered by the tendering program would be the highest price bid for the tendered volumes. To exercise this benchmark, the lessee would have to offer and sell at least 33⅓ percent of its total Federal and non-Federal production from that area under the tendering program and would have to receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(2) A value calculated as the volume-weighted average of the gross proceeds accruing to the lessee or its affiliate for arm's-length purchases or sales of production from the field or area during the month. The total volume purchased or sold under the arm's-length transactions must exceed 50 percent of the lessee's or its affiliate's Federal and non-Federal production from the same field or area during that month.

(3) A value calculated as the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, for deliveries during the production month, adjusted for location and quality differentials.

(4) If the lessee demonstrates to MMS's satisfaction that the first three benchmarks result in an unreasonable value for its production, the MMS Director may establish an alternative valuation method.

Summary of Comments—Tendering: Six respondents, all representing industry, commented on benchmark 1 (tendering). They all opposed the restrictions, claiming they were excessive and would all but eliminate tendering as a measure of value. Comments included:

- The method MMS used to arrive at the one-third volume requirement is flawed because if the lease is Federal, there is no State royalty or tax interest involved. Likewise, if the lease is a State lease, there is no Federal interest involved. Requiring one-third of the lessee's total production is onerous as a practical matter; a more reasonable volume would be 15 or 20 percent.
- Lessees have no control over the number of bids received. Together with the limited number of producers in the Rocky Mountain Area, the three-bid restriction would negate tendering as a viable benchmark in many cases.
- The use of the highest bid is unreasonable unless all the bids happen to be for the full tendered volume.
- If the lessee has a refining affiliate, that affiliate would be disqualified from bidding on oil tendered by others, while at the same time being excluded from buying at least one-third of its affiliated lessee's own production.

A few commenters thought that tendering, without the restrictions, would offer a viable valuation tool, not only for the RMR but nationwide.

MMS Response: MMS added the several qualifications stated above to ensure receipt of market value under tendering programs. First, royalty value must be the highest price winning bid rather than some other individual or average value. We believe this is necessary to assure receipt of market value.

Second, MMS acknowledges that the minimum tendered volume could be less than 33 ⅓ percent, but only by a small amount. In the final rule, you must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. MMS wants to ensure that the portion put up for tendering at least covers the Federal royalty interest and the composite State effective tax rate on oil production. That combination typically ranges from about 17 percent to about 27 percent. These percentages do not include State royalty rates, which did not enter into the calculation. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could ''game'' the system for Federal royalty or State tax payment purposes. In this final rule, we thus chose 30 percent as the minimum percentage the lessee would have to tender for sale to assure that some of the lessee's equity share of production generally was involved. Likewise, the tendering program must include non-Federal lease production volumes in the 30 percent determination to ensure that the program isn't aimed at limiting Federal royalty value.

In our February 1998 proposal, we stipulated a minimum of three bids. However, we received several comments that requiring three bidders was too stringent and that in many cases there simply would not be that many qualified bidders. We have reviewed this criterion and continue to believe that a minimum number of bidders is essential to ensure receipt of market value. We believe that at least three bidders are needed to provide an adequate measure of market value and have retained this provision in the final rule. Further, MMS is concerned about the possibility of companies cross-bidding at below-market prices. That is why in the final rule we have retained the stipulation that the minimum of three bids must come from bidders who do not also have their own tendering programs in the area.

Summary of Comments—Weighted Average Gross Proceeds: Five respondents, four industry and one State, commented on benchmark two (weighted-average gross proceeds). Comments included:

- The 50-percent arm's-length-sales threshold is too high. There is no reasonable justification for this percentage. Twenty to 25 percent is a sufficient statistical percentage to establish value.
- Where oils of different qualities are produced in the same field or area, the weighted-average method could lead to undervaluing of high-quality oils. Lessees can game the system by buying low-quality crudes and reporting their weighted-average value for high-quality crudes.
- Any discounting of prices for certain volumes would lead to inaccurate weighted averages.
- MMS received several industry comments that the proposed rule would cause hardships for producers who have marketing, but not refining, affiliates. The marketing affiliate takes the producing affiliate's production and also buys production from various other sources before reselling or otherwise disposing of the combined volumes. Section 206.102 requires the producer to base royalty value on its marketing affiliate's various arm's-length sales and allocate the proper values back to the Federal lease production. The commenters said this ''tracing'' would be difficult at best. One commenter suggested that as an alternative the lessee should be permitted to base the value of its production on the prices its marketing affiliate pays for crude oil it buys at arm's length in the same field or area.

MMS Response: MMS developed this method as the next alternative if a qualified tendering program does not exist. (One of the Rocky Mountain State commenters recommended that the alternatives be given in this order). This method is an effort to establish value based on actual transactions by the lessee and its affiliate(s). Just as for the tendering program, MMS believes a floor percentage of the lessee's and its affiliates' production should be set to prevent any ''gaming.'' Although we received several comments that the 50 percent minimum figure is too high, it is not intended to be a more stringent standard than the 30 percent floor associated with the tendering program. That is because the 50 percent floor applies to the lessee's and its affiliates' sales *and* purchases in the field or area, rather than just sales. (The tendering program involves only sales.)

We also received a comment expressing concern that lessees would have to perform additional work each month to determine whether they met the 50 percent threshold. In response to this concern, the final rule permits the option that if the first benchmark does not apply, the lessee may apply either the second or third benchmarks. Thus, if the lessee believes the continuing work involved in determining whether they meet the 50 percent threshold is too great, they may apply the third benchmark (spot prices at Cushing, Oklahoma, adjusted for transportation and quality differences).

This final rule requires using a gravity-adjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's and its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We received several comments that the method in the February 1998 proposal would result in improper valuation of some oil that was significantly different in quality than that associated with the ''average'' oil. In general, we believe that production in the same field or area will be similar in quality. However, in response to comments, in the final rule we require that before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Further, given that these sales and purchases must be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable-volume contracts.

We cannot agree with the comment that oil resold by a marketing affiliate of the producer should be valued using this benchmark. An overriding general premise of this rulemaking is that where oil ultimately is sold at arm's length before refining, it should be valued based on the gross proceeds accruing to the seller under the arm's-length sale. To do otherwise would be inconsistent with the way arm's-length resales are treated elsewhere in this rule. However, this final rule offers the option that where the production is sold or transferred to an affiliate who then resells it, the lessee could value its production using § 206.103 rather than the affiliate resale price. This does not mean that MMS believes the affiliate's arm's-length resale price should not form the valuation basis; rather, we are accommodating those who say ''tracing'' production is a problem by offering an alternative that should ease their administrative burden while still providing a fair royalty value. MMS is willing to permit this option because it anticipates that overall the index prices used under § 206.103 will approximately reflect what affiliated marketing entities are able to obtain under most circumstances.

Summary of Comments—NYMEX Futures Prices: Nine respondents, all representing industry, commented on benchmark three, NYMEX futures prices. Consistent with industry's previous position on NYMEX prices (*i.e.*, the futures market bears little relation to lease markets; see Sections III and IV), they all opposed NYMEX pricing as a measure of value for the RMR. One commenter pointed out the difficulty of applying NYMEX sweet prices to Wyoming sour crude.

MMS Response: As discussed in Section III(g) of this preamble, the final rule does not use NYMEX futures prices as a measure of value. Instead, MMS chose to use spot prices because studies indicated that when NYMEX prices, properly adjusted for location and quality differences, are compared to spot prices, they nearly duplicate those spot prices. Further, except for the RMR, application of spot prices removes one portion of the adjustments to the NYMEX price that would have been needed—the leg between Cushing, Oklahoma, and the market center location.

(e) Spot Prices (Proposed Paragraph 206.103(c))

Under the February 1998 proposal, the value of crude oil produced outside California, Alaska, and the RMR and not sold at arm's length was the average of the daily mean spot prices for deliveries during the production month:

—For the market center nearest the lease where spot prices are published in an MMS-approved publication and

—For the crude oil most similar in quality to the lease crude.

The average spot prices would be adjusted for location and quality differentials and for transportation costs to derive the royalty value.

Summary of Comments: Thirteen respondents—twelve industry and one State—commented on spot prices as a measure of value. One industry respondent supported the change from NYMEX-based pricing to spot prices, stating that the change bases valuation on a crude oil more similar in quality and at a location closer to the lease while eliminating an adjustment step in the valuation process that is prone to error.

The remaining eleven industry respondents opposed the use of spot prices (along with any other index pricing method) to value crude oil production. Their arguments included:

- Spot prices do not accurately reflect lease values. Spot prices represent the cost of obtaining crude oil for delivery within 30 days. By contrast, a great deal of market activity is accounted for by longer-term arrangements.
- Spot prices do not move in lock-step with local markets; they do not reflect the influence of local supply and demand.
- Spot prices capture downstream value enhancements; differential adjustments are inadequate to compensate for the value added by moving the production from the lease to a market center.
- Spot prices published by commercial news services are based on limited polling of traders; there is no uniform calculation method and accuracy is dependent on the reporter's judgment.

The State commenter disagreed with abandoning NYMEX prices for spot prices. This commenter contended that NYMEX prices better reflect market value because NYMEX transactions constitute a much larger volume of trades than spot markets and because the NYMEX market is less subject to manipulation than spot markets.

MMS Response: The body of evidence regarding actual marketing practices indicates that index prices, including spot prices, play a significant role in setting contract prices. The final rule maintains the use of ANS spot prices in California for oil not sold at arm's length. Location- and quality-adjusted spot prices, rather than NYMEX futures

prices, also are used for oil not sold at arm's length for oil produced elsewhere. (For the RMR, spot prices at Cushing, Oklahoma, are used as the third benchmark.) We believe that the location and quality adjustments together with the transportation allowances specified in the final rule effectively result in market value at the lease. Similarly, even though spot prices are not established directly for all local markets, we believe that the location and quality adjustments do result in reasonable measures of value in the local markets.

However, we believe that in some cases the use of spot prices determined before the production month, as proposed in February 1998, could affect lessees' production decisions and, ultimately, royalties paid. Therefore, in the final rule, we have adopted the procedure for applying spot prices proposed in January 1997, rather than the procedure proposed in February 1998, for the following reasons.

Assume the average daily spot price in an MMS-approved publication is determined April 26–May 25 for the delivery month of June. Further assume that the lessee transfers its production to an affiliated marketing entity who then resells at arm's length and that the lessee has opted to value the production at the index price. The lessee responsible for reporting June production volumes and values would then know the June spot price (and therefore the royalty value) by the end of May, before its production for the month of June even begins. If the daily spot price then rose through the rest of May and the early part of June, the lessee might decide to increase production over at least a short period and thereby realize more per barrel than the royalty value. Conversely, if the daily spot price fell after May 25 and into early June, the lessee might decide to decrease production so as to be impacted minimally by realizing less per barrel than the index price it must use for royalty payments. To prevent such potential problems, the final rule applies the spot price effectively determined during the production month so that the price determination is concurrent with production. So, for example, for May production in the Gulf of Mexico you would use the spot price determined from April 26 through May 25 for June delivery.

Several commenters said that use of a spot price improperly captures downstream value enhancements and that the differentials specified by MMS are inadequate. We covered this issue thoroughly in Section III(i) earlier in this preamble. We point out again here that MMS has never allowed deductions from royalty value for marketing costs. This rulemaking makes no change to the lessee's duty to market. Valuation based on a ''downstream'' sale or disposition of production has been commonplace for many years, because the initial basis for establishing value often is a ''downstream'' sales price. The United States as lessor always has shared in the ''benefit'' of ''downstream'' marketing away from the lease, and has allowed deductions for the cost of transportation accordingly.

One of the real issues between industry and MMS is what costs should be allowed as part of the transportation function. The industry would like more costs included as part of transportation than MMS is willing to allow. MMS has prescribed by rule what transportation costs are deductible, and believes that the allowed costs are proper.

Finally, MMS believes the available spot prices represent accurate assessments of day-to-day oil market value. MMS has reviewed the procedures used by the major price reporting services. While it is true that spot prices result from surveys done by individuals, we believe their procedures and safeguards produce meaningful value assessments. Further, comparisons of spot prices with NYMEX futures prices show a direct correlation between the two when appropriate location and quality adjustments are made. We did find some spot price locations—for example, Guernsey, Wyoming, and Kern River and Line 63 in California—where the volumes traded were so limited that we didn't believe we should rely on the resulting spot price. We did not use those spot prices in the final rule.

(f) Nonbinding Valuation Guidance (Proposed § 206.107)

This section of the February 1998 proposal provided that lessees may ask MMS for valuation guidance or propose a valuation method to MMS. It stated that MMS will promptly review the proposal and provide the requestor with a nonbinding determination.

Summary of Comments: Three industry commenters were concerned with the nonbinding nature of the guidance. As stated by one of the commenters:

- MMS offers no explanation for abandoning the current regulations, which don't specify that value determinations are nonbinding.
- As a practical matter, a lessee would not seek a nonbinding value determination.
- If the guidance is favorable to the lessee, MMS would not be bound by it. (In other words, MMS could change its mind at a future date.)
- If the guidance is unfavorable to the lessee, it might be at risk for civil penalties for willfully and knowingly not complying if it disregards the guidance; yet the lessee has no recourse to appeal the guidance.

MMS Response: In the final rule, in response to comments, we are providing a procedure for valuation determinations that is more than simply non-binding guidance. Under § 206.107 of the final rule, you may request a value determination from MMS regarding any Federal lease oil production. (Your request must identify all leases involved, the record title or operating rights owners, and the designees for those leases, and explain all relevant facts.) MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS; or

(3) Decline to provide a value determination.

A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it. It is also the final action of the Department and is subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706.

In contrast, a value determination issued by MMS is binding on MMS and delegated States with respect to the specific situation addressed in the determination, unless the MMS or the Assistant Secretary modifies or rescinds it. In the December 1999 proposal, we used the term ''MMS Director'' instead of ''MMS''. We changed the reference to ''MMS'' so that it was clear that the Director could delegate this authority, for example, to the Associate Director for Royalty Management.

Further discussion of States' concerns on their input to value determinations is provided at Section IX (u) of this preamble.

A value determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B. If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

A few commenters at the January 2000 public workshops asked MMS to specify that if a lessee chooses not to follow a value determination by MMS, it will not be subject to civil penalties under FOGRMA section 109(c), 30 U.S.C. 1719(c), for knowing or willful underpayment of royalties. A decision

not to follow an MMS value determination will not, in and of itself, result in a civil penalty assessment for knowing or willful underpayment. However, it does not immunize the lessee from penalties for knowing or willful violations if the lessee's conduct constitutes a knowing or willful underpayment independent of the MMS value determination.

Importantly, a change in an applicable statute or regulation on which any value determination is based takes precedence over the value determination. It is not necessary for the MMS or the Assistant Secretary to modify or rescind the value determination for the new statute or rule to take precedence.

With certain exceptions, a value determination may be modified only prospectively. However, the MMS or the Assistant Secretary may modify or rescind a value determination retroactively if there was a misstatement or omission of material facts in your request, or if the facts subsequently developed are materially different from the facts on which the guidance was based. In situations such as these, the agency should not be bound by a value determination.

Situations in which MMS typically will not provide any value determination include, but are not limited to, requests for guidance on hypothetical situations and matters that are the subject of pending litigation or administrative appeals. MMS also typically will not use a value determination to resolve factual disputes either between MMS and the lessee, or between the lessee and third parties (for example, a purchaser) where those disputes are relevant to royalty value. While MMS will respond to requests for value determinations, it is not obligated to issue a value determination.

Value determinations are issued only under § 206.107, in response to a specific request for a value determination. Under other provisions of the rule, lessees may ask MMS to make certain other determinations—for example, to establish a location/quality adjustment under § 206.112, or even (as the fourth benchmark for non-arm's-length dispositions in the RMR under § 206.103(b)) to establish a valuation method.

(g) Adjustments and Transportation Allowances (Proposed §§ 206.109 through 206.112)

Summary of Comments: Twenty respondents, including sixteen representing industry, three representing States, and one representing a municipality, commented on various aspects of location and quality adjustments and transportation allowances. Industry continued to oppose: (1) Differentials that do not allow all post-production marketing costs and services; (2) the elimination of the exception permitting requests to use FERC tariffs instead of actual costs for determining transportation allowances; and (3) limits on transportation allowances. Several industry commenters believed the proposed rules discriminate against lessees with affiliated transporters by requiring them to use a regulatory cost calculation to determine their transportation allowances, whereas third parties are permitted to use tariffs.

MMS Response: In Section III(*i*) of this preamble, we responded in detail to comments about not allowing marketing costs.

In the final rule, we have eliminated the option for lessees to request the use of a FERC tariff in lieu of calculating its actual transportation costs in non-arm's-length transportation arrangements. Since the 1988 rules were promulgated, FERC has renounced jurisdiction over many, if not most, pipelines on the OCS. Oxy Pipeline, Inc., 61 FERC ¶ 61,051 (1992); Bonito Pipeline Co., 61 FERC ¶ 61,050 (1992), aff'd sub nom., *Shell Oil Co.* v. *FERC,* 46 F.3d 1186 (D.C. Cir. 1995); *Ultramar, Inc.* v. *Gaviota Terminal Co.,* 80 FERC ¶ 61,021 (1997). Those FERC decisions resulted in MMS rejecting use of FERC tariffs under the existing rule because FERC cannot ''approve'' a tariff over which it has no jurisdiction. This in turn has resulted in litigation between several lessees and the Department over the applicability and meaning of the existing rule. *Shell Offshore, Inc.* v. *Babbitt,* No. CV98–0853 (W.D. La. Mar. 17, 1999), appeal pending, Nos. 99–30532 and 99–30745 (5th Cir.); *Torch Operating Co. et al.* v. *Babbitt,* Nos. 1:98CV00884 ES and consolidated cases (D.D.C.).

Absent any possibility of review or check by FERC over the reasonableness of the rates filed with FERC for such pipelines, MMS has no avenue to assure that the ''tariff'' filed by a pipeline affiliated with the lessee is reasonable. The potential for lessees to claim excessive transportation allowances in non-arm's-length situations is clear. Indeed, in many cases, MMS auditors have found that the FERC tariff the lessee has used is considerably higher than the actual costs that otherwise would be allowed under the existing rule.

This contrasts with the situation where a lessee pays an unaffiliated pipeline the rate that the pipeline had filed with FERC. In that event, the ''tariff'' represents the lessee's actual transportation costs because that was what it in fact was charged. Thus, in eliminating the FERC tariff exception, lessees are allowed to deduct their actual costs in both cases.

Further, in this final rule MMS has retained the provision that if the lessee's actual transportation costs exceed 50 percent of the value of the product, the lessee may apply for, and MMS may approve, an allowance greater than that amount.

Summary of Comment—Duplicate Quality Adjustments: One State commenter believed that proposed paragraph 206.113(a) permitted ''double-dipping'' for quality adjustments, since paragraphs 206.112(a) and (e) both provide for quality adjustments, thus allowing a double deduction for quality for crude oil at the lease and the market center. This commenter also noted that because paragraph 206.112(a) allows for deduction of a location differential between the lease and the market center, and paragraph 206.112(c) allows for deduction of transportation costs between the lease and the aggregation point, paragraph 206.113(a) will allow the lessee to deduct its transportation costs from the lease to the aggregation point twice.

MMS Response: In this final rule, we added a new paragraph (g) to § 206.112 to clarify that you may not use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under § 206.112. Moreover, the structure of the final rule is not susceptible to the problem the commenter describes. Under the final rule, for example, if you dispose of your production under an arm's-length exchange agreement, but transport the oil away from the lease to an intermediate point before giving it in exchange, you cannot claim a transportation allowance between the point where you give the oil in exchange and the point you receive oil back in exchange if you use a location differential for the segment between those two points. This same principle applies for all adjustments addressed in § 206.112. That is, any time a lessee takes one of the listed adjustments, it cannot duplicate any portion of that adjustment as part or all of any other adjustment that otherwise would be allowable.

Summary of Comment—No Quality Adjustment in Absence of Quality Bank: One commenter noted that, in the absence of a quality bank, the rule does not provide for any adjustments for quality differences between the indexed

crude oil and the oil produced at the lease.

MMS Response: In the final rule, MMS intentionally did not include a specific quality differential unless there is a quality bank that applies to the lessee's production. MMS does not want to be in a position of permitting quality adjustments where they may not be warranted. Further, quality adjustments will be reflected in the location differentials applied by lessees from their arm's-length exchange agreements. Finally, MMS has provided, in § 206.112 of the final rule, that if the lessee believes it does not have the information necessary to calculate a location/quality differential or transportation allowance, the lessee may request approval from MMS for the location/quality differential or transportation allowance. This may provide an opportunity to reflect quality differences the lessee believes are not otherwise accounted for.

VII. Responses to Public Comments on July 1998 Proposal

MMS's July 1998 proposal included several additional proposed changes based on comments received on the February 1998 proposal:

(1) The definition of ''affiliate'' was changed back to its meaning under the current rule, but made separate from the ''arm's-length'' definition;

(2) Specific regulatory language was inserted stating that MMS would not ''second guess'' lessees' marketing decisions by disallowing arm's-length gross proceeds as royalty value; and

(3) The procedure for valuing production subject to arm's-length sale following exchanges was modified. Value would be the arm's-length sale price following a single exchange, but where more than one exchange is involved, the lessee would have to use index pricing.

MMS also requested comments on the definition of ''gathering'' as related to deepwater leases involving subsea production without a platform but with long-distance movement of bulk production.

We received approximately 200 pages of comments within 25 separate submissions. Commenters included 3 States (6 submissions), 4 industry trade groups, 12 producers (13 submissions), 1 watchdog group, 1 concerned citizen, and two members of Congress (1 submission).

Although MMS asked for specific comments relating to particular issues (63 FR 38355), and reiterated that previous comments need not be resubmitted because they are already part of the record, there were many comments similar to previous submissions. Rather than repeating all such issues and comments here, we refer the reader to Sections I, III, IV, V, and VI. Instead, with a few exceptions, we address only those comments on provisions that are new or revised from the previous proposals. The comments fall into 11 topical categories ((a) through (k) below). Each topic begins with a description of the issue and is followed by a summary of comments and MMS's response.

(a) General Comment

The issue relates to the overall changes in MMS's July 1998 proposal.

Summary of Comments: One commenter believes the latest proposal provides numerous concessions to industry and thus amounts to a weaker rule.

MMS Response: We disagree with this comment. None of the changes in the July proposal should result in a weaker rule. Rather, they clarify the specifics of the rule and make it more usable for all involved. The changes result from a reasoned analysis of comments made by all parties over this extended rulemaking process. Rather than trying to give a specific response to this general comment, we address the proposed changes in the July 1988 proposal one-by-one below.

(b) MMS's Proposed Definition of Affiliate

MMS proposed retaining the meaning of ''affiliate'' embodied in the current rules at § 206.101, but removing it from the ''arm's length'' definition.

Summary of Comments: One commenter believed that the 10 percent threshold which constitutes no controlling interest in an affiliate is too low; at least 20 percent should be used, because this is the standard used by the Bureau of Land Management. Most commenters believed that the definition of affiliate was too vague, and specific criteria for rebutting the presumption of control were needed. One commenter believed the burden should be on the lessee to prove that the presumption of control is incorrect. One commenter stated that transactions between affiliates with any common ownership should not be considered arm's length. One commenter believed that by retaining the current definition of affiliate, it becomes easier for a company to pay on gross proceeds rather than index, which is the proper value.

MMS Response: See MMS's response in Section VI(a).

Summary of Comments: One group presented a scenario in which a small group of producers bands together to build a pipeline, but if one member of the group owns more than a 10 percent interest in the pipeline, they may be penalized under the affiliate definition.

MMS Response: This scenario is unlikely to play out as portrayed. Moreover, the definition of ''arm's length'' goes beyond ownership and affiliation. The owners also must have opposing economic interests in the pipeline to claim arm's-length status. Under this common ownership scenario all the owners likely would be deemed non-arm's-length as related to the pipeline.

(c) Breach of Duty To Market

In the July 1998 proposal, MMS tried to allay industry concerns about potential additional royalty assessments by adding specific language to § 206.102(c)(2)(ii) that MMS would not use the ''breach of duty'' provision to second-guess industry marketing decisions.

Summary of Comments: Industry and their representative organizations were not reassured that MMS will not ''second-guess'' their marketing decisions. Many believed the terms ''substantially below'' and ''market value'' were not easily defined and could lead to MMS questioning legitimate transactions. One commenter said that MMS has in the past rejected legitimate, at-the-lease prices in favor of higher, downstream prices. One commenter believed that as long as a company is acting in good faith, they have nothing to fear with MMS ''second-guessing'' their decisions. One commenter offered alternate ''breach of duty to market'' language.

MMS Response: The provision MMS was attempting to clarify with its proposed additional language is identical to the provision in the existing rules (see 30 CFR 206.102(b)(1)(iii)). It has resided in those rules for over a decade and has not been used to second-guess a lessee's marketing decisions to try to impose the benchmarks at § 206.102(c) on arm's-length transactions.

We agree with the commenter who said lessees have nothing to fear if they are acting in good faith. This provision is simply meant to protect royalty value if, for example, a lessee were to inappropriately enter into a substantially below-market-value transaction for the purpose of reducing royalty.

In § 206.102(c)(2)(ii) of the final rule, in response to comments, we specifically state that MMS will not use this provision to simply substitute its judgment of the market value of the oil

for the proceeds received by the seller under an arm's-length sales contract. The fact that the price received by the seller in an arm's length transaction is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease. Likewise, the fact that one co-lessee sells production at the lease while another lessee sells its production downstream does not imply that the co-lessee who sells at the lease has breached its duty to market.

Some commenters have argued that adding to the lessee's gross proceeds the marketing costs that a purchaser of oil, rather than the lessee, incurred constitutes ''second guessing'' of an arm's-length contract. They cite as a purported example of such ''second guessing'' the IBLA's decision in Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending). MMS strongly disagrees with this argument. The Amerac case is not an example of ''second-guessing.'' Lessees may not avoid the obligation to market production at no cost to the lessor by transferring the function to the purchaser and accepting a lower price in return. In the Amerac case, neither MMS nor the IBLA ''second guessed'' the contract at all.

(d) Marketing Fees

MMS has maintained its ''duty to market'' provision with no additional deductions allowed for marketing or other associated costs.

Summary of Comments: One commenter believes the administrative fee that is charged under MMS's existing Small Refiner Royalty-In-Kind program is analogous to a marketing fee. Consequently, lessees who use index prices should be allowed to deduct marketing fees from these prices.

MMS Response: The fee charged to the small refiners for participation in the RIK program covers MMS's additional costs in administering the program and does not relate to a marketing fee. The MMS fee does not parallel marketing costs incurred by the producers.

(e) Exchanges

In response to earlier industry comments, MMS proposed in its July 1998 proposal that where oil was involved in a single exchange before an arm's-length sale, its value should be based on the arm's-length gross proceeds under that sale. But if there were two or more exchanges, the oil would be valued under § 206.103.

Summary of Comments: Most industry commenters and their representative groups still stressed the problem of tracing the oil through an exchange to determine proper value. In many cases, the oil is commingled with non-Federal oil and sold in bulk, creating difficulty in determining the true value of the Federal portion. Additionally, there can be a significant workload if any corrections need to be made to previously-reported values. The producer should at least be given the option of using: (1) the arm's-length sales price after the exchange, or (2) index value. One commenter believed that any exchange between affiliates should not be considered arm's length, that the definition of exchange should be modified to include only exchanges that are truly at arm's length, and that the definition of exchange should be expanded to include other specific types of exchange agreements. Two commenters believe that if a lessee is to use gross proceeds after an exchange, then it must report all balancing agreements for that lease to the MMS.

MMS Response: MMS understands the potential administrative burden of tracing. We are also well aware of the desire of other producers, as expressed in the meetings sponsored by Senator Breaux on July 9 and July 22, 1998, to be able to use prices received in arm's-length sales following multiple exchanges. As a result, in this final rule, MMS allows lessees the option of using either their arm's-length gross proceeds regardless of the number of arm's-length exchanges preceding the arm's-length sale, or the provisions of § 206.103 (index prices or, in the RMR, benchmarks). The selected option, once chosen, cannot be changed for 2 years and must be applied to all of the lessee's oil produced from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that is sold at arm's length following one or more exchanges. This process preserves the integrity of the rule's underlying principle of applying arm's-length gross proceeds where appropriate, but still allowing use of index/benchmark values that fairly represent market value where ''tracing'' would be too burdensome.

Also, we acknowledge that exchanges between affiliates are not at arm's length. Because there is potential for inflated differentials in such exchanges, production so transferred and followed by an arm's-length sale must be valued at the appropriate index/benchmark value under this final rule. We also agree that the definition could be clarified by specifying several other types of exchange agreements. We have done this in the final rule. We do not believe, however, that it is to the lessee's or MMS's benefit for all balancing agreements to be reported to MMS. Such agreements should be made available on audit or as otherwise requested by MMS.

(f) Binding Guidance

MMS did not request comment on this issue in its July 1998 proposal, but drew several comments. The February 1998 proposal stated that lessees could petition MMS for non-binding guidance.

Summary of Comments: MMS received five comments stressing the importance of MMS issuing binding guidance. They believed that the nature of a business relationship requires it. One commenter believed that guidance should not be binding because all of the facts may not be available at the time the guidance is issued.

MMS Response: See Section VI(f) of this preamble for a complete discussion of this issue.

(g) Gathering versus Transportation

MMS asked for comment on whether the definition of transportation should include subsea movement of bulk, untreated production over distances of 50 miles or more. This typically involves a subsea completion and subsequent movement to a platform where the production first surfaces and is treated. If this movement is considered transportation, the associated costs may be allowable deductions from royalty. If the movement is considered gathering, the costs would not be allowed.

Summary of Comments: MMS received mixed comments on this issue. The majority of the producers commented that movement away from the lease should be considered transportation. Other comments centered on the fact that many deepwater leases are already receiving some type of royalty relief, and additional deductions are not warranted.

MMS Response: This issue arose in the public comments for the first time in the meetings of July 9 and 22, 1998, sponsored by Senator Breaux. In the past, MMS has consistently held that movement of production to a central accumulation or treatment point prior to the royalty measurement point is considered gathering, rather than transportation of marketable production eligible for a deduction from royalty. In this final rule, MMS has not changed the existing regulatory language. (However, we further note that on May 20, 1999, the MMS Associate Director for Royalty Management issued

guidance regarding movement of production from deepwater leases).

(h) MMS Use of BBB Bond Rate

The existing rule uses the Standard and Poor's Industrial BBB bond rate as an allowable rate of return on capital investment for producers who transport oil through their own pipelines (see 30 CFR 206.157(b)(2)(v)).

Summary of Comments: Two commenters from affiliated companies said the use of the BBB bond rate as an allowable return within the calculation of actual costs of transportation is arbitrary and would be considered unacceptable by any court. The actual rate should be much higher, reflecting the real rates of return seen in the Gulf of Mexico, and particularly in deep waters to recognize additional risk.

MMS Response: We have continued the use of the Standard and Poor's BBB industrial bond rate in this final rule. MMS did not propose specific provisions regarding the rate of return, but received numerous comments on those issues. This issue is discussed more fully below in the responses to the comments on the December 1999 proposal in paragraph IX(a).

(i) Quality and Transportation Adjustments

In its February 1998 proposal, MMS allowed quality adjustments in § 206.112 based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points, at the aggregation point, or at the market center applicable to the lease. Allowable transportation deductions were based on actual costs of movement, consistent with the rules currently in effect.

Summary of Comments: Two commenters believe that only gravity and sulfur banks should be used for quality adjustments. One commenter believes the rule should allow transportation costs only to the nearest market center and by the cheapest means to move it there.

MMS Response: In this final rule, MMS intentionally did not include specific quality differentials unless a quality bank applies to the lessee's production. MMS does not want to permit quality adjustments where they may not be warranted. Further, quality adjustments will be reflected in the location differentials applied by lessees from their arm's-length exchange agreements and in location differentials that MMS provides to lessees upon request under § 206.112(f). In this way, MMS is allowing only additional pipeline-specific adjustments where they exist.

Consistent with the current rules, transportation allowances in this final rule are based on actual transportation costs. MMS historically has not questioned whether the transportation was to the nearest market center or whether it was by the cheapest means available. We presume that lessees will act prudently to market their oil at the appropriate point and use the most efficient means of transportation available. Once again, MMS does not intend to ''second-guess'' marketing decisions to which these factors apply.

(j) Tendering and Other Alternatives

In its various proposals, MMS generally has not incorporated industry-proposed valuation alternatives. An exception is application of tendering programs in the RMR.

Summary of Comments: Many comments from industry and their trade groups criticized MMS for not permitting use of viable alternatives such as tendering programs in all parts of the U.S. Additionally, MMS ignored many lease-based alternatives and the option of taking royalty in kind.

MMS Response: MMS believes it has adequately responded to all alternatives presented by industry above. For example, see Section VI(d) for detailed comments and responses regarding tendering programs and Section III(r) for a discussion of royalty in kind.

(k) Gross Proceeds Valuation

The various MMS proposals have allowed lessees to use their gross proceeds received under arm's-length sales as their royalty value basis.

Summary of Comments: One commenter believes the use of gross proceeds as a method of valuation is flawed because it does not always represent the full value of the oil. Two commenters state that only independents should be allowed to use gross proceeds, while all major integrated producers should use index prices.

MMS Response: MMS's valuation rules have always followed the general premise that arm's-length gross proceeds represent market value and hence royalty value. However, the various MMS proposals and this final rule all include provisions that where an arm's-length sales contract does not reflect the total consideration received for the oil, MMS may require that the lessee value the oil under the appropriate index or benchmark value or at the total consideration received. For example, if in return for its oil the lessee received the contract sales price plus some other valuable goods or benefits—for example, a new car—the total consideration would include the contract price and the car's value. Also, we do not believe it is appropriate to apply different valuation methodologies based solely on whether the lessee is an independent producer or a major integrated company.

VIII. Responses to Public Comments on March 1999 Notice

On March 4, 1999, in response to requests by Members of Congress and parties interested in moving the process forward to publish a final rule, the Secretary announced he would reopen the comment period. MMS reopened the comment period from March 12, 1999, through April 12, 1999 (and later extended the comment period through April 27, 1999). The **Federal Register** notice announcing the reopening of the comment period (64 FR 12267 (March 12, 1999)) provided the contents of the August 31, 1998, letter from the Assistant Secretary for Land and Minerals Management, to the Senate outlining the direction the final rule might take on certain issues. The letter identified seven areas where MMS was considering changes in response to commenters' concerns: (1) Definitions; (2) valuation of oil sold by the lessee at arm's length; (3) valuation of oil sold after arm's-length exchange agreements or sold by an affiliate at arm's length; (4) valuation of oil not sold at arm's length; (5) location/quality adjustments to index prices; (6) transportation allowances; and (7) non-binding valuation guidance.

The MMS also scheduled three workshops during the comment period (Houston, Texas, March 24, 1999; Albuquerque, New Mexico, March 25, 1999; and Washington, DC, April 7, 1999) to obtain public input on specific issues that remained to be resolved.

MMS received 117 pages of comments from 16 commenters (three State agencies, two industry trade associations, eight oil and gas producers, two public interest groups, and one congressional office).

In response to the positions outlined in the August 31, 1998, letter to the Senate, industry participants at the workshops submitted a set of six unified industry proposals for discussion. These proposals were supported by both the major trade associations and the independent trade associations and became the primary focus of the workshops. Industry's written comments basically reiterated its support for these proposals. The States and public interest groups' comments were more general in nature and stated an overall objection to the reopening of the comment period and discussion of

the ''same old'' issues. They objected to the continual delays in publishing a final rule and recommended that MMS proceed posthaste to a final rule based on index pricing. Specific comments by States and interest groups are included in the discussion of industry proposals.

(a) Use of Comparable Sales in Non-arm's-length Situations

Summary of Comments: For non-arm's-length sales, industry commenters proposed adoption of a menu of valuation alternatives that would center on using a weighted average of comparable arm's-length sales transactions at the lease. Under their proposal, a minimum of 20 percent of the lessee's production must be sold or purchased at arm's-length, including tendering programs. Other value benchmarks, including index, could be used in situations where comparable sales were not adequate. Industry advanced this proposal on the theory that it reflects the value of production ''at the lease.'' Industry commenters also maintained that using comparable sales would be a more accurate method of capturing the quality characteristics of lease production and it would avoid the complexity of calculating differentials between the lease and market center. Companies that tender their production under a competitive bidding process expressed strong support for using such programs to establish value for royalty purposes.

States continue to oppose lease-based benchmarks, because they believe arm's-length sales at the lease are limited, and they have concerns about the use of tendering programs. One State commenter stated that the comparable sales approach does not address the problem of undervalued field prices. That commenter plus an interest group recommended that MMS consider going forward with a rule specific to majors.

MMS Response: In the final rule, MMS did not adopt the industry-proposed comparable sales model to value production not sold at arm's-length. We continue to believe that there are meaningful spot prices applicable to production in all areas other than the Rocky Mountains. With the exception of the RMR, spot and spot-related prices drive the manner in which crude oil is bought and traded in the U.S. Spot prices play a major role in crude oil marketing and are readily available to lessees through price reporting services.

We believe spot prices are a better indicator of the value of production and are preferable to attempting to use comparable arm's-length sales in the field or area. Commenters have not demonstrated the consistent existence or availability of such transactions for volumes sufficient to use for royalty valuation. Contrary to the industry commenters, MMS believes that nationwide about two-thirds of crude oil production is disposed of non-arm's length. As previously mentioned, the general lack of competitive and transparent markets at the lease makes the attempt to find comparable sales transactions far inferior to the use of index prices.

The RMR, where reliable spot prices are not readily available, is an exception. About two-thirds of crude oil produced there is sold at arm's length, and there is not a reliable index price in that region. In addition, industry's proposal has substantial practical difficulties since companies are not privy to other companies' ''comparable'' sales transactions, and to the extent that such information may be available to MMS, it is unaudited for current periods. The final rule thus primarily uses index prices, adjusted for location and quality, to establish value for oil not sold at arm's length.

(b) Binding Valuation Determinations

Summary of Comments: Industry commenters proposed a provision under which MMS would provide binding valuation determinations on a case-by-case basis. Among other provisions, the determination would have no precedential value beyond the facts in the case. The MMS would have 180 days from the date the lessee submitted the request to make a decision, otherwise the request would be deemed approved. An MMS decision on a request would be subject to the existing appeals process. Industry commenters cited the need for obtaining timely valuation determinations that can be relied on for satisfying royalty obligations.

State commenters expressed general opposition to binding determinations, stating that information could be inaccurate, incomplete, or dated and that MMS should have discretion over issuing any binding determinations. A public interest group indicated it would support a binding determination as long as all of the information submitted is correct and verifiable and that the determination only applies to the requestor. A congressional commenter stated that this issue remains of concern and needs to be developed further.

MMS Response: See Section VI(f) above and the explanation of § 206.107 of the final rule in Section X below.

(c) Transportation Allowances in Non-Arm's-length Situations

Summary of Comments: Industry commenters proposed that transportation allowances in non-arm's-length situations should be based principally on the value of the service. That is, the allowance should be based on what companies pay under arm's-length contracts. Under the proposal, where more than 20 percent of the pipeline volume is transported at arm's length, an annualized volume-weighted average of the arm's-length rates would be used. Where less than 20 percent of the volume is arm's-length, the current MMS actual-cost method would apply; however, the rate of return would increase from the current level to twice Standard & Poor's BBB bond rate. Undepreciated capital investment would never be less than 10 percent of the original capital cost.

Industry commenters argued that they only agreed to the MMS actual-cost method under the 1988 regulations because of the provision to use FERC tariffs. They oppose MMS proposing to revoke use of tariffs without allowing an adequate transportation allowance rate that reflects the value of the production at the market centers. They also assert that the transportation allowance rate should recognize the risk associated with building pipelines. Furthermore, they point out that the current rate of return based on one times BBB is too low to accurately reflect a company's cost of capital.

State commenters agreed with MMS's position under the latest proposed rule. One congressional commenter stated that MMS should confer with FERC and develop a proposal that is more consistent with accepted public rate setting practices.

MMS Response: As explained elsewhere in this preamble, in the final rule MMS has deleted the FERC tariff exception. However, we note that independently of eliminating the FERC tariff exception, MMS has modified several provisions related to non-arm's-length transportation allowances, including new depreciation schedules if a transportation facility is sold, and a ''base'' investment level to which the rate of return could always be applied, as discussed further below. In the final rule, we have continued the use of the Standard and Poor's BBB industrial bond rate, for reasons discussed more fully below in the responses to the comments on the December 1999 proposal at paragraph IX(a).

(d) Adjustments to Downstream Values

Summary of Comments: Industry commenters stated that they would not be properly compensated for location and quality adjustments under the proposed rule. They contended that, with valuation being set downstream of the lease (*i.e.,* index prices), the prescribed location and quality adjustments do not arrive at a proper value at the lease, and they do not adequately compensate the lessee for the costs and risks associated with those midstream and downstream activities. They claimed that use of Form MMS–4415 would be unduly burdensome and too out-of-date for providing accurate location and quality adjustments to current index prices. They proposed alternatively that industry and MMS jointly develop a uniform monthly report or contemporaneous tables by region incorporating differentials reflective of actual recent market conditions. They also proposed adjustments for marketing activities.

MMS Response: MMS has always proposed that all reasonable location and quality adjustments be applied to the appropriate index, and believes this final rule permits those adjustments. Under § 206.112, the lessee may request approval from MMS for additional or alternative adjustments if necessary. However, for reasons explained in Section III(i), MMS maintains that marketing costs are not a proper deduction from royalty value and has retained this provision in the final rule.

Under the final rule, MMS will not publish location/quality differentials because MMS believes that lessees generally will have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions. If a lessee disposes of its oil through one or more exchange agreements, it ordinarily should have the information necessary to determine adjustments to the index price. As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is not part of the final rule. Because MMS is not requiring the proposed form, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

If the oil is not disposed of through exchange agreements, then the lessee is physically transporting the oil either to a market center or to an alternate disposal point (such as a refinery.) In that event, the lessee will have the necessary information regarding actual transportation costs to claim the appropriate transportation allowance.

(e) Definition of Affiliate

Summary of Comments: Industry commenters did not object to having separate definitions for ''affiliate'' and ''arm's-length,'' and in general, did not oppose the provision that ownership of 10 through 50 percent creates a presumption of control, as reinstituted in the July 1998 proposal. However, they recommended certain guidelines for lessees to rebut the presumption of control. If the lessee meets any of the following four criteria, they would be deemed to have no control over the affiliate: (1) The affiliated entity can take any relevant action without an affirmative vote of the lessee; (2) the lessee is not a general partner of a partnership; (3) the lessee is a natural person not related within the fourth degree to the affiliated natural person; and (4) the lessee's directors on the board of the affiliated company cannot block any relevant action of the affiliated company. Industry commenters also asserted that a lack of opposing economic interests cannot be assumed. However, they believe that if noncontrol is demonstrated, the existence of ''opposing economic interests'' has been established. One industry commenter indicated that MMS should bear the burden of proof in demonstrating a lack of opposing economic interest.

A public interest group commenter suggested that any economic interest in the other company should require index-based valuation. A State commenter suggested that ownership percentages should be only one of many factors to determine whether a contract is arm's-length and that any list of control rebuttal factors should be illustrative only.

MMS Response: See MMS response in Section VI(a).

(f) ''Second-guessing''

Summary of Comments: As stated above, industry commenters expressed significant concern that the additional regulatory language proposed in the July 1998 proposal at paragraph 206.102(c)(2)(ii) would lead to further uncertainty and misunderstanding regarding the lessee's duty to market production in arm's-length situations. Industry reiterated these concerns at the workshops. Particularly, they expressed concern that if a company sold production at the lease under an arm's-length arrangement, MMS might later ''second-guess'' the transaction and determine that the royalty should have been paid on a higher price than the company actually received, such as index. They proposed specific language to be added to the rule and preamble.

One State commenter also proposed specific regulatory language regarding ''second-guessing.'' A public interest group commented that it would support language that MMS will not second-guess arm's-length contract prices received, provided that lessees disclose balancing arrangements between themselves and the unaffiliated companies.

MMS Response: See Section VII(c) above.

IX. Responses to Public Comments on December 1999 Proposal

On December 30, 1999, MMS published a reproposal of the entire rule. The December 1999 proposal modified the prior proposals in a few respects, specifically:

- MMS proposed to eliminate MMS-published location/quality differentials, and, as a consequence, proposed to eliminate the previously-proposed Form MMS–4415.
- MMS proposed to permit a continuing return on investment component of the transportation allowance, even after a pipeline is fully depreciated, and to permit a new depreciation schedule when a lessee buys a pipeline at arm's length under certain conditions.
- MMS asked for comments on alternative rates of return, including multiples of the Standard & Poor's BBB bond rate and weighted average cost of capital methods.
- MMS proposed to change the definition of ''affiliate'' in light of the D.C. Circuit's decision in *National Mining Association* v. *Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999).
- MMS proposed value determinations issued by the Assistant Secretary for Land and Minerals Management that would be binding on both MMS and the lessee, and value determinations issued by MMS that would be binding on MMS and not the lessee.
- MMS proposed specific regulatory language regarding so-called ''second guessing'' of arm's-length sale prices.

MMS received approximately 700 pages of comments on the December 1999 proposal. In addition, MMS conducted public workshops in Denver, Colorado, on January 18, 2000, in Houston, Texas, on January 19, 2000, and in Washington, D.C. on January 20, 2000. The comments divide into 41 categories, addressed in (a) through (aj) below.

(a) MMS Should Modify the Rate of Return in Calculating Actual

Transportation Costs Allowances and Involve FERC.

Summary of Comments: Many industry comments favored increasing the rate of return in some fashion. Some suggested increasing the rate used in calculating the allowance to twice the Standard and Poor's BBB industrial bond rate. In some cases, industry provided detailed reports and analyses to support their claims.

Three States and an individual commented that increasing the rate of return above the BBB rate is unnecessary. They favor maintaining the provisions in the current regulations. The individual stated that the BBB rate already is for marginal credit risks and already is enhanced, hence a higher return is unneeded.

Several U.S. Senators encouraged MMS to utilize the expertise of FERC staff to develop costs of debt and equity applicable to pipeline investments for use in establishing a rate of return for lessees to use in calculating actual transportation costs for non-arm's-length transportation arrangements.

MMS Response: The fact that a lessee's overall operations are funded historically by some proportion of debt and equity does not imply that the resulting aggregate weighted average cost is appropriate for determining a proper transportation allowance for royalty purposes. Different projects and investments will be expected to involve very different levels of risk and generate different levels of returns. They also may be funded in different ways. For example, a pipeline investment likely would be much less risky than investment in a wildcat drilling operation and thereby command a lower rate of return.

MMS expects that lessees will finance pipeline investments in the least costly manner available. MMS's research indicates that most recent pipeline investments are financed largely through debt rather than equity. For those pipelines financed entirely by debt, the BBB bond rate is a very favorable rate to claim as a cost for the lessee, because most large operators can borrow money at lower rates. Also, equity financing is typically more costly than debt financing.

The Standard & Poor's BBB industrial bond rate (BBB rate) that MMS currently uses typically falls between the cost of borrowing for large integrated oil and gas companies and the return that these firms are expected to earn on their capital investments. Therefore, given the predominance of debt financing for pipeline investments, MMS believes the choice of the BBB rate for the cost of capital is entirely reasonable.

The industry proposes using a weighted average cost of capital. Industry states that this weighted average cost is approximately 2.2 times the BBB bond rate. That is the basis of industry's proposal to use 2 times the BBB rate in transportation allowance calculations.

However, MMS believes that the companies used in industry's weighted average cost of capital calculation (those in Standard Industrial Classification (SIC) code 131) are less representative of lessees that typically build or own pipelines (including through affiliate arrangements) than those listed in SIC code 291. We believe code 291 is more appropriate because it includes major integrated firms, and therefore more closely represents the body of companies that typically would be involved in owning or constructing pipelines.

Also, we agree with industry's proposal to calculate a before-tax rate of return. Royalties are calculated before tax, so the rate of return used should be a before-tax rate as well. However, in adjusting certain after-tax information to obtain before-tax estimates, we did not use the 35 percent marginal tax rate used by industry. Instead, we used the 19 percent average tax rate that we find find is more appropriate for SIC code 291 firms.

Industry's calculation of weighted cost of capital is further exaggerated because it uses the BBB rate as the debt rate. As explained above, we believe that the BBB rate generally is higher than these companies' actual borrowing rates would be.

Further, we believe the equity rate used in industry's calculations was not appropriate because the equity rate applicable to companies in SIC code 131 is higher than the equity rate for companies in SIC code 291.

Even if, arguendo, we accepted the premise of using a weighted average cost of capital as the rate of return, MMS has found, using more appropriate SIC codes, tax rates, debt rates, and equity rates, that the average cost of capital is much lower than the 2.2 times BBB that industry calculated. MMS therefore concluded that industry's proposal is not well founded. MMS concludes that the BBB bond rate is an appropriate rate of return, and we have retained it in the final rule. We also conclude that since the BBB bond rate is adequate as a rate of return used in calculating actual transportation costs for royalty purposes, there is no need for MMS to utilize the expertise of FERC staff to develop costs of debt and equity.

(b) Rulemaking Process

Summary of Comments: One State commented that it would like to be involved in valuation requirements that affect it. Further, the rule should include a provision that the affected State may review valuation determinations.

A private organization questioned the rulemaking process in light of certain payments made to Department officials from proceeds paid to relators as a result of settling certain litigation brought under the qui tam provisions of the False Claims Act. It urges a delay in the rule until all matters associated with these payments are fully examined.

MMS Response: We understand the importance of the royalty income for each State and the fact that valuation decisions affect royalty revenues that are shared with States. States already have a major role in the process, through delegations of audit authority under 30 U.S.C. 1735, many informal consultations, and comments on proposed rules such as the comments submitted in this instance. We intend to continue this cooperative relationship. However, valuation determinations ultimately are MMS's responsibility.

The payments made to a Department employee from litigation settlement proceeds are the subject of a pending investigation. In that respect, MMS knows of no grounds for delaying this rulemaking.

(c) ''Second Guessing''

Summary of Comments: An industry comment stressed support for the concept of MMS not ''second guessing'' industry's decisions in disposing of crude oil production. However, the commenter would like to see the concept expanded in the preamble and the associated sections within the rule itself.

MMS Response: MMS continues to reiterate that it will not ''second guess'' a company's decision on how it disposes of production. We have emphasized this at several points, both in the text of the rule and in the preambles to this rule and previous proposals. We do not believe that additional discussion would be helpful. As discussed above, MMS has rarely, if ever, ''second guessed'' the value received in an arm's-length sale of oil, so we cannot use actual experience that would provide a basis for elaboration.

(d) Spot Prices as a Marker of Value

Summary of Comments: Several industry commenters reiterated the assertion that spot prices do not reflect lease values even after adjusting for

quality and location. MMS fails to provide any analysis showing that spot prices do reflect lease value. The use of these prices inflates the actual value of the production at the lease, in violation of the lease terms.

Further, some industry commenters questioned the use of the Alaska North Slope (ANS) spot price as a marker for west coast oil. The State of California reiterated its belief that ANS prices are a valid measure of value.

MMS Response: MMS addressed the use of spot prices previously. The comment here was a prominent theme of the comments on the February 1998 proposal. See Section VI(e) above.

MMS continues to believe ANS is a valid measure of value for west coast production. However, there is language in the rule allowing review and changes should an index price become invalid.

(e) Nearest Spot Prices

Summary of Comments: Some comments from industry urged that if MMS is going to use index pricing, lessees should have the option of using a more distant index price if that index better reflects sales of oil more similar in quality to the lessee's Federal production, or if that index better reflects the location specified in the lessee's exchange agreements.

MMS Response: MMS's intent in the December 1999 proposal and this final rule in requiring lessees to use index prices at the market center nearest the lease is to correlate both proximity to the lease and quality similarity. If lessees could choose other market centers, the rule would become ambiguous and more vulnerable to manipulation.

(f) Unclear Whether Spot Price Applies to Trading Month or Calendar Month

Summary of Comments: Several industry commenters were not sure if the spot price to be used under the rule means the price that applies to the trading month or to the production month. They would like to see a clarifying example.

MMS Response: The final rule and this preamble clarify that the spot prices to be used in index value calculations are the prices for the trading month concurrent with the production month. The term ''trading month'' is a defined term in the final rule, and means the period during which crude oil trading occurs and spot prices are determined, generally for deliveries of production in the following calendar month.

In effect, the spot prices used will be the prices published during the production month for ANS crude, and prices published principally during the production month for other indexes. For example, a publication may publish prices between approximately the 26th day of month one and the 25th day of month two. That period will be the trading month, and the spot prices published in that trading month will be used to value, for royalty purposes, production from a Federal lease in month two).

Thus, continuing the example, if the production month is June and the oil is produced outside California/Alaska, and the trading month is May 26–June 25, you would compute the average of the daily mean prices using the daily spot prices published in the appropriate MMS-approved publication for all the business days between May 26 and June 25 (for delivery in July).

As indicated previously in this preamble, in the final rule we have adopted the index timing method proposed in the January 1997 proposal and not the method proposed in February 1998 and December 1999.

(g) Tendering Should Be an Option for Oil Not Traded at Arm's Length

Summary of Comments: Several comments from both industry and a group of U.S. Senators indicated that tendering should be used as a valuation methodology in all areas of the country, not just as a benchmark in the RMR. Further, MMS restrictions on tendering in the RMR are too severe. MMS can ease its restrictions and still prevent ''gaming''.

MMS Response: MMS addressed the overall appropriateness of tendering programs when similar comments were raised in response to the February 1998 proposal.

(h) Use of FERC tariffs in Lieu of Actual Costs

Summary of Comments: Again, industry submitted numerous comments supporting the position that FERC tariffs should be permitted as allowances because they recognize the real cost structure of pipeline investments; MMS allowances do not recognize these costs. Several State comments indicated that FERC tariffs are not appropriate and should not be used as allowances.

MMS Response: MMS addressed the appropriateness of FERC tariffs as allowances in the February 1998 responses to public comments.

(i) The Two-Year Election Requirement

Summary of Comments: Several comments from industry expressed concern that the requirement that a lessee declare for a 2-year period whether it will use gross proceeds or index pricing is too severe. Further, MMS should allow the election on a lease-by-lease basis rather than for all production and in intervals less than 2 years.

A State commented that it generally favors the 2-year valuation election as a method to ensure that industry does not ''game'' the valuation methods.

MMS Response: MMS agrees with the State comment that 2 years is needed to ensure that lessees do not have any incentive to ''game'' valuation methods. However, MMS acknowledges that it may be problematic for a lessee to have to declare an overall valuation method for all of its properties when circumstances may dictate different approaches for properties that are widely geographically separated or from which production is marketed in different ways. Therefore, in the final rule, MMS is requiring lessees to make the 2-year election on a property-by-property basis, *i.e.,* for a unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement).

(j) MMS Ignores Alternative Valuation Methodologies for Non-Arm's-Length Transactions

Summary of Comments: A consultant hired by industry claims that MMS has not addressed all of the alternatives that can arrive at lease value. It has not explained why RIK will not work in all circumstances. Other comments asserted that MMS would be able to eliminate valuation problems if it were to take its royalty in kind. Most States favor the approach of using index prices. One State is open to tendering if a lessee can demonstrate that its program will establish competitive prices.

MMS Response: MMS consulted with crude oil experts in economics, marketing, and related areas in the formulation of these rules. It has consulted with industry, States, and other interested parties for more than 4 years. During this time MMS held workshops addressing alternate proposals from these parties and made numerous refinements and revisions to its proposals. MMS has addressed alternate valuation proposals in the sections addressing comments received on earlier proposals before the December 30, 1999 proposal.

It is not incumbent on MMS to prove that RIK will not work in all circumstances before issuing a final rulemaking on oil valuation. The statutes and lease terms give MMS the option of taking royalty in value or in kind. As a steward of publicly owned resources, MMS is responsible for

receiving fair value for development of publicly-owned resources.

(k) MMS Has Not Fully Considered the Advantages of a Lease-Based Comparable Sales Valuation Methodology

Summary of Comments: Industry commenters still embrace comparable lease-based arm's-length sales to value production not sold at arm's length and claim that their consultants' work demonstrates that there are viable markets at the lease.

MMS Response: MMS has addressed the concept of comparable sales in multiple workshops attended by State and industry representatives and in sections containing responses to previously submitted comments in this rulemaking process. In support of their position, industry commenters offer the analyses prepared by Joseph Kalt (Kalt) and Kenneth Grant (Grant). For the west coast market, industry includes the comments of Samual Van Vactor. In support of their position, Kalt and Grant cite an extensive data base of lease-based arm's-length transactions that they say demonstrate that a market exists at the lease. We are aware that this database apparently exists because Kalt cited it in support of industry's position in a presentation to a congressional subcommittee reviewing this rulemaking process.

MMS also understands that this same database has been cited in several judicial proceedings where royalty payments were valued at posted prices. MMS has not seen the database containing these transactions because it was not provided with the comments submitted by Kalt and Grant. MMS has no way of verifying whether this database is accurate or whether or to what extent it supports Kalt's and Grant's thesis. We have no way of knowing whether the database includes transactions that MMS would not regard as arm's-length sales, whether it includes buy/sell exchanges within arm's-length sales, or whether it may involve other possible problems. It is also unclear whether any double counting of information may have occurred, since multiple parties' sales and purchase information apparently are contained in the database.

MMS cannot rely on data it has not seen and has not examined. MMS does not believe that industry has provided convincing evidence or analysis to show that a competitive market exists at the lease throughout the domain of Federal leases.

Another consultant hired by industry, Samuel Van Vactor (Van Vactor), claims that ANS spot prices are poor indicators for the market value of California crude oil. In support of his position, Van Vactor cites several difficulties in comparing ANS crude to California crude oils.

- ANS is of better physical quality than most California crude oil.
- Line 63 spot prices of California crude yield lower values than ANS.
- Gravity schedules on posted price bulletins and pipeline gravity banks are not intended to make comparisons between crude oils from different fields.
- MMS's method is more cumbersome than industry's comparable sales method.
- MMS disagrees with Van Vactor's position and reasons. While the quality of ANS is clearly different than most Federal California crude oil, after adjustments are made for gravity, sulfur, and location, it is a good proxy in valuing oil not sold at arm's length. ANS spot prices have the advantage of regular transactions of sufficient liquidity to establish a fair market price. Spot prices for Kern River crude and Line 63 are suspect indicators of market value because they reflect only thinly traded volumes. Additionally, Line 63 is a blend of heavy and lighter crude oil and, when refined, yields a different product slate than ANS and other California crude oils.

Van Vactor's criticism of the use of posted price gravity schedules and pipeline gravity banks for making adjustments between different fields ignores their common use by industry in exchange contracts involving different quality crude oils from distant locations. See Review of Selected Technical Reports on MMS's Proposed Federal Oil Rule and Supplemental Rule, prepared by Innovation and Information Consultants, Inc., dated September 25, 1997, p. 5. That review observes:

> Finally, Van Vactor argues that one cannot apply the California gravity price differential as a quality adjustment to ANS. He claims such adjustments are only meant to measure small deviations around the gravity actually being delivered and are not intended to be applied across crude fields or to compare with different crude oils. He also claims that when comparing ANS with California crudes of identical quality, ANS sells for $0.50 to $1.00 per barrel more. We disagree with his reasoning and its factual basis. First, it can be demonstrated that the interfield (the gravity adjustment factor across different fields) and the intrafield (the adjustment factor used in posted price bulletins to adjust for gravity variations within a field) gravity price differential are very nearly the same. [Citing ''West Coast Crude Oil Pricing,'' Department of Energy, 1988.] Second, the oil companies regularly apply the gravity price differential (GPD) on exchange agreements covering many different crude oil types, gravity levels and fields within and outside California. Indeed even when companies are trading ANS for California crude oils, they often apply the California gravity price differential (or something lower) to adjust for differences in quality. Third, pipelines such as the All America pipeline which transports both ANS and California crude oils (heavy and light) utilizes a gravity bank that is very similar to the California posted price gravity differential. Furthermore, this bank can be applied to widely varying gravities (10–30° API).
>
> Id.

On at least one occasion involving a gravity bank dispute between producers of ANS crude oil, an integrated company argued for the use of California posted price gravity schedules in making adjustments between different grades of ANS crude that was shipped via the Trans-Alaska Pipeline. See, Prepared Direct Testimony of Karl Richard Pavlovic, dated January 11, 1998, in *Exxon USA, Inc.* v. *Amerada Hess Pipeline Corp.,* Docket No. OR96–14–000 before the Federal Energy Regulatory Commission. In short, Van Vactor's arguments against the use of ANS for valuing California Federal crude oil are at odds with actual industry practices. Additionally, ANS prices are transparent and adjustments for location and quality can be made that will provide a value at Federal leases for royalty purposes.

Finally, MMS disagrees with Van Vactor's claim that the ANS methodology is more cumbersome than a comparable sales method. A comparable sales method would be burdensome for both MMS and industry. In many instances companies would not have sufficient transaction information to arrive at a reasoned calculation of value. Under the current regulations, comparable sales methods (i.e., the benchmarks) lead to a significant audit burden for both industry and MMS. Moreover, MMS does not believe that in most instances in California there are sufficient arm's-length sales at the lease to derive an accurate comparable sales value.

(l) Posted Prices are Valid Indicators of Value for Non-Arm's-Length Transactions

Summary of Comments: Some industry commenters continue to assert that postings represent market value at the lease. They cite the recent jury decision in the Long Beach II trial [i.e., the Exxon case] as evidence for this position.

MMS Response: In the various proposals that have resulted in this final rule, MMS has discussed at great length the reasons why we believe posted prices no longer represent market value. The reasons why the jury's decision in

the Exxon matter does not imply that posted prices are a valid indicator of value, and why it is not contrary to this rule, are covered in detail in Section X of this preamble in the discussion of the provisions of § 206.103.

(m) MMS Treats Producers Inequitably by Not Allowing Arm's-Length Production To Be Valued at Index

Summary of Comments: MMS received several comments that lessees should be allowed to use index pricing where tracing of arm's-length dispositions would prove overly burdensome. Others commented that MMS should provide the option to value all arm's-length production under index pricing.

MMS Response: The principle that gross proceeds is the primary measure of value in arm's-length transactions has been retained under these regulations. This means that a lessee must be able to account for actual receipts under an arm's-length contract. This is consistent with the principle that arm's-length contracts should be the basis for valuation whenever possible.

In the final rule, as in the December 1999 proposal, and for the reasons explained in that proposal, MMS has provided the option for lessees to choose to report and pay on index values only after one or more arm's-length exchanges or after sales to an affiliate. We do not believe that use of index prices when production initially has been sold at arm's length should be expanded.

(n) Use of Alternate Index Prices

Summary of Comments: There were some industry comments suggesting that MMS use Line 63 and Kern River Spot prices in place of ANS. Several comments suggest using index prices from more distant markets if the crude oil indexed better approximates quality parameters than a nearby indexed crude oil.

MMS Response: MMS does not believe that the Line 63 and Kern River spot prices are dependable indicators of market value for reasons explained elsewhere in this preamble. We also have explained elsewhere why we do not believe that as a general rule lessees should be allowed to use index prices from more distant markets.

(o) Use of Benchmarks Outside the Rocky Mountain Region

Summary of Comments: Industry commented that the benchmarks applicable to the RMR should apply everywhere. The RMR benchmarks should be a menu and not a hierarchy, and MMS should modify them to allow lessees to use either tracing or index pricing where tendering programs do not meet MMS standards. The RMR benchmark that uses a volume-weighted average of sales prices must also include adjustments for gravity. Also, MMS has not explained why comparable sales are used in the proposed Indian rule but not in the Federal rule.

MMS Response: MMS has addressed the need for a series of benchmarks for the RMR in earlier parts of this preamble and in earlier versions of this rulemaking. The reasons for prescribing in the final rule an initial benchmark, followed by a choice between two other benchmarks if the first does not apply, have been explained elsewhere in this preamble. In other parts of the country, reliable index prices exist. MMS has addressed the concern about gravity differences in the RMR comparable sales methodology by requiring that gravity be normalized before a volume-weighted average of prices is considered.

The proposed Indian oil value rule does not include comparable sales as the commenters here imply. The ''major portion'' provisions in Indian leases are not what the commenters in this rulemaking have suggested.

(p) Binding Value Determinations

Summary of Comments: Several U.S. Senators stated that MMS should issue binding value determinations that are appealable administratively. (In light of the text of the December 1999 proposal, it appears that the congressional commenters are suggesting that MMS, and not just the Assistant Secretary, should issue value determinations that are binding on the lessee as well as on MMS.) Industry wants MMS to broaden the kinds of binding determinations it provides, and then only prospectively. These determinations should be issued expeditiously and be appealable. The limits on determinations are overly restrictive. Fact-specific determinations should be issued. The uncertainty surrounding determinations makes the rule unworkable. MMS should expand the circumstances in which lessees may receive determinations.

MMS Response: The final rule provides that MMS will be bound by MMS determinations, and that both MMS and the lessee will be bound by Assistant Secretary determinations. MMS disagrees with the suggestion that value determinations by MMS should be appealable administratively, because they are not binding on lessees. We see no need to expand the number of potential administrative appeals when enforcement of the measure of value in an MMS determination (should the lessee disagree with and not follow it) depends on whether MMS later issues an order to pay.

We disagree that the scope of value determinations is overly restrictive and we do not agree that MMS should be required to issue value determinations in every case in which a lessee asks for one. Issuing value determinations is not always appropriate, and MMS must retain discretion in this respect. We also do not believe that there is ''uncertainty'' surrounding determinations or that the procedure in the December 1999 proposal and this final rule is ''unworkable.''

(q) Binding Determinations—Allegedly ''Penalizing'' Lessees

Summary of Comments: Some commenters argued that the provision about not penalizing a lessee for failing to follow a value determination by MMS is illusory and amounts to a form of ''Hobson's choice.'' The commenters say that to require lessees to subject themselves to penalties in order to challenge determinations they disagree with is unsound policy. MMS should apply the principle that the mere existence of a higher selling price does not mean that MMS will question the validity of the proceeds in any transaction.

MMS Response: MMS does not agree with this characterization of the value determination process. If a lessee disagrees with a determination by MMS, it has the option of not following the determination. The burden will lie with MMS to issue an order to pay on the value basis contained in the determination. The lessee is not in any different position than in any other circumstance in which it may disagree with MMS's position on a valuation issue. We are unable to see how this in any way ''penalizes'' the lessee or imposes on it a ''Hobson's choice.''

Finally, as explained elsewhere in this preamble, the existence of a higher selling price does not in itself imply that the lessee has breached its duty to market or that the arm's-length gross proceeds would not be accepted as royalty value.

(r) Requirement To Identify Other Lessees When Requesting a Value Determination.

Summary of Comments: At least one commenter argued that the requirement in the December 1999 proposal that a lessee must identify record title or operating rights owners when requesting a valuation determination is unnecessary.

MMS Response: MMS believes it is appropriate to require lessees to identify

other operating rights owners or record title owners to the extent that the lessee knows who they are because they may be affected by the analysis or conclusions of a value determination in a manner similar to the lessee who requested it. If production for which those other parties may be liable for royalty payments is affected by the results of a value determination, MMS needs to have this information to proceed expeditiously.

(s) Clarification of Value Determination Procedures

Summary of Comments: At least one commenter suggested that MMS should issue guidelines in the rule to help lessees determine if their transactions are at arm's length. The commenter argued that the final rule should better clarify what decisions do and do not come under the valuation determination process.

MMS Response: With the change made in the definition of affiliate, we believe the final rule provides sufficient criteria to determine what transactions are at arm's length in the vast majority of situations. The final rule at § 206.107 explains that MMS will not provide valuation determinations in response to requests for guidance on hypothetical situations or matters that are the subject of pending litigation or administrative appeals.

We also removed the provision in the December 1999 proposal that we would not provide valuation determinations where the request dealt with matters ''inherently factual'' in nature. We proposed not to address such requests because the purpose of providing valuation determinations is to take given facts and render an interpretation of how they should be applied in a given situation, not to interpret what the actual facts are. But since the term ''inherently factual'' may mean different things to different people and cannot be precisely defined for purposes of this rule, we removed this provision in the final rule. We still do not intend, however, that valuation determinations would be given just to determine the facts involved in a given situation.

Further, we did not include in this final rule the provision in the current rule at § 206.102(g) that the lessee may use its proposed value for royalty payment purposes until MMS provides a value determination. MMS does not want to be in the position of having to accept royalty payment on a value it may find unacceptable, no matter how short the period may be between the lessee's request for a value determination and MMS's response. MMS will act as expeditiously as possible on such requests, but sometimes policy interpretations may be required or other complications may arise.

This preamble at Section VI(f) also explains some types of situations where value determinations may or may not be appropriate. Value determinations are issued only under § 206.107, in response to a specific request for a value determination. An example might be where the lessee operates in the RMR and approaches MMS for approval to use results from its tendering program to value its production that is not sold at arm's length. Or, if the lessee has no tendering program, it might ask MMS to determine whether purchases and sales by it and its affiliate are at arm's length and of sufficient quantities to permit use of the second RMR benchmark. Requests not covered under § 206.107 include, for example, those under the fourth benchmark for the RMR where the Director establishes an alternative valuation method (§ 206.103(b)(5)), calculation of a value at the refinery when the adjusted index price yields an unreasonable value (§ 206.103(e)), and calculation of a location/quality differential when the lessee does not have its own information to calculate the differential (§ 206.112(f)). MMS will respond to these requests, but they will not be handled under the value determination procedures.

(t) Timely Value Determinations

Summary of Comments: Some commenters express a lack of confidence that MMS will be able to issue timely determinations. They say that MMS should rule on all issues and provide timely answers, even if a negative decision results. The States are concerned about MMS making decisions based on incomplete information.

MMS Response: MMS has identified some types of matters for which value determinations probably are not appropriate, such as hypothetical situations or matters that are the subject of pending litigation or administrative appeals. It is in MMS's interest to expedite value determinations so as to resolve as many matters as possible and avoid a backlog. (See also our response at (s) immediately above.) As for the States' concern that MMS will make decisions based on incomplete information, MMS does not intend to make a determination until the lessee provides all the pertinent facts, documents, and analysis. In the rare event that a misstatement or omission of the material facts occurs, or the facts ultimately developed are materially different from the facts on which the guidance was based, MMS could change the determination retroactively.

(u) State Involvement in MMS Value Determinations

Summary of Comments: State commenters said they would like to be involved in the decision-making process when binding determinations affect their revenue. California is concerned with lessees possibly requesting valuation determinations on no more grounds than an asserted belief that a methodology required under the rule is not applicable. The State commenters argued that prospective valuation determinations should ''sunset'' after 2 years, within which time the lessee must demonstrate that the circumstances continue to apply.

MMS Response: MMS is mindful of States' concerns in valuation issues. As a general practice, MMS consults with States in preparing valuation determinations, but the ultimate decisions with respect to value determination requests rest with MMS and the Assistant Secretary. MMS does not believe that lessees have any incentive to file spurious or unsupported requests for value determinations. If MMS receives a spurious or frivolous request, it will be rejected. (Such a situation would be another example of an appropriate circumstance in which MMS would decline to issue a determination.) MMS does not believe it is appropriate to include a ''sunset'' provision in every determination as a matter of course. However, MMS may include such a provision where circumstances indicate that the situation addressed in the determination is likely to change, or that the matter should be reexamined after some interval.

(v) Location and Quality Differentials

Summary of Comments: Industry commenters uniformly favor removing the requirement to submit Form MMS–4415, as proposed in the December 1999 proposal, but many express doubts that MMS will accept the location and quality differentials they derive and use in reporting royalties due. Industry commenters also do not believe that MMS can determine meaningful differentials for them when they are required to pay on an index value, but do not have actual information from their own contracts to determine these differentials. These commenters question how a company would challenge an MMS determination. Industry wants to be able to appeal determinations of differentials.

MMS Response: If a lessee can document the differentials it uses from

its arm's-length exchange agreements or other reliable evidence, MMS will have little reason to dispute the lessee's use of those differentials. If MMS determines a location/quality differential, it will do so on the basis of the best information available to it. If the lessee disagrees with MMS's determination and the lessee and MMS are unable to resolve the disagreement, MMS would issue an order to the lessee to use MMS's differential. That order would be appealable.

(w) Elimination of Form MMS–4415 and Validity of Location/ Quality Differentials

Summary of Comments: One State commenter supports keeping the Form MMS–4415 for now, with the provision that MMS can always eliminate the form in the future. That State asserts that it is better to collect the information now and realize later that the form is not needed rather than to be forced to work without it. One State believes that using location differentials to alternate disposal points (such as a refinery) is not appropriate, and that location differentials should be between the lease and the index pricing point.

This commenter also asserts that exchange differentials will not accurately reflect the difference in value between the lease and the index pricing point. It proposes using gravity and sulfur banks in the pipeline tariffs for quality differentials. A public interest group recommends standardized location differentials.

MMS Response: One of the most contentious issues arising from prior proposals in this rulemaking process has been the requirement for lessees to submit information about their exchange agreements on Form MMS–4415. These lessees correctly point out that the information is not for their benefit, but would be used only in a small number of cases where a lessee must pay on an index value, but does not have access to actual location/ quality differential information. While it would be preferable to have comparable exchange differential information, MMS must weigh this benefit against the burden and cost that it would impose on industry and MMS. After considerable discussions with all interested parties, MMS has determined that the burdens and costs would outweigh the potential benefits. MMS anticipates that it will have to determine differentials for lessees in only a limited number of circumstances.

(x) Economic Analysis of Lease Markets

Summary of Comments: On behalf of industry, one commenter asserts that MMS has ignored basic economic principles in arriving at the conclusion that lease markets are not competitive. MMS's conclusions, this commenter says, are based on contradictory statements, unsubstantiated claims, and misinterpretation of economic principles and significant facts about the domestic crude oil market. He states that the lease market contains significant and recurring volumes of crude oil sales moving in outright sales between unrelated, well-informed buyers and sellers with access to information. Competition allows each party to protect its interests.

MMS Response: MMS does not agree with this commenter and does not believe that his analysis of the lease market is complete. First, the commenter's analysis ignores the principle that the lessor is entitled to share in gains derived from the lessee's marketing activities. Second, relying on supposed comparable sales at the lease results in relying on prices paid to captive sellers in many instances. Those prices will tend to be below the true market value of the oil. Third, the commenter equates posted prices to ''price transparency.'' This assumption contradicts statements that companies with tendering programs have made during the rulemaking process, and cannot be defended under any concept of ''price transparency'' that we have been able to find. The fact that prices paid in arm's-length transactions frequently include a premium over the posted price refutes the commenter's assumption. The principles of competitive markets that this commenter outlines in fact occur at market centers with spot prices. Therefore, MMS believes it is appropriate to establish value for non-arm's-length transactions by using spot prices, with adjustments for location and quality.

(y) Alleged Different Treatment of Integrated and Non-Integrated Producers

Summary of Comments: Some industry commenters assert that integrated producers should not be treated differently than non-integrated producers. Also, producers in the RMR have more options than producers in other regions. MMS should allow the same standards for all Federal leases, including tendering and comparable sales.

MMS Response: MMS disagrees that integrated producers are treated differently than non-integrated producers under either the previous proposals or this final rule. How producers value production and pay royalties under this final rule depends in large measure on how they choose to market their production. If a producer sells its production outright at arm's length, it pays based on gross proceeds. If not, it pays royalties using either the index pricing methodology, an applicable benchmark (for production in the RMR), or on the basis of an arm's-length sale price following either inter-affiliate transfers or arm's-length exchanges. These principles apply to both integrated and non-integrated producers.

(z) Final Rule Implementation Date

Summary of Comments: Industry commenters assert that MMS should allow for adequate time for industry to completely update its systems before the final rule becomes effective. (According to some industry commenters, it will require at least until the beginning of next year to update their systems.) A number of public interest groups stated that they expect a final rule in March 2000. A citizen and the State of New Mexico also favor immediate implementation of this rule.

MMS Response: MMS understands that this rule will require some adjustments to many lessees' systems. It has extended its earlier proposed effective date to June 1, 2000, the first day of the first month more than 60 days after the publication date of this rule to allow lessees to make needed adjustments. MMS further has provided for a ''grace period'' in § 206.121 that allows lessees to make adjustments to royalty payments for production in the first 3 months after the effective date of the rule without liability for late payment interest if the adjustment results from a system change necessary to comply with this rule. Lessees may get interest bills, but if they demonstrate that the adjustment generating the bill resulted from system changes necessitated by the rule, MMS will credit the bill. MMS believes that the ''grace period'' should allow adequate time for lessees to make necessary adjustments.

(aa) The Lessee's Duty to Market Production at No Cost to the Lessor

Summary of Comments: Some industry commenters provided extensive comments on MMS's analysis in the December 1999 proposal of the lessee's duty to market production at no cost to the lessor and related issues (e.g., the commenters' view of valuing production ''at the lease'' and gain realized from ''downstream'' sales). (The analysis in the December 1999 proposal is reiterated with some additional explanation in Section III(i) above.) The industry commenters cite numerous

State court decisions, discuss IBLA precedents and various Federal court decisions at great length, and dispute the existence, scope and implications of the lessee's implied covenant to market the production for the mutual benefit of the lessee and the lessor. The State commenters support the MMS's position on the lessee's duty to market as reflected in the December 1999 proposal.

MMS Response: The lessee's duty to market at no cost to the lessor is the subject of pending litigation. Industry has challenged a provision in the Department's December 16, 1997, gas transportation allowance rule that is virtually identical to the provision in the several proposals in this rulemaking and in this final rule (62 FR 65753). See, *American Petroleum Institute* v. *Babbitt,* Civil No. 98–631 and *Independent Petroleum Association of America* v. *Armstrong,* Civil No. 98–531 (D.D.C.) (consolidated). The ultimate resolution of this issue likely will lie with the courts. MMS believes the final rule is well within the agency's authority and reflects existing law governing Federal leases.

(ab) Affiliation and Control

Summary of Comments: Some industry commenters believe that tests to determine control (and, consequently, affiliation in the event one person owns less than 50 percent of the voting securities of another) are too subjective.

MMS Response: As explained elsewhere in this preamble, after the D.C. Circuit's decision in *National Mining Association* v. *Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999), MMS has no alternative but to conduct a fact-specific inquiry in cases where one person owns less than 50 percent of the voting securities of another. The situations vary widely. This rule identifies some of the key factors which MMS will examine in evaluating whether one person controls another. These factors are objective, not subjective, indicators. Their application depends on the facts of a particular case.

(ac) Production ''Tracing'' Issues

Summary of Comments: Some industry commenters claim that tracing will involve multiple valuation determinations where none were needed before, and may make implementation of the rule impossible.

MMS Response: The facts that oil produced from any particular lease or unit may be commingled with oil produced from other properties, and that the combined quantities may be disposed of through multiple transactions at more than one location, are not new. In many circumstances, the MMS valuation rules that hitherto have been in force require allocation of production from multiple sources and multiple dispositions if lessees are to pay royalty correctly. In fact, this rule provides the option to use index-based valuation, in which no ''tracing'' would be required, in certain circumstances.

(ad) Tracing in Relation to Exchange Agreements

Summary of Comments: Some States are concerned about the issue of tracing production after multiple exchanges. They assert that value can be masked in this process due to commingling and other factors. They favor limiting the number of exchanges or using a weighted average price if only one exchange exists. One public interest group favors limiting the number of exchanges to two.

MMS Response: In cases where lessees have multiple exchanges involving production from a Federal lease, they will have to be able to account for adjustments due to location/quality differentials or transportation costs. These adjustments will be subject to audit. Lessees who dispose of production through arm's-length exchanges followed by an arm's-length sale have the option of valuing the production under either gross proceeds or index (§ 206.102(a) or § 206.103, respectively). (Lessees who dispose of production through non-arm's-length exchanges or who refine their production must use the index value under § 206.103.) If the lessee uses the index value under § 206.103, the considerations the commenters raise are irrelevant. If the lessee values the production according to the arm's-length gross proceeds following one or more arm's-length exchanges, it must be able to support its adjustments.

(ae) Treatment of and Effect on Affiliated Pipelines

Summary of Comments: One pipeline commenter who is affiliated with producers said that the December 1999 proposal improperly affects affiliates negatively in several respects. This commenter said that MMS is trying to control the affiliate's pricing, transportation, and contracting behavior even though it is not a party to the lease. It also said that requiring production of an affiliate's pricing information could expose the affiliated pipeline to ''unreasonable allegations of antitrust violations.'' This commenter also says that the rule discriminates against affiliated transportation arrangements. The commenter further asserts that the rule imposes ''enormous'' administrative costs on affiliates and designees, which, it says, MMS ''grossly underestimated.'' The commenter says that the rule would require multiple valuation methodologies, which in turn require new accounting systems and additional manpower. Finally, this commenter asserts that MMS lacks the statutory authority to require affiliates to make their records available.

MMS Response: MMS disagrees with this commenter's characterizations. This rule does not control an affiliate's behavior. The fact that transactions with an affiliate may affect how production is valued for royalty purposes does not imply that the rule somehow ''controls'' the affiliate's behavior.

MMS does not believe that requiring production of an affiliate's information would create any exposure under the antitrust laws. In the commenter's own words, it fears that ''[p]laintiffs lawyers might try to concoct'' a Sherman Act theory. The commenter apparently does not believe that any such concocted theory would have any merit, and neither do we.

As explained elsewhere in this preamble, the rule does not discriminate against affiliated transportation arrangements. In both arm's-length and non-arm's-length arrangements, the lessee may deduct its actual costs of transportation.

We do not believe that the commenter has justified its assertion of ''enormous'' administrative costs resulting from this rule. Although the rule does require changes in valuation methodology in some respects, no one has demonstrated that it requires lessees to construct completely new systems. Indeed, although companies have asserted repeatedly that the rule will result in large costs, none has attempted to quantify such costs.

MMS believes that the commenter's assertion that the new rule requires ''multiple valuation methodologies'' is misplaced. We doubt that any lessee with more than a few leases valued all of its production for all of its leases in the same way under the previous rules. Under the prior rules, some dispositions resulted in using arm's-length gross proceeds as royalty value, while others resulted in using the ''benchmarks.'' MMS does not believe this rule is more difficult to apply than the earlier provisions; indeed, we expect that the opposite is true.

Finally, the commenter's argument that MMS does not have statutory authority to require affiliates to produce their records is wrong. The commenter relies on the provisions of FOGRMA Section 103(a), 30 U.S.C. 1713(a), for the proposition that MMS may require

production of records only through the first non-arm's-length transfer. This position was expressly rejected in *Shell Oil Co.* v. *Babbitt,* 125 F.3d 172 (3d Cir. 1997). Contrary to the commenter's assertion, the affiliate is a person ''directly involved in . . . purchasing, or selling oil or gas subject to [FOGRMA] through the point of first sale or the point of royalty computation, whichever is later . . .''

(af) Pipeline Residual Return on Investment

Summary of Comments: Many industry comments favored the proposed changes regarding a continued return on investment after a pipeline has been fully depreciated. Companies favored continuing to apply a rate of return against a minimum base value even after the pipeline has been fully depreciated. A few industry commenters were concerned as to how the calculation would be performed if original cost records no longer exist. States expressed concern that allowing a rate of return on some base value after the pipeline is fully depreciated amounts to an unnecessary gift to industry. One citizen also commented that the current regulations should remain, with no additional return on investment allowed beyond the normal life of a pipeline.

MMS Response: MMS believes that, to cover factors such as the ongoing risk of operating a pipeline, it is reasonable to permit a residual return on investment component within the allowance calculation even after the pipeline has been almost completely depreciated. To account for such factors, this final rule, at § 206.111(j), permits the allowance calculation to include an annual return on investment component of ten percent of the total capital investment in the pipeline, even after the pipeline has been depreciated to a level at or below 10 percent of the total capital investment.

Under the final rule, we also added a provision at paragraph (j)(2) clarifying that you may apply this paragraph to a transportation system that before the effective date of the final rule is depreciated to a level at or below a value equal to ten percent of your total capital investment.

(ag) Definitions

Summary of Comments: MMS received many comments that suggested various clarifications and modifications to definitions and terms used throughout the rule. Some groups offered specific suggestions. Others simply asked for additional clarification of some terms. Many comments focused on the definition of ''area'' and asserted that further clarification is warranted. One commenter noted that the rule as proposed would value some crude from the San Juan Basin one way if it were produced from surface wells in New Mexico or Arizona and another way if produced from surface wells in Utah or Colorado. The commenter recommended that the Four Corners area be treated consistently for valuation purposes because all production from the area generally is sold into the same market.

MMS Response: Many of these terms used and defined in this rule were used in the previous rule, and further changes are not necessary. MMS agrees that the terms ''exchange for physicals'' and ''time trades'' can be removed from the definition of exchange agreement, and removed them in this final rule.

MMS believes the defined term ''area'' requires no additional modification. This definition is similar to the definition in the 1988 regulations. Moreover, this rule relies less on ''area'' than the 1988 regulations did.

However, we agree with the commenter who said production from the Four Corners area should be valued consistently. As a result we have modified the Rocky Mountain Region definition to mean the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and, more generally, the ''Four Corners'' area that lie within Colorado and Utah.

(ah) Alleged Illegal Information Transfers for Transportation Allowance Calculations

Summary of Comments: Some producers and industry groups commented that in order for them to calculate ''actual costs'' under the proposed rule, they need pipeline data from their affiliate. These commenters assert that the Interstate Commerce Act (ICA) prohibits the disclosure of this information. Even if this data was available and could be legally disclosed, they say MMS ignores the burden it now places on companies to compute this ''actual cost''.

MMS Response: MMS believes that disclosure of pipeline cost information between affiliates is legal, the information is readily available, and affiliates have the right to exchange information and often do.

The estimate of the cost burden related to calculation of ''actual transportation costs'' is embedded in the cost estimate for completing the Form MMS–2014, on which the allowance is reported, and is discussed in the ''Procedural Matters'' section of this preamble.

(ai) Cushing Spot Prices as a Benchmark in the Rocky Mountain Region

Summary of Comments: A State commented, and some industry groups agreed, that using the Cushing, Oklahoma WTI spot price is not an appropriate measure of value for Wyoming crude oil. There may be only a few trades from Wyoming to Oklahoma, which means an accurate differential may be impossible to obtain.

MMS Response: Valuation of oil produced in the RMR and not sold at arm's length is determined under a series of benchmarks. If the first benchmark does not apply, the lessee may select either the second or the third. The third is the WTI spot price at Cushing, Oklahoma. The lack of a dependable published spot price within the RMR prompted MMS to refer to the Cushing price. If the first two benchmarks cannot be applied, and the lessee believes the use of WTI in the third benchmark is not properly adjustable back to its property in Wyoming, the MMS Director may establish an alternate value under the fourth benchmark.

X. Summary and Discussion of Adopted Rules

This final rule incorporates changes made in response to comments on the January 1997 proposal, the July 1997 proposal, the September 1997 notice, the February 1998 proposal, the July 1998 proposal, the March 1999 notice, and the December 1999 proposal. As in the February 1998 proposal, we also added and renumbered sections and further reorganized the rule for readability.

This summary of adopted rules builds on the above summary of, and MMS's responses to, comments received on the January 1997, July 1997, September 1997, February 1998, July 1998, March 1999, and December 1999 proposals and notices. Because this final rule is a product of changes made in response to comments received throughout this rulemaking, the preambles of each of the previous proposals and notices may be consulted in conjunction with this preamble to trace the evolution of the final rule.

Note that the renumbering and reorganization for the final rule resulted in the following modifications to the existing rule at 30 CFR Subpart C-Federal Oil:

Section	Modification
§§ 206.100 and 206.101	Revised.
§§ 206.102	Revised and redesignated as §§ 206.102, 206.103, 206.104, 206.105, 206.106, 206.107, and 206.108.
§§ 206.103 and 206.104	Redesignated as §§ 206.119 and 206.109, respectively.
§§ 206.105	Revised and redesignated as §§ 206.110, 206.111, 206.114, 206.115, 206.116, 206.117, and 206.118.
§§ 206.106	Revised and redesignated as §§ 206.120. New §§ 206.112, 206.113, and 206.121 added.

In addition, we rewrote all sections of the existing rule in plain English so the entire rule would read consistently.

Before proceeding with the summary and discussion of adopted rule, it is appropriate to reiterate the conceptual framework of the final rule. When crude oil is produced, it is either sold at arm's length or is refined without ever being sold at arm's length. If crude oil is exchanged for other crude oil at arm's length, the oil received in the exchange is either sold at arm's length or is refined without ever being sold at arm's length. Under this final rule, oil that ultimately is sold at arm's length before refining generally will be valued based on the gross proceeds accruing to the seller under the arm's-length sale. This includes oil that is exchanged at arm's length where the oil received in exchange is ultimately sold at arm's length. (The exceptions reflect particular circumstances in which MMS believes the arm's-length sale does not or may not reliably reflect the real value.) However, the final rule also provides the option for the lessee to apply index prices or benchmark values because of the difficulty of ''tracing'' production in some exchanges and affiliate resales. If oil (or oil received in exchange) is refined without being sold at arm's length, then the value will be based on appropriate index prices or other methods, as explained below.

These principles apply regardless of whether oil is sold or transferred to one or more affiliates or other persons in non-arm's-length transactions before the arm's-length sale, and regardless of the number of those non-arm's-length transactions. They also apply if an arm's-length exchange occurs before an arm's-length sale. (However, MMS believes that if there are multiple exchanges prior to an arm's-length sale, using the ultimate arm's-length sales price may in some cases require too much ''tracing'' of the oil to be cost-efficient for lessee and lessor alike. Consequently, under such circumstances, MMS has provided the option to determine value based either on the arm's-length gross proceeds or on an index or benchmark basis. The same option is provided for valuing production that is first sold or transferred to an affiliate and then resold at arm's length.)

Lessees and producers may structure their business arrangements however they wish, but MMS generally will look to the ultimate arm's-length disposition in the open market as the best measure of value. This means that MMS will not be ''second-guessing'' industry business decisions. Where a true arm's-length sale occurs that has not been preceded by non-arm's-length exchanges, the gross proceeds from that sale will represent royalty value, absent misconduct on the part of the lessee or breach of express or implied lease covenants, unless the lessee opts to apply index or benchmark values in appropriate situations.

Nor does the express language regarding the lessee's obligation to market production for the mutual benefit of the lessee and the lessor give MMS a license to ''second-guess'' marketing decisions. As discussed above, that obligation has always been an implied covenant of the lease.

Similarly, if oil is refined without being sold at arm's length, MMS believes that the valuation methods prescribed in this final rule are the best measures of value regardless of internal, inter-affiliate, or other non-arm's-length transfers.

Another important feature of the final rule is separate valuation procedures for California and Alaska, the RMR, and the rest of the country. In California and Alaska, if oil is not sold under an arm's-length contract, value would be based on ANS spot prices, adjusted for location and quality. MMS chose this indicator because it believes that ANS is the best measure of market value in that area when oil is not sold at arm's length.

In the RMR, if oil is not sold under an arm's-length contract, market value is more difficult to measure because of the isolated nature of the RMR from the major oil market centers. Therefore, MMS will accept values established by a company-administered tendering program as the first benchmark.

If the company does not have an approved tendering program, it may choose either the second or third benchmark. The second benchmark is a volume-weighted average of the gravity-normalized prices at which the lessee and its affiliates purchase or sell production from both Federal and non-Federal leases in the field or area at arm's length, if those arm's-length sales and purchases exceed 50 percent of the lessee's and its affiliates' production.

The third benchmark is the spot price for WTI crude at Cushing, Oklahoma, with location and quality adjustments. MMS chose the Cushing spot price because no acceptable published spot price exists in the RMR. If none of the first three benchmarks results in a reasonable value, the MMS Director may establish an alternative valuation method.

For other areas of the country, value would be based on the nearest spot price for oil of similar quality to your production, adjusted for quality and location. MMS believes that because the spot market is so active in areas other than the RMR, it is the best indicator of value in those other areas.

Section 206.100 What Is the Purpose of This Subpart?

As proposed in December 1999, this section includes the content of the existing section except for minor wording changes to improve clarity, additional language in new § 206.100(b) clarifying the respective roles of lessees and designees, and additional wording in § 206.100(d)(3) regarding written valuation agreements between the lessee and the MMS Director. (''Lessees'' and ''designees'' are defined in § 206.101, and those definitions follow the definitions contained in Section 3 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1702, as amended by Section 2 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104–185, 110 Stat. 1700.)

Specifically, if you are a designee and you or your affiliate dispose of production on behalf of a lessee, references to ''you'' and ''your'' in the rule refer to you and not to the lessee. In this event, you must report and pay royalty by applying the rule to your and your affiliate's disposition of the lessee's oil. If you are a designee and you report and pay royalties for a lessee but do not dispose of the lessee's production, the references to ''you'' and ''your'' refer to the lessee and not the designee. In that

case, you as a designee would have to determine royalty value and report and pay royalty by applying the rule to the lessee's disposition of its oil. Some examples will illustrate the principle.

Assume that the designee is the unit operator, and that the operator sells all of the production of the respective working interest owners on their behalf and is the designee for each of them. For each of those working interest owners, the operator, as designee, would report and pay royalties on the basis of the operator's disposition of the production. For example, if the operator transferred the oil to its affiliate, who then resold the oil at arm's length, the royalty value would be the gross proceeds accruing to the designee's affiliate in the arm's-length resale under § 206.102, or the appropriate index or benchmark value under § 206.103, as explained further below.

Alternatively, assume the operator is the designee but a lessee disposes of its own production. Assume the lessee transfers its oil to an affiliate, who then resells the oil at arm's length. In this case, the operator would have to obtain the information from the lessee, and report and pay royalties on the basis of the gross proceeds accruing to the lessee's affiliate in the arm's-length resale under § 206.102, or, at the lessee's option, on the basis of the appropriate index or benchmark value under § 206.103.

In some cases, the designee is the purchaser of the oil. Assume the operator disposes of the lessee's oil and that the operator is not affiliated with the designee-purchaser. Because the sale to the designee is an arm's-length transaction, then under § 206.102 the designee would report and pay royalty on the total consideration (the gross proceeds) realized on the sale to the purchaser.

In some cases, a lessee sells its production directly to a designee. (In such cases, the designee frequently is the operator but it does not have to be.) Questions may arise regarding whether such an arrangement is actually a sale or is an arrangement for the designee to dispose of the production on behalf of the lessee. These questions were raised during the January 2000 public workshops.

Several scenarios are possible, and each case will have to be considered on its facts. Nevertheless, there are some indicators MMS will examine in determining whether a designee is disposing of production on behalf of a lessee or is purchasing the production from the lessee. These indicators include but are not limited to the following:

- If a lessee sells to an unaffiliated designee where there is no joint operating agreement and the designee or its affiliate refines the oil rather than selling it, MMS ordinarily would regard this arrangement as an arm's-length sale and accept the price as royalty value.
- If a lessee sells to a co-lessee/designee under a joint operating agreement, MMS ordinarily will regard that arrangement as the designee disposing of production on the lessee's behalf and not as an actual sale to the designee.
- If the price paid to the lessee by the designee is dependent on the designee's receipts on resale of the production (*e.g.*, a specified percentage of the co-lessee's receipts), MMS ordinarily will regard that arrangement as the designee disposing of the production on the lessee's behalf and not as a sale. (In this situation, even if the transaction were regarded as an arm's-length sale, the designee is most likely the lessee's marketing agent in any event. Thus, the difference in price between the designee's receipts and what it pays the lessee would reflect the lessee's marketing costs, which it may not deduct from royalty value.)

We also note that the question of whether a lessee is selling to a designee (as opposed to the designee disposing of production on the lessee's behalf) is related to the larger question of whether a sale to a co-lessee (including one who is not a designee) is an arm's-length sale as opposed to an arrangement where the co-lessee is the lessee's marketing agent. MMS acknowledges that there are many cases in which a lessee sells to a co-lessee (whether a designee or not) at arm's length. But there are also many cases in which a co-lessee effectively acts as the marketing agent for the lessee. We will discuss this question further below in connection with arm's-length sales under § 206.102(a).

Revised § 206.100(a) is the same as the corresponding paragraph in the existing rule, rewritten for clarity. New § 206.100(b) clarifies the respective roles of lessees and designees.

New § 206.100(d) is essentially the same as existing § 206.100(b). That provision says that if any Federal statute, settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart is inconsistent with any regulation in this subpart, then the statute, lease provision, or settlement agreement governs to the extent of the inconsistency. However, we added a separate provision at new § 206.100(d)(3). It says that if a written agreement between the lessee and the MMS Director establishes a production valuation method for any lease that MMS expects at least would approximate the value otherwise established under this subpart, the written agreement will govern to the extent of any inconsistency with the regulations. This provision is intended to provide flexibility to both MMS and the lessee in those few unusual circumstances where a separate written agreement is reached, while at the same time maintaining the integrity of the regulations. As noted, any such agreement also must at least approximate the royalty value that would apply under these regulations for the production.

The content of new § 206.100(e) is the same as in existing paragraph (c), but rewritten for clarity. It says MMS may audit and adjust all royalty payments.

Section 206.100 also reflects the principle that this rule constitutes the Secretary's exercise of his authority reserved under the statutes and lease terms to establish the reasonable value of production for royalty purposes. MMS will not look to other possible measures of value that may be referenced in the lease terms (for example, the so-called ''major portion'' value) to supersede these rules, except in those few unusual circumstances where MMS and the lessee establish a written royalty valuation agreement under § 206.100(d)(3).

We removed existing paragraph (d). It said the regulations in this subpart are intended to ensure that the United States discharges its trust responsibilities concerning Indian oil and gas leases. Since Indian leases are subject to a separate set of valuation regulations at 30 CFR § 206.50 that include the same language as existing paragraph (d), the existing language at paragraph 206.100(d) is not needed.

Section 206.101 What Definitions Apply to This Subpart?

The definitions section in the final rule remains virtually the same as in the December 1999 proposal. The preamble to that proposal explains thoroughly each of the changes to definitions previously proposed (64 FR at 73825–73827). Several of these definitions also have been discussed at various points earlier in this preamble. The only changes in the final rule to the definitions proposed in December 1999 are:

- *Affiliate*—We changed one detail of the definition proposed in December 1999. That definition said that if there is ownership or common ownership of between 10 and 50 percent of another

person, MMS will consider various factors in determining whether control exists. One of those factors involves forms of ownership, including percentage of ownership or common ownership, the relative percentage of such ownership compared to percentages of ownership by other persons, whether a person is the greatest single owner, and whether there is an opposing voting bloc of greater ownership. We changed the *and* preceding the final clause to *or* in the final rule. We did this to avoid the implication that all of the listed factors carry equal weight in all situations or that if one factor does not apply, then none of them does. MMS may consider any one of the factors in subparagraph (2) of the definition to establish control.

• *Exchange agreement*—We have removed the examples included in the December 1999 proposal of exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP) and exchanges of produced oil for similar oil produced in different months (Time Trades) because these trades or exchanges involve different time periods and may not reflect reliable location/quality differentials applicable to royalty payment for a particular production month.

• *Location differential*—We added language clarifying that the amount paid or received as a location differential under an exchange agreement may be expressed in terms of either money or barrels of oil.

• *Quality Differential*—We added language clarifying that the amount paid or received as a quality differential under an exchange agreement may be expressed in terms of either money or barrels of oil.

• *Trading Month*—We added this definition to clarify the changes we made in the final rule regarding the timing and application of spot prices under § 206.103. We also believe use of this term will help in understanding the general concepts of spot price formulation and application. *Trading month* means the span of time during which crude oil trading occurs and spot prices are determined, generally for deliveries of corresponding production in the following month. (We use the term ''generally'' only because for West Texas Intermediate at Cushing, Oklahoma, spot prices are published for deliveries both in the following month and the second-following month.) For Alaska North Slope (ANS) spot prices, the trading month includes the entire calendar month. For other domestic spot prices, the trading month includes the span of time from the 26th of the previous month through the 25th of the current month.

Section 206.102 How do I Calculate Royalty Value for Oil That I or My Affiliate Sell Under an Arm's-Length Contract?

In the December 1999 proposal, we revised and reorganized § 206.102 as written in the several previous proposed rules. We revised § 206.102 to specifically address valuation of oil ultimately sold under arm's-length contracts. We have adopted § 206.102 as proposed in December 1999 with only a few minor changes in wording for clarification.

An arm's-length sale may occur immediately, or may follow one or more non-arm's-length transfers or sales of the oil or one or more arm's-length exchanges.

Paragraph (a) states that value is the gross proceeds accruing to you or your affiliate under an arm's-length contract, less applicable allowances. Similarly, if you sell or transfer your Federal oil production to some other person at less than arm's length, and that person or its affiliate then sells the oil at arm's length, royalty value is the other person's (or its affiliate's) gross proceeds under the arm's-length contract.

For example, a lessee might sell its Federal oil production to a person who is not an ''affiliate'' as defined, but with whom its relationship is not one of ''opposing economic interests'' and therefore is not at arm's length. An illustrative example would be a number of working interest owners in a large field forming a cooperative venture that purchases all of the working interest owners' production and resells the combined volumes to a purchaser at arm's length. Xeno, Inc., 134 IBLA 172 (1995), involved a similar situation for a gas field. If no single working interest owner owned 10 percent or more of the new entity, the new entity would not be an ''affiliate'' of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners would not be at arm's length. In this instance, it would be appropriate to value the production based on the arm's-length sale price the cooperative venture received for the oil.

Paragraph 206.102(a)(3) of the February 1998 proposal was meant to be specific to those cases, such as Xeno, where the transfer is not between affiliates but the sale is not at arm's length because the parties do not have opposing economic interests. However, several commenters could not see the difference between (a)(3) and (a)(2); the latter applied only to sales or transfers to an affiliate who then sells the oil at arm's length. Because the result of both paragraphs would be the same, and to stem this confusion, the December 1999 proposal eliminated previous paragraph (a)(3) and included its intent in revised paragraph (a)(2), which we adopt in the final rule. That paragraph now says value is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances, where you sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person or another affiliate of either of them then sells the oil under an arm's-length contract unless you exercise the option provided in paragraph (d)(2) of this section. As a result of this change, paragraph (a)(4) of the February 1998 proposal now becomes § 206.102(c).

In all these circumstances, you must value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the oil (or its affiliate) when the oil ultimately was sold at arm's length unless you elect to use index pricing or benchmarks under § 206.102(d).

Because a lessee may sell oil to a co-lessee, questions arise regarding whether a sale to an unaffiliated co-lessee (particularly a co-lessee who is an operator) is an arm's-length sale or is really a marketing arrangement (with the purchasing co-lessee acting as the lessee's marketing agent). As noted in the discussion of § 206.100 above, these questions are closely related to the question of whether a co-lessee who is also a designee is disposing of production on the lessee's behalf or whether it is buying the lessee's production, which was raised in the January 2000 public workshops. MMS acknowledges that there are cases in which a lessee sells to a co-lessee at arm's length and in which the arm's-length sales price is the royalty value. But there are also many cases in which a co-lessee effectively acts as the marketing agent for the lessee.

Possible factual scenarios may vary widely, and each case must be evaluated on its facts. MMS may look to a number of factors. These include, but are not limited to, the following:

• If the purchasing co-lessee or its affiliate refines the oil rather than reselling it, MMS ordinarily will regard the sale as an arm's-length sale.

• If the sales price under the contract with the co-lessee is dependent on the co-lessee's resale receipts, MMS ordinarily will regard the co-lessee as the lessee's marketing agent.

• If the co-lessee disposes of production under a joint operating agreement, MMS ordinarily will regard

the co-lessee as the lessee's marketing agent.

Paragraph (a)(5) of the January 1997 proposal dealt with inclusion in gross proceeds of payments made to reduce or buy down the price of oil to be produced in later periods. We removed this paragraph in the February 1998 proposal but added the concept within the definition of *gross proceeds* as discussed above. This remained unchanged in the December 1999 proposal. The final rule reflects the February 1998 proposal and the December 1999 proposal in this regard without change.

Paragraph (b) clarifies how to value the oil produced from your lease when you sell or transfer it to your affiliate or to another person under a non-arm's-length contract, and your affiliate, the other person, or an affiliate of either of them sells the oil at arm's-length under multiple arm's-length contracts. In this case, value is the volume-weighted average of the values established under paragraph (a) for each contract for the sale of oil produced from that lease.

A number of commenters said that calculating this volume-weighted average value would be extremely problematic because it often would be difficult to tie specific contracts to specific Federal oil production, especially where commingling of various production is involved. MMS acknowledges that proper royalty calculations can be complicated in such situations, but that does not diminish the lessee's duty to pay proper royalties on its Federal production. Even under the existing rules, circumstances similar to those described by the commenters often require that the lessee allocate values and volumes. We believe this provision is consistent with ongoing practice.

Paragraph (c) specifies two exceptions to the use of arm's-length gross proceeds. It also requires you to apply the exceptions to each of your contracts separately.

Paragraphs (c)(1) and (c)(2) remain essentially unchanged from paragraphs (a)(2) and (a)(3) in the January 1997 proposal. Note, however, that paragraph (a)(4)(ii) of the July 1997 proposal said that where an arm's-length contract price does not represent market value because an overall balance between volumes bought and sold is maintained between the buyer and seller, royalty value would be calculated as if the sale were not at arm's length.

In the February 1998 proposal, MMS decided to remove that language as a specific, separate provision. Rather, in considering whether an arm's-length contract reflects your or your affiliates' total consideration or market value (proposed paragraphs (c)(1) and (c)(2)), MMS would examine whether the buyer and seller maintain an overall balance between volumes they bought from and sold to each other. Under these paragraphs, if an overall balance agreement were found to exist, MMS would require you to value your production under § 206.103 or the total consideration received.

Several commenters said that removal of the overall balance provision and relying on MMS to find such agreements put an undue burden on MMS. They further stated that MMS would have great difficulty verifying the existence of such agreements. As explained in the December 1999 proposal, we continue to believe, however, that verification of overall balancing arrangements, and appropriate follow up, is best left to audit in conjunction with the provisions of paragraphs 206.102(c)(1) and (c)(2). There were no comments in response to the December 1999 proposal that added any new informative analysis on this question. Thus, the final rule does not contain any specific language regarding balancing agreements.

Likewise, the final rule does not contain any specific language regarding crude oil calls. In response to the July 1997 and February 1998 proposals and in MMS's public workshops, several commenters asserted that producers often negotiate competitive prices even if a non-competitive call provision exists and a call on production is exercised. We agreed with this point in the December 1999 proposal. In the final rule, oil subject to a noncompetitive crude oil call will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

In the July 1997 proposal, MMS modified paragraph (a)(4) of the January 1997 proposal regarding exchange agreements and crude oil calls. It also proposed a new paragraph (a)(6) regarding exchange agreements. See the preamble to the July 1997 proposal at 62 FR 36031 for a complete explanation of the changes proposed. In the February 1998 proposal, we further modified the exchange agreement language at paragraphs (a)(4)(i) and (a)(6) of the July 1997 proposal and combined it in paragraph (c)(3). That paragraph required use of § 206.103 to value oil you dispose of under an exchange agreement. But if you entered into one or more arm's-length exchange agreements, and after these exchanges you or your affiliate disposed of the oil in an arm's-length sale, you would value the oil under paragraph (a) on the basis of the gross proceeds received under the arm's-length contract for the sale of the oil received in exchange. You would adjust the value determined under paragraph (a) for location or quality differentials or any other adjustments you received or paid under the arm's-length exchange agreement(s). However, if MMS found that any such differentials or adjustments weren't reasonable, it could require you to value the oil under § 206.103.

This concept was similar to paragraph (a)(6)(i) of the July 1997 proposal, but with three differences. First, the July 1997 language referred to exchange agreements with a person not affiliated with you. The February 1998 proposal clarified that this covered arm's-length exchange agreements. This meant that not only must you be unaffiliated with your exchange partner, but there must be opposing economic interests regarding the exchange agreement. MMS believed this would limit instances where inappropriate or unreasonable location, quality, or other adjustments would be applied. MMS proposed to limit this provision to arm's-length exchanges because it believed transportation, location, and quality differentials stated in non-arm's-length exchange agreements are not reliable.

Second, MMS clarified that the same valuation procedure would apply if there is more than one arm's-length exchange. For example, if you entered into two sequential arm's-length exchanges for your Federal oil production and then you or an affiliate sold the reacquired oil at arm's length, you would value your production under paragraph (a) under the February 1998 proposal. MMS believed that as long as the integrity of the differentials and adjustments was maintained, there was no reason not to look to the ultimate arm's-length sale proceeds.

Third, under paragraph (a)(6)(i) of the July 1997 proposal, if you disposed of your oil under an exchange agreement with a non-affiliate and after the exchange you sold the acquired oil at arm's length, you could have elected to value your oil either at your gross proceeds or under index pricing. MMS eliminated this option in the February 1998 proposal, believing that the actual arm's-length disposition should govern valuation. That is, the provisions of §§ 206.102 or 206.103 would have been applied according to your actual circumstances. This change also led to the deletion of the previously-proposed paragraph (a)(6)(iii), which related to

the election we eliminated in the February 1998 proposal.

As a result of the changes discussed previously, MMS also eliminated paragraph (a)(6)(ii) of the July 1997 proposal. This paragraph would have required you to use index pricing if you either transferred your oil to an affiliate before the exchange occurred, transferred the oil you received in the exchange to an affiliate, or entered into a second exchange for the oil you received back under the first exchange. MMS believes that if you transfer your production to an affiliate and the affiliate then enters into an arm's-length exchange and sells the oil received in the exchange at arm's length, the arm's-length proceeds should be the measure of value. Likewise, if you enter an arm's-length exchange but then transfer the oil received to an affiliate who resells the oil at arm's length, the arm's-length proceeds should be the measure of value. For any exchanges where the oil received in return is not resold but instead is refined, index prices would apply as discussed under § 206.103.

However, we received numerous comments about the problems of tracing value back to the lease where an arm's-length sale follows multiple arm's-length exchanges. Commenters insisted it would be a monumental task for lessees to track, and for MMS to verify, the multiple transactions involved. Further, the problems involved in such ''tracing'' are aggravated when the necessary records are in the possession of independent third parties who are not affiliates of the lessee.

As a result, in our July 1998 proposal we modified paragraph 206.102(c)(3) of the February 1998 proposal to require valuation under paragraph 206.102(a) only if you enter into a single arm's-length exchange agreement and following that exchange you dispose of the oil in a transaction to which paragraph (a) applies. If you entered into multiple exchanges to dispose of your production, you would have used § 206.103 to value that production. However, some commenters on the July 1998 proposal believed they also should be able to use their arm's-length gross proceeds following multiple arm's-length exchanges.

Therefore, the December 1999 proposal, at paragraph 206.102(d)(1), provided the option, where arm's-length sales follow one or more arm's-length exchanges, to apply either the arm's-length gross proceeds or the index or benchmark value appropriate to the region of production. To prevent potential abuses of this option, paragraph 206.102(d)(1)(ii) provides that you must apply the option you select for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold at arm's length following arm's-length exchange agreements. You may not change this election more often than once every 2 years. We believe this process achieves the best balance of valuing production based on arm's-length gross proceeds and minimizing the administrative problems for all involved, and have adopted it in the final rule.

We reiterate that you must use § 206.103 to value oil disposed of under an arm's-length contract following one or more non-arm's-length exchanges. MMS does not believe it is appropriate to use the terms of non-arm's-length exchange agreements to adjust the arm's-length gross proceeds because the differentials in such agreements may not accurately reflect market rates.

Paragraph (d)(2) of this final rule was proposed in December 1999, and results from comments received throughout the rulemaking process. Some commenters believe that where lessees sell or transfer production to an affiliate and the affiliate resells the oil at arm's length, they should be able to apply an alternative valuation method other than tracing the production to its final disposition. In the final rule, similar to the option for sales following arm's-length exchange agreements, we provide the option to use either the ultimate arm's-length gross proceeds or the appropriate index or benchmark value. Also, paragraph (d)(2)(ii) states that you must apply the option you select for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) disposed of through affiliate resales at arm's length. You may not change this election more often than once every 2 years. Again, we believe this achieves the best balance of valuing production based on arm's-length gross proceeds and limiting administrative burdens.

Paragraph (e) is the same as the December 1999 proposal, and is essentially the same as paragraphs (b)(2) and (3) of § 206.102 in the January 1997 proposal and paragraphs (d)(2) and (3) of the February 1998 proposal and comes directly from existing § 206.102. We have eliminated proposed paragraph (b)(1) of the January 1997 proposal (paragraph (d)(1) of the February 1998 proposal) in connection with the change to the definition of ''affiliate'' explained previously in this preamble. Also, since this final rule generally requires arm's-length gross proceeds as royalty value regardless of whether the lessee, an affiliate, or another person to whom the lessee has sold or transferred production under a non-arm's-length contract is the person who ultimately sells at arm's length, all of these persons come within the term ''seller.''

Section 206.103 How Do I Value Oil That I Cannot Value Under § 206.102?

In the February 1998 proposal, this section replaced paragraph 206.102(c) of the January 1997 proposal. The December 1999 proposal included a few changes to this section. The final rule makes a few further changes in this section as explained below.

This section deals specifically with valuation of oil you cannot value under § 206.102 because the oil is not ultimately sold at arm's length or is otherwise excepted under § 206.102. It also applies where you have elected one of the options available at § 206.102(d)(1) or (2).

The February 1998 proposal made a change (continued in the December 1999 proposal) from the January 1997 proposal for value based on index prices. In MMS's initial proposal, where either NYMEX or spot prices were applied in valuation, the prices for the month following the lease production month were used. This was meant to reflect the fact that spot prices and NYMEX futures prices for the following month are determined during the month of production. MMS believed this best reflected market value at the time of production. However, various commenters asserted that, for application of spot or futures prices, the lease production month should coincide with the spot or futures delivery month. They said this would effectively match production to index prices for deliveries in the same month. In the February 1998 and December 1999 proposals, we accordingly changed the timing of application of index prices so that the lease production month and the spot delivery month would coincide.

However, as explained above, further examination has led us to believe that in some cases the use of spot prices determined before the production month could affect lessees' production decisions and, ultimately, royalties paid. See Section VI(e) above. For the reasons stated there, the final rule applies the spot price effectively determined during the production month so that price determination is concurrent with production.

Also, paragraph 206.102(c)(1) of the January 1997 proposal would have permitted you an option if you first transferred your oil production to an affiliate and that affiliate or another affiliate disposed of the oil under an

arm's-length contract. The option was to value your oil at either the gross proceeds accruing to your affiliate under its arm's-length contract or the appropriate index price. For the reasons discussed earlier, we have reinserted that option in this final rule under paragraph 206.102(d)(2). MMS believes that where arm's-length transactions satisfying the provisions of § 206.102 occur, royalty value generally should be the arm's-length gross proceeds. However, providing this option should afford some administrative relief to lessors while assuring receipt of fair royalty values.

Another change from the January 1997 proposal is an additional geographic breakdown for valuation purposes. The original proposed rule included separate valuation procedures for California and Alaska separately from the rest of the country. But based on the various written comments MMS received in response to its January 1997, July 1997, September 1997, February 1998, July 1998, March 1999, and December 1999 proposals and notices, and comments made at the various valuation workshops and hearings, it became apparent that oil marketing and valuation in the RMR is significantly different from other areas. Also, the only published spot price in the RMR is at Guernsey, Wyoming. Most commenters consistently maintained that the spot price there is based on thinly-traded volumes. The combination of geographical remoteness from midcontinent markets, unique marketing situations, and the lack of a meaningful published spot price led MMS to add the RMR as a third royalty valuation region.

Paragraph 206.103(a) applies to production from leases in California or Alaska. It replaces paragraph 206.102(c)(2)(ii) of the January 1997 proposal and includes a change from the December 1999 proposal. Under the final rule, value is the average of the daily mean ANS spot prices, published in any MMS-approved publication, that apply to the month following the production month (instead of those published during the calendar month preceding the production month). You must adjust the value for applicable location and quality differentials, and you may adjust the value for transportation costs, as described at § 206.112. The only change in this final rule is a more detailed explanation of how to calculate the spot prices.

To calculate the daily mean spot prices, average the published daily high and low prices published during the production month, only using the days and corresponding prices for which spot prices are published. Do not include weekends, holidays, or any other days when spot prices are not published. For example, assume the production month has 31 days, including 8 weekend days and a holiday, and the publication publishes spot prices for all other days. You would average together the published high and low spot prices for each of the 22 remaining days.

An example of the index pricing method utilizing ANS spot prices for California production follows. Assume that the production month is December 1999 and that we take data from an MMS-approved publication. To reflect the market's assessment of value during the production month, use the spot prices published during December 1999 (for the January 2000 spot sales delivery month). The daily mean spot price assessments during December 1999 are averaged to arrive at the ANS price basis, in this case $24.5469 per barrel. This price would be adjusted for location/quality differentials and transportation (as discussed elsewhere in this preamble) in determining the proper value of your oil. The following table illustrates the calculation in this example:

ALASKA NORTH SLOPE SPOT PRICES—DECEMBER 1999

[Prices for January 2000 Delivery, December 1999 Production]

Date	Low ($/bbl)	High($/bbl)	Average
12/01/99	23.3300	23.4000	23.3650
12/02/99	24.0500	24.1200	24.0850
12/03/99	24.0900	24.1500	24.1200
12/06/99	24.9500	25.0600	25.0050
12/07/99	24.6000	24.6800	24.6400
12/08/99	24.9000	24.9500	24.9250
12/09/99	24.6000	24.6500	24.6250
12/10/99	23.9500	24.0100	23.9800
12/13/99	23.8500	23.9100	23.8800
12/14/99	24.3300	24.4000	24.3650
12/15/99	24.8300	24.9100	24.8700
12/16/99	25.3500	25.4100	25.3800
12/17/99	25.2500	25.2800	25.2650
12/20/99	24.9000	25.0300	24.9650
12/21/99	24.7100	24.7500	24.7300
12/22/99	23.9400	24.0000	23.9700
12/23/99	24.4100	24.4400	24.4250
12/27/99	24.7500	24.8400	24.7950
12/28/99	25.2400	25.3100	25.2750
12/29/99	24.6000	24.6500	24.6250
12/30/99	24.1700	24.2200	24.1950
Average	24.5143	24.5795	24.5469

We received various comments about use of ANS spot prices. Most industry commenters said that because there are significant differences between ANS and California crudes in terms of quality, product yield, transportation modes and distances, and timing of production versus delivery, the ANS spot price is not a good value indicator for California crude oil production. The State of California and City of Long Beach, on the other hand, continue to endorse the use of ANS spot prices. They indicate that ANS spot prices are used in many arm's-length transactions and that ANS crude constitutes a large percentage of California refinery feedstock. MMS's own experience,

including participation in the interagency task force investigating California oil undervaluation, shows that ANS crude frequently has been used by industry as a valuation benchmark for valuing California crudes. Also, because of the control of the pipeline transportation network in California by a few companies who also act as purchasers of a large portion of California crude oil production, the use of posted prices or contracts based on postings as a basis for valuing crude disposed of at other than arm's-length is questionable. We believe that, with proper adjustments for location and quality differences, the ANS spot price is the best available measure of royalty value for Federal oil production in California that is not sold at arm's length.

MMS has received comments to the effect that a court decision in favor of Exxon in California demonstrates that adjusted ANS prices do not reflect reasonable values for California crude oil. MMS disagrees because the facts in the Exxon case are different and the leases involved are not Federal leases.

The State of California and the City of Long Beach first sued Exxon in the mid-1970s alleging that Exxon (along with other major producers) had conspired to keep posted prices low and that the State and City had been damaged because their oil revenues depended on posted prices. The contracts with the City required oil value at the higher of posted prices or prices paid at Wilmington or three nearby fields. The City and State contended that true value was higher and should be tied to ANS prices. The State and City ultimately took the case against Exxon to a jury trial before the Los Angeles County Superior Court on a breach-of-contract claim. On August 30, 1999, the jury found that Exxon did not act in bad faith or manipulate prices for oil produced from the Wilmington field from 1981–1989, and had conformed to its contract requirements.

A jury verdict does not constitute a legal ruling on Federal leases or on Federal royalty issues. The contract terms were very specifically tied to posted prices or prices received in the immediate area. Federal oil leases require royalty payments based on different principles than those used by the jury. Rather than a contract price agreed on in advance, Federal oil royalties are tied to regulations that require different valuation procedures depending on how the oil is sold.

The lands at issue in the Exxon case were State-owned and not leased. The companies participating in their development bought most of the oil produced. This situation is much different from a Federal lessee paying a royalty on the value of production. For all of these reasons, the Exxon State court decision has no applicability here.

Paragraph 206.103(b) applies to production from leases in the Rocky Mountain Region, a defined term. As discussed above, production in the RMR is controlled by relatively few companies, and the number of buyers is more limited than in the Texas, Gulf Coast, or Midcontinent areas. As a result, there is less spot market activity and trading in this area due to the control over production and refining. The majority of written comments we received, as well as oral comments in our public meetings, agreed that a separate valuation procedure is needed for the RMR.

As noted above, all of the previous proposals defined the Rocky Mountain Region as the States of Wyoming, Montana, North Dakota, South Dakota, Colorado, and Utah. However, portions of southern Colorado and southern Utah encompass parts of the San Juan Basin and, more generally, the ''Four Corners'' area. (The ''Four Corners'' is the convergence of the boundaries of New Mexico, Arizona, Utah, and Colorado.) New Mexico and Arizona are not part of the RMR. Parts of the San Juan Basin and the Four Corners area are within the boundaries of those States. Oil produced from the San Juan Basin and the Four Corners area typically is sold or exchanged to midcontinent markets (such as Midland, Texas), where dependable spot prices are published.

One commenter on the December 1999 proposal noted that the rule as proposed would value some crude from the San Juan Basin one way if it were produced from surface wells in New Mexico or Arizona and another way if produced from surface wells in Utah or Colorado. The commenter recommended that the Four Corners area be treated consistently for valuation purposes because all production from the area generally is sold into the same market.

There was no logical reason to treat those portions of the San Juan Basin or the Four Corners area that lie within Colorado or Utah any differently than those parts that lie within New Mexico or Arizona. Accordingly, we have excluded them from the definition of Rocky Mountain Region. Consequently, you must value oil produced from leases in these areas under the standards applicable to the remainder of the country.

For the reasons explained above, we derived a series of valuation benchmarks for the RMR. The final rule makes one change from the December 1999 proposal, as discussed below.

The first benchmark applies if you have an MMS-approved tendering program (a defined term). The value of production from leases in the area the tendering program covers is the highest price bid for tendered volumes. Under your tendering program you must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

MMS added the several qualifications stated above to ensure receipt of market value under tendering programs. First, royalty value must be the highest winning bid price rather than some other individual or average value. Several commenters said this is inappropriate because it is possible that a single bidder may only bid on some small portion of the tendered volumes at a high price, but this price would then apply to all tendered volumes. We continue to believe, however, that to assure receipt of market value, value must be based on the highest winning bid received.

Second, you must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could abuse the system for Federal royalty or State tax payment purposes. MMS originally chose 33⅓ percent as the minimum because it exceeded the typical combined Federal royalty rate and effective composite State tax and royalty rates for onshore oil leases by roughly 10 percent. We received various comments that this figure was too high and that it was not appropriate to consider State royalties, since they would not be payable on Federal leases. MMS recognizes this fact but also notes that for the oil-producing States in the RMR the combined Federal royalty rate and State composite effective tax rate on Federal oil production typically ranges from about 17 percent to about 27 percent. These percentages do not include State royalty rates. In the December 1999 proposal, we therefore chose 30 percent, or just above the high end of the royalty/tax range, as the minimum percentage the lessee would have to tender for sale to assure that some of the lessee's equity share of production generally was involved. Likewise, the tendering program would be required to include non-Federal lease

production volumes in the 30 percent determination to ensure that the program isn't aimed at limiting Federal royalty value. Nothing in the comments in response to the December 1999 proposal persuasively rebutted this analysis. We have adopted the December 1999 proposal in the final rule.

Third, to ensure receipt of competitive bids, your tendering program must result in at least three bids from bidders who do not have their own tendering programs covering some or all of the same area. MMS believes that requiring a minimum number of bidders is needed to ensure receipt of market value. In our February 1998 proposal we stipulated a minimum of three bids. However, we received several comments that requiring three bidders was too stringent and that in many cases there simply would not be that many qualified bidders. The December 1999 proposal reviewed this criterion, and maintained the view that a minimum number of bidders is essential to ensure receipt of market value. We believe that at least three bidders are needed and have retained this provision in the final rule. (A lessee may receive more bids, including from bidders who have tendering programs of their own, but at least three bids must be from bidders who do not have their own tendering programs.) Further, MMS is concerned about the possibility of cross-bidding between companies at below-market prices, which could otherwise satisfy the minimum number of bidders requirement. That is why we have retained the stipulation that three bids must come from bidders who do not also have their own tendering programs in the area.

Under the final rule, if the first benchmark (an approved tendering program) does not apply, you may choose between the second and third benchmarks. In the February 1998 and December 1999 proposals, the benchmarks were strictly hierarchical. We have changed to permitting a choice between the second and third benchmarks in response to comments received in the January 2000 public workshops. However, consistent with other options provided in the final rule, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that you cannot value under § 206.102 or that you elect under § 206.102(d) to value under this section. After you select either paragraph (2) or (3), you may not change to the other method more often than every 2 years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change methods, you must begin a new 2-year period.

Under the second benchmark, value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The benchmark itself is not changed from the December 1999 proposal. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

MMS developed this method as one alternative if you do not have an approved tendering program, and as an effort to establish value based on actual transactions by the lessee and its affiliate(s). We received a number of comments during the rulemaking process that MMS should look not only to sales by the lessee, but also purchases a lessee and its affiliates make in the field or area. Just as for the tendering program, MMS believes a floor percentage of the lessee's and its affiliates' production should be set to prevent any abuse. Although we received several comments that the 50 percent minimum figure is too high, it is not intended to be a more stringent standard than the 30 percent floor associated with the tendering program. As we explained in the December 1999 proposal, that is because the 50 percent floor applies to the lessee's and its affiliates' sales and purchases in the field or area, rather than just sales as in the tendering program. For example, Company A produces 10,000 barrels of crude oil in a given field during the production month. It sells 1,000 barrels under an arm's-length contract. Company A also has a refining affiliate, Company B, that purchases the remaining 9,000 barrels of Company A's production and 5,000 barrels of oil under arm's-length purchase contracts with other producers in the same field. Together the arm's-length sales by Company A and the arm's-length purchases by Company B are 6,000 barrels, or 60 percent of the lessee's and its affiliates' production in the field that month. The volume-weighted arm's-length gross proceeds accruing to Company A and paid by Company B for these 6,000 barrels represents royalty value for the 9,000 barrels of Company A's Federal lease production in the field that cannot be valued under § 206.102.

This final rule requires using the unadjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's and its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We received several comments that this would result in improper valuation of some oil that was significantly different in quality than that associated with the ''average'' oil. As explained in the December 1999 proposal, we believe that production in the same field or area generally will be similar in quality. However, in the final rule, based on comments received in the January 2000 workshops, we have included a requirement that before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arms-length purchases or sales to the same gravity as that of the oil produced from the lease. Further, given that these sales and purchases must be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable-volume contracts.

MMS received several industry comments that the proposed rule would cause hardships for producers who have marketing, but not refining, affiliates. The marketing affiliate takes the producing affiliate's production and also buys production from various other sources before reselling or otherwise disposing of the combined volumes. Section 206.102 of the February 1998 proposal would have required the producer to base royalty value on its marketing affiliate's various arm's-length sales and allocate the proper values back to the Federal lease production. Many commenters said this ''tracing'' would be difficult at best, but others wanted the opportunity to do so. One commenter suggested that as an alternative the lessee should be permitted to base the value of its production on the prices its marketing affiliate pays for crude oil it buys at arm's length in the same field or area.

As explained in the December 1999 proposal, we do not agree with this proposal because an overriding general premise of this rulemaking is that where oil ultimately is sold at arm's length before refining, it will be valued based on the gross proceeds accruing to the seller under the arm's-length sale (with the option to use index or benchmark values under some circumstances as discussed earlier). This means the marketing affiliate's arm's-length resale should form the basis for valuing the producing affiliate's production. To do otherwise would be inconsistent with the way arm's-length resales are treated elsewhere in this rule.

The third benchmark value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, applicable to deliveries during the month following the production month. You must calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112 of this subpart. An illustration of how the spot price value is calculated is given below in the discussion of spot price values for areas other than California and Alaska and the RMR.

This paragraph is very similar to paragraph 206.102(c)(2)(i) of the January 1997 proposal. The main difference is that rather than using NYMEX futures prices, we apply Cushing spot prices in the final rule. This was due to an industry comment that since Cushing spot and NYMEX futures prices track closely over time and that we use spot prices in the other two valuation regions, using the spot price in the RMR would lend consistency with no downside effects. As noted earlier, in the final rule we correlated the spot price determination period with the trade month, rather than the delivery month. As provided in the previous proposals, the final rule provides that if you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

This method is the last alternative and is intended to be used only in very limited and highly unusual circumstances. We believe there should be very few such alternative valuation methods.

We received several comments that this option should be offered nationwide. However, as we explained in the December 1999 proposal, we believe this is inappropriate because valid spot prices for which reasonable location and quality adjustments may be made are available throughout the rest of the country. While the Cushing spot price likewise is valid, the remoteness of the RMR may in some cases cause such severe difficulties in making reasonable location/quality adjustments that an alternative method may be warranted.

Paragraph 206.103(c) applies to production from leases not located in California, Alaska, or the RMR. As proposed in December 1999, MMS has modified paragraph 206.102(c)(2)(i) of the January 1997 proposal that applied to locations other than California and Alaska. That paragraph would have required you to value your oil at the average daily NYMEX futures settle prices. In this final rule, value is the average of the daily mean spot prices:

(1) For the market center nearest your lease where spot prices for crude oil similar in quality to that of your production are published in an MMS-approved publication. (There may be cases where the nearest market center may not be the appropriate one for you to use because the quality of your production better matches that typically traded at another, more distant market center. In such cases, you may use this alternate market center to value your production.);

(2) For that similar quality crude oil. (For example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly, and you must use the spot price for the oil that is most similar to your production.); and

(3) That are applicable to the month following the production month.

An example of the index pricing method utilizing Empire, Louisiana spot prices for Heavy Louisiana Sweet production follows. Assume that the production month is December 1999 and that we take data from an MMS-approved publication. To reflect the market's assessment of value during the production month, use the spot price published for each business day beginning with November 26, 1999, and ending with December 25, 1999 (for the January 2000 spot sales delivery month). The daily mean spot price assessments during the period November 26, 1999—December 25, 1999 are averaged to arrive at the Empire spot price basis, in this case $26.3089 per barrel. This price would be adjusted for location/quality differentials and transportation (as discussed elsewhere in this preamble) in determining the proper value of your oil for December 1999 production. The following table illustrates the calculation in this example:

HEAVY LOUISIANA SWEET (EMPIRE, LOUISIANA) SPOT PRICES.—DECEMBER 1999

[Prices for January 2000 Delivery, December 1999 Production]

Date	Low ($/bbl)	High($/bbl)	Average
11/29/99	26.2000	26.2400	26.2200
11/30/99	25.0400	25.0900	25.0650
12/01/99	25.4400	25.4800	25.4600
12/02/99	26.2000	26.3000	26.2500
12/03/99	26.5500	26.6000	26.5750
12/06/99	27.5000	27.5200	27.5100
12/07/99	26.9500	27.0000	26.9750
12/08/99	27.2000	27.2500	27.2250
12/09/99	26.7500	26.7900	26.7700
12/10/99	25.9000	26.0300	25.9650
12/13/99	25.7700	25.8000	25.7850
12/14/99	26.2000	26.2500	26.2250
12/15/99	26.8000	26.9500	26.8750
12/16/99	27.2500	27.3300	27.2900
12/17/99	26.3900	26.4500	26.4200
12/20/99	25.9000	26.0200	25.9600
12/21/99	25.7500	25.8500	25.8000
12/22/99	25.5000	25.5500	25.5250
12/23/99	25.9500	26.0000	25.9750
Average	26.2758	26.3421	26.3089

At the January 2000 workshops, one commenter suggested that MMS offer an option to use the market center where exchanges of the lessee's oil typically take place, rather than the market center nearest the lease. As explained above, we have not adopted this suggestion because our intent is to correlate both proximity to the lease and quality similarity. The commenter's suggestion would introduce unwarranted ambiguity and susceptibility to manipulation into the rule.

You must calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. You must use only the days and corresponding spot prices for which such prices are published. You *must* adjust the value for applicable location and quality differentials, and you *may* adjust it for transportation costs, under § 206.112 of this subpart.

As explained in the December 1999 proposal, MMS changed the valuation procedure to use spot, rather than NYMEX, prices, for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices removes one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location. Although industry continued to object to any form of valuation that begins with values away from the lease, we received several comments that using the spot price rather than NYMEX futures prices would improve administration of the rule with no apparent adverse effects.

MMS did not adopt any of the alternatives here (or for California and Alaska) that it did for the RMR where oil cannot be valued under § 206.102. That is because, unlike the RMR, there are meaningful published spot prices applicable to production in the other regions (Cushing, Oklahoma; St. James, Louisiana; Empire, Louisiana; Midland, Texas; Los Angeles/San Francisco, California). In the United States, with the exception of the RMR, spot and related index-type prices drive the manner in which crude oil is bought and traded. Spot prices play a significant role in crude oil marketing. They form a basis on which deals are negotiated and priced and are readily available to lessees via price reporting services. We believe spot prices are the best indicator of value for production from leases outside the RMR. Therefore, it is not necessary to consider other, less accurate means of valuing production not sold at arm's length for regions outside the Rocky Mountains.

We received numerous comments about MMS inappropriately moving the value of production away from the lease without permitting deduction of marketing costs or the value added by the lessee and its affiliates. MMS is not allowing the costs of marketing production as a deduction from value based on index prices or value based on gross proceeds. The requirement to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is an implied covenant of the lease, and is not unique to Federal leases. *See* Section III(i) for more detail. With respect to the costs of putting production into marketable condition, see, *e.g., Mesa Operating Limited Partnership* v. *Department of the Interior,* 931 F.2d 318 (5th Cir. 1991), cert. denied, 502 U.S. 1058 (1992); *Texaco, Inc.* v. *Quarterman,* Civil No. 96-CV–08-J (D. Wyo. 1997). It follows that any payments the lessee receives for performing such services are part of the value of the production and are royalty bearing. MMS is not altering this principle in this final rule. The rule, in § 206.106 discussed below, simply makes the longstanding implied obligation express.

Paragraph 206.103(d) is paragraph 206.102(c)(3) of the January 1997 proposal with minor clarifying word changes proposed in December 1999. It states that if MMS determines that any of the index (spot) prices are no longer available or no longer represent reasonable royalty value, then MMS will exercise the Secretary's authority to establish value based on other relevant matters. These could include, for example, well-established market basket price formulas.

Paragraph 206.103(e) addresses situations where you transport your oil directly to your or your affiliate's refinery and believe that use of a particular index price is unreasonable. In that event, you may apply to the MMS Director for approval to use a value representing the market at the refinery. Based on the lack of persuasive contrary comments on this provision, which was included in the February 1998 proposal, we included it in the December 1999 proposal and in this final rule with only minor clarifying changes.

Section 206.104 What Index Price Publications Are Acceptable to MMS?

Section 206.104 in the December 1999 proposal and in the final rule is paragraphs (c)(4), (c)(5), and (c)(6) of § 206.102 from the January 1997 proposal with an added reference to spot prices for crude oil other than ANS. The few comments that MMS received on this section simply said that industry should have some input into which publications MMS accepts. We have included this section in this final rule unchanged. MMS will consult with industry groups as appropriate in deciding which publications should be used for index pricing.

Section 206.105 What Records Must I Keep To Support My Calculations of Value Under This Subpart?

Section 206.105 specifies that you must be able to show how you calculated the value you reported, including all adjustments. This is important because if you are unable to demonstrate on audit how you calculated the value you reported to MMS, you could be subjected to sanctions for false reporting.

Section 206.106 What Are My Responsibilities To Place Production Into Marketable Condition and To Market Production?

Section 206.106 is paragraph 206.102(e)(1) of the January 1997 proposal with minor clarifying word changes proposed in December 1999. It says you must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless otherwise provided in the lease agreement. As explained previously, we received many comments from industry that MMS is inappropriately trying to force industry to bear all marketing costs and that MMS should share in these costs. MMS disagrees with those arguments and is not altering the lessee's obligation to market production at no cost to the lessor in this final rule.

The January 1997 proposal also included, at paragraph 206.102(e)(2), a provision regarding the lessee's general responsibility to pay interest if the lessee reports value improperly and underpays royalties, or to take a credit for overpaid royalties. We deleted this provision in the December 1999 proposal and have left it out of the final rule because these matters are already covered in other parts of MMS's regulations.

Section 206.107 How Do I Request a Value Determination?

Section 206.107 of the February 1998 proposal included the substance of paragraph 206.102(f) of the January 1997 proposal in shortened and simplified terms. It said you may ask MMS for guidance in determining value, and you may propose a valuation method to

MMS. MMS would then review your proposal and provide you with a non-binding determination of the guidance you request. We received a variety of comments that guidance alone is insufficient and that something much more substantial is needed to provide certainty and protection in case of audit.

The final rule provides for value determinations issued by the Assistant Secretary for Land and Minerals Management that are binding on the lessee and MMS. It also provides for value determinations issued by MMS that are binding on MMS only and not the lessee, and that are not administratively appealable. See MMS's response to comments on the earlier proposals in Sections VI(f), VII(f), VIII(b), and IX(p) above.

Also, we deleted paragraph 206.102(g) of the January 1997 proposal. It discussed audit procedures related to value determinations, and these are covered sufficiently in other parts of MMS's regulations.

Section 206.108 Does MMS Protect Information I Provide?

Section 206.108 is paragraph 206.102(h) of the January 1997 proposal, but with minor wording changes for clarity that we proposed in December 1999.

Section 206.109 When May I Take a Transportation Allowance in Determining Value?

Section 206.109 includes the substance of § 206.104 of the January 1997 proposal with only minor wording changes proposed in December 1999. In the December 1999 proposal and in this final rule, we removed the last two sentences of paragraph (a) of the January 1997 proposal regarding transportation of oil that MMS takes as royalty in kind. These provisions were unnecessary because this issue is addressed in the royalty-in-kind regulations in § 208.8.

This section also includes the provision that you may not take a transportation allowance greater than 50 percent of the value of the oil determined under this subpart. We received several comments that MMS should relax this limitation. However, paragraph 206.109(c)(2) continues the existing practice that you may ask MMS to approve a larger transportation allowance by demonstrating that your reasonable, actual, and necessary costs exceed the 50 percent limitation.

Sections 2206.110 and 206.111 How Do I Determine a Transportation Allowance Under an Arm's-Length Transportation Contract, and How Do I Determine a Transportation Allowance Under a Non-Arm's-Length Transportation Contract?

Sections 206.110 and 206.111 of the December 1999 proposal were paragraphs 206.105(a) and (b), respectively, of the existing rule, rewritten to reflect plain English, with three proposed changes. MMS also requested comments on two other issues. Based on comments received and further analysis, we are making further changes in the final rule.

The December 1999 proposal included two changes to the calculation of actual transportation costs under § 206.111(g). First, under the current regulations, a change in ownership does not alter the depreciation schedule. That is, a transportation system cannot be depreciated more than once by one or more owners. Section 206.111(g)(2) proposed in December 1999 stated that an arm's-length change in ownership of a transportation system would result in a new depreciation schedule for purposes of the allowance calculation. Under the proposed provision, if you or your affiliate purchased an existing transportation system at arm's length, your initial capital investment would have been equal to your purchase price of the transportation system.

The final rule does not adopt the provision as proposed in December 1999. As written, the December 1999 proposal gave rise to serious difficulties because of potential inflated allowances due to the original owner's ability to recover or ''recapture'' its actual costs by selling the pipeline at a value greater than the depreciable balance.

For example, assume that an original owner had paid $20 million to construct a pipeline. Further assume that the original owner used a 20-year straight-line depreciation and made no subsequent reinvestment. Further assume that in year 15, the original owner sold the pipeline at arm's length for $10 million to another person who also transported oil through the pipeline under a non-arm's-length arrangement. Under the December 1999 proposal, the purchaser would have begun a new depreciation schedule based on the $10 million purchase price. But the consequence of this transaction is that the original owner's actual transportation costs effectively were reduced because it recovered $5 million of the $15 million it had taken as depreciation. Thus, if the actual transportation costs it originally reported were not recalculated, more transportation costs than were actually incurred would be deducted from royalty value.

The December 1999 proposal thus gave rise to serious questions of how to ''recapture'' the royalties owed as a result of the reduced costs. One possible solution would have been to require the lessee who sold the transportation system to recalculate all of its transportation allowances for a retrospective period of several years. That would have been an extraordinarily complex calculation, because the difference between the transportation costs reported and the costs actually incurred is not equal to the amount of depreciation the selling lessee recaptured. If the depreciation element of the cost calculation were reduced retroactively, that also would change the calculation of return on undepreciated investment. Thus, the selling lessee would have to recalculate both elements of actual transportation costs for every report month. Further, this recalculation in most cases would involve a number of leases.

In view of the complex and costly burdens that would be imposed on lessees, MMS has not provided for a detailed ''recapture'' procedure in the final rule. Instead, MMS adopted a simpler approach that still addresses much of the concern that led to the provision in the December 1999 proposal.

Under the final rule, if you or your affiliate own a transportation system on the effective date of the rule, you must base your depreciation schedule used in calculating actual transportation costs for royalties paid on production after the effective date of the rule on your total capital investment in the system. Total capital investment includes your original purchase price or construction cost and any subsequent reinvestment.

If you or your affiliate were not the original owner of the system, but purchased the transportation system at arm's length before the effective date of the final rule, you must incorporate depreciation on the schedule based on your purchase price (and subsequent reinvestment) into your transportation allowance calculations in paying royalty on production after the effective date of the rule. However, you would begin at the point on the depreciation schedule corresponding to the effective date of the rule. You must prorate your depreciation for the year 2000 by claiming part-year depreciation for the period from the effective date of the rule until December 31, 2000.

Under this provision, you may not adjust your transportation costs for

royalties paid on production before the effective date of the rule using the depreciation schedule based on your purchase price. The final rule does not permit recalculation of allowances for prior periods on that basis. Your calculation of actual transportation costs for periods before the effective date of the rule presumably was based on the original owner's depreciation schedule, and that will remain unchanged.

For example, if you purchased a system at arm's length on January 1, 1995, you would be in the sixth year of the depreciation schedule based on your purchase price. Assume that you had no subsequent reinvestment. You would incorporate into your calculation of actual transportation costs the depreciation applicable to the sixth year from the schedule based on your purchase price. However, you must prorate your claimed depreciation for calendar year 2000 by claiming part-year depreciation for the period from the effective date of the rule until December 31, 2000. If your calculation of actual transportation costs for the period before the effective date of the rule was based on the original owner's depreciation schedule, you may not adjust the calculation of costs for the period before the effective date of the rule using the schedule based on your purchase price.

Under the final rule, if you are the original owner of the transportation system on the effective date of this rule, you must continue to use your existing depreciation schedule in calculating actual transportation costs for production in periods after the effective date of this section. In other words, your depreciation calculation does not change.

However, if you or your affiliate purchase a transportation system at arm's length from the original owner after the effective date of the rule, you thereafter must base your depreciation schedule used in calculating actual transportation costs on your total capital investment in the system (including your original purchase price and subsequent reinvestment). You must prorate your depreciation for the year in which you or your affiliate purchased the system to reflect the portion of that year for which you or your affiliate own the system.

If you or your affiliate purchase a transportation system at arm's length after the effective date of the rule from anyone other than the original owner, you must assume the depreciation schedule of the person who owned the system on the effective date of the rule.

Thus, under the final rule, if you purchased a pipeline before the effective date of this rule (whether from the original owner or a subsequent owner), you now may calculate depreciation based on your purchase price. From now on, you may use your purchase price as your basis only if you purchase the pipeline from the original owner. If you purchase a pipeline from anyone other than the original owner, you will assume the seller's depreciation schedule. MMS believes that these provisions balance the competing considerations arising from the December 1999 proposal and minimize the burdens on both the lessees and the agency.

The second change proposed in December 1999, at § 206.111(g)(3) and adopted in the final rule as § 206.111(j), provides that even after a transportation system has been depreciated below a value equal to ten percent of your original capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your total capital investment in the transportation system multiplied by a rate of return under paragraph (h) of this section, regardless of the pipeline's depreciation status. (Under the current regulations a lessee is not allowed to claim any depreciation or return on capital once a pipeline is fully depreciated.) This is only to calculate the return component of the transportation allowance; you still must follow the depreciation schedule for calculating the depreciation component of the allowance. So while you are permitted to take a return component equal to the allowable rate of return times ten percent of the total capital investment each year after you have depreciated your facility to the ten percent level, you may claim only the actual depreciation according to the depreciation schedule. Thus, you will be eligible for a return component even when you can no longer claim depreciation.

In the final rule, we also have added a clarifying paragraph (2) to specify that in calculating royalties paid on production after the effective date of the rule, you may apply this paragraph to a transportation system that before the effective date of this rule is depreciated at or below a value equal to ten percent of your total capital investment. You may not adjust royalties paid for production in periods before the effective date of the rule incorporating this additional return on investment component.

Section 206.111(g)(4) of the December 1999 proposal (paragraph 206.105(b)(2)(B) of the current regulations) provides an alternative for transportation facilities first placed in service after March 1, 1988. In the December 1999 proposal, we asked for comments on whether this provision should be continued. In the final rule, we are deleting this paragraph. This paragraph is unnecessary in light of the changes we are making to the calculation of actual transportation costs and because it is our understanding that this paragraph has been used in few, if any, situations.

The existing rule uses the Standard and Poor's Industrial BBB bond rate as an allowable rate of return on capital investment for producers who transport oil through their own pipelines (see 30 CFR § 206.157(b)(2)(v)). In the December 1999 proposal, we asked for comments on whether the existing rate of return should be changed. As noted above, some commenters suggested increasing the rate used in calculating the allowance to twice the Standard and Poor's BBB industrial bond rate. Two States and an individual commented that increasing the rate of return above the BBB rate is unnecessary and urged MMS to maintain the current rate of return.

As explained above in Section IX(a), MMS believes the BBB bond rate is a very appropriate rate of return and is retaining it in the final rule.

Section 206.112 What adjustments and transportation allowances apply when I value oil using index pricing?

Section 206.112 describes how to adjust the index price for location differentials, quality differentials, and transportation allowances depending on how you dispose of your oil.

In the February 1998 proposal, § 206.112 contained a ''menu'' of possible adjustments that could apply in different circumstances, and § 206.113 prescribed which of the adjustments from the ''menu'' applied to specific circumstances. The December 1999 proposal eliminated the ''menu'' and instead combined the previously proposed §§ 206.112 and 206.113 into one section that describes what adjustments apply when using index pricing. We have adopted that approach in the final rule. The ''menu'' of options is no longer necessary with the elimination of aggregation points and MMS-published differentials. This new paragraph covers all situations regardless of lease location, so there is no need for geographical breakdown of adjustments and allowances.

As proposed in December 1999, we eliminated the location differential between the index pricing point and the market center. This is because under the valuation procedures proposed under the February 1998 and December 1999

proposals and adopted in this final rule, the index pricing point and market center are synonymous.

Paragraph 206.112(a) covers situations where you dispose of your production under one or more arm's-length exchange agreements. In this case, you must adjust the index price for any location/quality differentials that reflect the difference in value of crude oil between the point(s) where your production is given in exchange and the point(s) where oil is received in exchange. You may also adjust the index price to reflect any actual transportation costs between the lease and the first point where you give your oil in exchange, and between any intermediate point where you receive oil in exchange to another point where you give the oil in exchange again, and between the last point you receive oil in exchange and a market center or refinery that is not at a market center. These costs are determined under §§ 206.110 or 206.111, depending on whether your transportation arrangement is at arm's length or not. (Note again, that if the transportation costs from the lease to the market center or alternate disposal point are already reflected in the location differential between the lease and the market center, you may not claim duplicate transportation costs.) A third adjustment (paragraph (d)) may be warranted if the quality of your lease production differs from that of the oil you exchanged at any intermediate point (for example, due to commingling at intermediate locations). This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at intermediate commingling points before your oil reaches the market center or alternate disposal point.

For example, Company A transports its production from a platform in the Gulf of Mexico to an intermediate point under an arm's-length transportation contract for $0.50 per barrel. Company A then enters into an arm's-length exchange agreement between the intermediate point and the market center at St. James, Louisiana. Company A then refines the oil it receives at the market center, so it must determine value using an index price under § 206.103. The arm's-length exchange agreement between the intermediate point and St. James contains a location/quality differential of $0.10 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for the production month. The value of Company A's production at the lease is $19.40 ($20.00—$0.10—$0.50) per barrel.

Under paragraph 206.112(a), you must determine the differentials from each of your arm's-length exchange agreements applicable to the exchanged oil. Therefore, for example, if you exchange 100 barrels of production under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, separately determine the location/quality differential under each of those exchange agreements, and apply each differential to the corresponding index price. As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, total the three adjustments from those exchanges to determine the adjustment under this subparagraph. (If one of the three exchanges were not at arm's length, you must request MMS approval under paragraph (b) for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

Paragraph 206.112(b) addresses cases where your exchange agreement is not at arm's-length. In that event, you must request approval from MMS for any location/quality adjustment.

Paragraph 206.112(c) addresses cases where you transport your production directly to a market center or to an alternate disposal point (for example, your refinery), and establish value based on index prices under § 206.103.

In the case of transportation directly to a refinery, you would deduct from the index price your actual costs of transporting production from the lease to the refinery with the costs determined under §§ 206.110 or 206.111 and any quality adjustments determined by pipeline quality banks under paragraph 206.112(d). The index pricing point is the one nearest the lease.

For example, a lessee or its affiliate in the Gulf of Mexico might transport its production directly to a refinery on the eastern coast of Texas and not to an index pricing point. Because that production is not sold at arm's length, the lessee must base value on the average of the daily mean spot prices for St. James, less actual costs of transporting the oil to the refinery and any quality adjustments from the lease to the refinery.

Likewise, if a lessee or its affiliate transports Wyoming sour crude oil directly to its refinery in Salt Lake City, Utah, and values the oil based on paragraph 206.103(b)(3), the lessee must base value on the average of the daily Cushing spot prices, less the actual cost of transporting the oil to Salt Lake City and any quality adjustments between the lease and the refinery.

When production is moved directly to a refinery and value must be established using an index, issues arise because the refinery generally is not located at an index pricing point. Consequently, the lessee does not incur actual costs to transport production to an index pricing point, and in any event, the production is not sold at arm's length at that point. The principle underlying the rules and cases granting allowances for transportation costs is that the lessee is not required to transport production to a market remote from the lease or field at its own expense. When the lessee sells production at a remote market, the costs of transporting to that market are deductible from value at that market to determine the value of the production at or near the lease. Where sales occur only at or near the lease, the question of a transportation allowance, as that term always has been understood, does not arise. However, because the lease and the index pricing point may be distant from one another, there is a difference in the value of the production between the index pricing point and the location of the lease. The question becomes how to determine or how best to approximate that difference in value.

In theory, one solution would be for MMS to try to derive what it would cost a lessee to move production from the lease to the index pricing point. There are, in MMS's view, several problems with such an approach. First, it would require a burdensome information collection from industry and impose substantial information collection costs on many parties to whom the resulting calculation may never be relevant. Second, in many cases it may well not be possible to obtain information on which to base such a calculation. In many instances, it is likely that no production from the lease or field is transported to the index pricing point that applies under § 206.103. Consequently, in such cases there would be no useful data on which such a cost derivation could be based.

Another possible solution, in theory, would be for MMS to derive a location adjustment between the index pricing point and the refinery. This might be possible if, for example, there are arm's-length exchanges of significant volumes of oil between the index pricing point and the refinery, and if the exchange agreements provide for location adjustments that can be separated from quality adjustments. But establishing such location adjustments on any scale again would require a burdensome

information collection effort. MMS also anticipates that in many cases there would be no useful data from which to derive a location adjustment.

As we explained in the December 1999 proposal, MMS therefore believes that the best and most practical proxy method for determining the difference in value between the lease and the index pricing point is to use the index price as value at the refinery, and then allow the lessee to deduct the actual costs of moving the production from the lease to the refinery. This is not a ''transportation allowance'' as that term is commonly understood, but rather is part of the methodology for determining the difference in value due to the location difference between the lease and the index pricing point. Nevertheless, it is appropriate to include this deduction for situations in which index pricing is used.

MMS included this same method in the January 1997 proposal and did not receive any suggestions for alternative methods. We received few comments on this issue in response to the February 1998 proposal. However, one State commented that this method could result in calculation of inappropriate differentials. Absent better alternatives, MMS believes this method is the best and most reasonable way to calculate the differences in value due to location when production is not actually moved from the lease to an index pricing point.

However, if a lessee believes that applying the index price nearest the lease to production moved directly to a refinery results in an unreasonable value based on circumstances of the lessee's production, paragraph 206.103(e) allows MMS to approve an alternative method if the lessee can demonstrate the market value at the refinery. Although we received a few comments that MMS should not allow such requests, MMS believes it should leave this opportunity open for those limited cases where the procedure discussed above may be shown to be inappropriate, as we explained in the December 1999 proposal. MMS will do a thorough review and analysis of any such requests and will only approve them where the proper alternative value or procedure has been clearly demonstrated.

It is the lessee's burden to provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to: (1) costs of acquiring other crude oil at or for the refinery; (2) how adjustments for quality, location, and transportation were factored into the price paid for the other oil; (3) the volumes acquired for the refinery; and (4) other appropriate evidence or documentation that MMS requires. If MMS approves an alternative value representing market value at the refinery, there will be no deduction for the costs of transporting the oil to the refinery unless it is specifically identified in the Director's approval. Whether any quality adjustment is available depends on whether the oil passes through a pipeline quality bank or if an arm's-length exchange agreement used to get oil to the refinery contains a separately-identifiable quality adjustment.

Paragraph 206.112(c) also covers situations where you transport your oil directly to an MMS-identified market center. To arrive at the royalty value, you would adjust the index price by your actual costs of transportation under §§ 206.110 and 206.111. A second adjustment (paragraph (d)) may be warranted if the quality of your lease production differs from the quality of the oil at the market center. This adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at the aggregation point or intermediate commingling points before your oil reaches the market center.

For example, Company A transports its production from a platform in the Gulf of Mexico to St. James, Louisiana, under a non-arm's-length transportation contract with its affiliate. The actual cost of transporting production under § 206.111 is $0.50 per barrel. The average of the daily spot prices at St. James is $20.00 per barrel for the production month. The value of Company A's production at the lease is $19.50 ($20.00–$0.50) per barrel.

As discussed earlier in this preamble, MMS received a variety of comments, pro and con, about the differentials used in § 206.112. MMS believes the criteria laid out in this final rule are fair and reasonable and best represent a balanced response to the comments received.

In this final rule, paragraph 206.112(e) contains language from proposed paragraph 206.112(f) of the February 1998. It states that the term ''market center'' means Cushing, Oklahoma, when determining location/quality differentials and transportation allowances for production from leases in the RMR.

In the February 1998 proposal at paragraph 206.112(e), and in the December 1999 proposal and the final rule at paragraph 206.112(d), MMS added a separate adjustment to reflect quality differences based on quality banks between your lease and an alternate disposal point or market center applicable to your lease. You would make these quality adjustments according to the pipeline quality bank specifications and related premia or penalties that may apply in your specific situation. If no pipeline quality bank applies to your production, then you would not take this quality adjustment. Likewise, if a quality adjustment is already contained in an arm's-length exchange agreement from the lease to the market center, you could not also claim a pipeline quality bank adjustment from the lease to the aggregation point or market center. MMS believes this additional adjustment would more accurately reflect actual quality adjustments made by buyers and sellers.

In this final rule we added a new paragraph 206.112(g) to clarify that regardless of how you dispose of your production and which adjustments might otherwise apply, you cannot include separate transportation or quality adjustments that duplicate one another. That is, any time you take one of the listed adjustments, you cannot duplicate any portion of that adjustment in part or all of any other adjustment that otherwise would be allowable.

Paragraph 206.112(f) of the December 1999 proposal and of this final rule addresses situations where you may not have access to differentials between the lease and the alternate disposal point or market, or you may not have access to the actual transportation costs from the lease alternate disposal point or market center. In such cases, which should be infrequent, MMS will permit you to request approval for a transportation allowance or quality adjustment. In determining the allowance for transportation from the lease to the alternate disposal point or market center, MMS will look to transportation costs and quality adjustments reported for other oil production in the same field or area, or to available information for similar transportation situations. Under paragraph 206.112(b), you must also request approval from MMS for any location/quality adjustments when you have a non-arm's-length exchange agreement.

As discussed above, paragraph (g) of § 206.112 of the December 1999 proposal and the final rule clarifies that you may not use any transportation or quality adjustment that duplicates all or any part of any adjustment that you use under this section.

Section 206.113 How will MMS identify market centers?

Section 206.113 of the December 1999 proposal and the final rule is paragraph 206.105(c)(8) of the 1997 proposal and

§ 206.115 of the February 1998 proposal, except that we have eliminated the identification of aggregation points and we have made minor wording changes. MMS has eliminated the list of aggregation points identified in the January 1997 proposal in conjunction with the elimination of Form MMS–4415.

In the preamble to the January 1997 proposal, MMS listed market centers for purposes of the rule. That list included Guernsey, Wyoming. MMS has eliminated Guernsey as a market center for the reasons given earlier. Also, we received comments that simply using Los Angeles and San Francisco as market centers for ANS pricing purposes was too broad and that multiple, local delivery points in and near these two cities should be included in the market center definition. So, for purposes of this rulemaking, the Los Angeles market center includes Hines Station, GATX Terminal, and any of the refineries located in Los Angeles County. The San Francisco market center includes Avon, or any of the refineries located in Contra Costa or Solano Counties.

Section 206.114 What are my reporting requirements under an arm's-length transportation contract?

Section 206.114 of the December 1999 proposal and the final rule is paragraph 206.105(c)(1) of the existing rule rewritten in plain English.

Section 206.115 What are my reporting requirements under a non-arm's-length transportation contract?

Section 206.115 of the December 1999 proposal and the final rule is paragraph 206.105(c)(2) of the existing rule rewritten in plain English, except paragraph 206.105(c)(2)(iv) is deleted as described in the preamble to the January 1997 proposal. We also added a sentence clarifying that when you adjust your estimated allowance to an actual allowance, § 206.117 will apply.

Section 206.116 What interest and assessments apply if I improperly report a transportation allowance?

Section 206.116 of the December 1999 proposal and the final rule is paragraph 206.105(d) of the existing rule rewritten in plain English.

Section 206.117 What reporting adjustments must I make for transportation allowances?

Section 206.117 of the December 1999 proposal and the final rule is paragraph 206.105(e) of the existing rule rewritten in plain English.

Section 206.118 Are costs allowed for actual or theoretical losses?

Section 206.118 of the December 1999 proposal and the final rule is paragraph 206.105(f) of the existing rule rewritten in plain English. Reference to the FERC- or State regulatory agency-approved tariffs was deleted in the January 1997 proposal, and since this final rule does not provide the option for lessees who own pipelines to request use of such tariffs in lieu of their actual costs, the tariff reference is not in this final rule. Although we received a comment that actual or theoretical losses are real costs of transportation, this section is simply a continuation of longstanding policy.

Section 206.119 How are the royalty quantity and quality determined?

Section 206.119 of the December 1999 proposal and the final rule is § 206.103 of the existing rule rewritten in plain English.

Section 206.120 How are operating allowances determined?

Section 206.120 of the December 1999 proposal and the final rule is § 206.106 of the existing rule rewritten in plain English.

Section 206.121. Is there any grace period for reporting and paying royalties after this subpart becomes effective?

In the January 2000 public workshops, some commenters discussed the need for systems changes in their companies to comply with certain provisions of the December 1999 proposal. In the final rule, we have added a new § 206.121 in an effort to facilitate that transition. Under this section, you may adjust royalties reported and paid for the first three production months after the effective date of this rule without liability for late payment interest if the adjustment results from systems changes needed to comply with new requirements imposed under this subpart that were not requirements under the predecessor rule. This is not a blanket exemption from late payment charges. The lessee will bear the burden of being able to demonstrate that the adjustment resulted from a systems change necessitated by the final rule. While the lessee may be billed for interest, it will be credited only if MMS is satisfied that the adjustment that caused the interest bill was due to systems changes needed as a result of this rule.

Decision to delete proposed change to royalty-in-kind procedures at 30 CFR 208.4(b)(2)

In the January 1997 proposal, MMS proposed to modify the procedures for determining the sales price billed to the RIK purchaser. The proposal would have used the index price less a location/quality differential specified in the RIK contract. MMS has decided not to proceed with this approach. Instead, MMS will establish future RIK pricing terms directly within the contracts it writes with RIK program participants. MMS's goal still is to achieve pricing certainty in RIK transactions. But because of its revised plans, MMS has dropped its proposed January 1997 change to 30 CFR 208.4(b)(2).

XI. Procedural Matters

General Comments Relating to Procedural Matters for the December 1999 Proposal

With respect to the procedural matters of this proposed rule, MMS received comments from several parties, including U.S. Senators, with the most detailed comments coming from one entity (the Barents Group). Many industry groups endorsed the Barents Group's comments. We received no comments related to procedural matters from States, watchdog groups, or private citizens.

The comments generally were focused on the burden estimates associated with implementing the rule. We will address the comments in the sections that discuss the respective requirements.

General Comments Relating to Procedural Matters for the February 1998 Proposal

MMS received comments regarding various procedural matters involved in the February 1998 proposed rule from one entity (The Barents Group) that were endorsed by several companies and industry organizations. One comment centered on overall procedure, while two other comments specifically addressed Executive Order (E.O.) 12866 and the Regulatory Flexibility Act. We will address the overall procedure comment here, and we will address the specific comments in the sections that discuss the respective requirements.

Issue: Procedures not followed with the latest publication and re-opening of the comment period

Summary of Comments: The commenter believes that the Administrative Procedure Act (APA) requires any comment period to remain open for at least 60 days. Furthermore, an advance copy of the rule (in this case the July 1998 proposal) should be sent to the Office of Management and Budget (OMB) for review prior to any publication. The comment period for this rule was much less than 60 days

and OMB never received a copy of the rule.

MMS Response: The APA does not specify a minimum time period for accepting comments. The APA only requires a ''reasonable'' comment period depending on the particular facts of the rule. Generally, the comment period is 60 days for proposed rules, and shorter periods for supplementary proposed rules. The July 1998 proposal was not an initial proposed rule; it was a further supplementary proposed rule representing the fifth in a series of proposed and supplementary proposed rules. Given the numerous times this rule has been published for comment and the many meetings held over the last three-plus years, MMS believes the brief comment period (July 9 through July 31) for the July 1998 proposal, which merely addressed issues that had been commented on before, was more than adequate. The July 1998 proposal included few changes to previous versions of the rule; the major substance of the rule had been addressed several times in great detail. Additionally, MMS provided OMB a copy of the February 1998 proposal, and OMB approved the rule for publication. MMS made only minor modifications to the February 1998 proposal in its July 1998 proposal, and MMS provided a copy of the July 1998 proposal to OMB.

The Regulatory Flexibility Act

The Department certifies that this 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.*).

This rule establishes the methodology royalty payors are to use in calculating royalty payments owed the Federal Government for oil produced on Federal leases, both onshore and offshore. There are approximately 800 such royalty payors.

The majority of royalty payors operate onshore and are smaller companies that sell the oil they produce to third parties in arm's-length transactions. They generally do not engage in downstream petroleum businesses. Larger companies usually operate offshore as well as onshore and have the resources needed to meet the technical and financial challenges associated with producing oil on the Outer Continental Shelf, especially in deep water. Many of these larger firms are integrated companies that produce crude oil, operate refineries, or market petroleum products at the wholesale and retail levels.

This rule provides that lessees that sell their oil under arm's-length transactions will continue to report and pay royalties based on their gross proceeds. Consequently, this rule will not affect the amount of royalties they pay, nor the manner in which they calculate the royalty. Generally, only integrated payors who do not trade oil at arm's-length will be required to pay royalties based on the rule's non-arm's-length provisions.

According to the Small Business Administration (SBA), drilling companies and companies that extract oil, gas or natural gas liquids having fewer than 500 employees are defined as small businesses. SBA defines refining companies as small if they employ less than 1,500 people. Based on the 500-employee standard for oil extraction companies, we estimate that over 90 percent (or about 740) of the 800 royalty payors, are small businesses.

MMS's analysis of 1998 data shows that a total of 45 royalty payors would have been required to value their production as less than arm's-length for royalty purposes. The other 755 companies sold the oil they produced under arm's length transactions and would not be affected by this rule. In comparison to their actual royalty payments, MMS estimates that the 45 affected payors would have paid additional royalties totaling $67.3 million.

Using company employment data, we determined that nine of the 45 companies are small businesses. (Since these companies are refiners as well as producers, we used the SBA standard of 1,500 or fewer employees for determining which companies were small.) Consequently, the nine small businesses who will be affected by the rule represent only 1.2 percent of the 740 small businesses who pay royalties on Federal oil. Our analysis of these nine companies' 1998 royalty payment data indicates that they would have paid additional royalties of approximately $280,000 or an average of about $31,100 each in 1998.

In addition to the impact on royalty payments, the rule will impose certain paperwork burdens as discussed in the Paperwork Reduction Act section of this preamble. Our analysis of the additional reporting burden for small companies required by this rule is 31.25 hours per company. Based on a cost of $50 per hour, the total cost to the nine affected small companies is about $14,000, or an average of about $1,600 per company.

In summary, nine small businesses will be affected economically by this rule. Their costs will include about $280,000 in additional royalties and $14,000 in reporting burdens for a total cost of $294,000. On average, the cost per company is about $32,700 annually ($31,100 in additional royalties and $1,600 in reporting burden).

Given the small number of companies and the costs involved, this rule will have minimal impact on companies producing oil on Federal lands, including the 45 royalty payors most directly affected. As noted, most of these companies are large integrated oil companies with very substantial technical, financial and real property resources. The additional costs that may result from the rule are small when compared to the revenues the companies earn from the oil they produce from Federal leases and upon which royalties are paid. As discussed in the economic analysis, the benefits of pricing simplification and the savings associated with transportation allowance changes would outweigh any additional administrative costs associated with this proposed rule. This analysis is available upon request.

Because of the lack of a substantial direct impact on the producing companies, the rule will have no secondary impacts on small businesses, such as oil field service companies, supply boat operators, etc., that conduct business with the producing companies.

Consequently, MMS concludes that this rule will not have a significant impact on a substantial number of small business entities.

Summary of Comments Related to the December 1999 Proposal:

One party commented that all small businesses will be affected by the rule, not just the nine businesses MMS identifies. Many independents have marketing affiliates and also act as designees on behalf of other lessees. These aspects were not considered in MMS's analysis.

MMS Response: MMS has maintained throughout this rulemaking that lessees who sell their oil at arm's length will continue to report and pay on their gross proceeds. Almost all of the identified small businesses dispose of their production through arm's-length contracts. Further, small businesses who market through an affiliate may report and pay on the affiliate's arm's-length gross proceeds.

Lessees that have designees reporting for them will incur no additional burden, while the designees themselves likely will not either. In the majority of cases, lessees who have designees reporting on their behalf are smaller firms whose gross proceeds from arm's-length sales will be the reported royalty value. In these cases, small companies with interests in Federal leases would rather dispose of production at arm's length and allow a designee to report for them. The rule imposes no additional

burden in these cases. MMS therefore does not believe that the rule will impose significant burdens on all small businesses.

Summary of Comments Related to the July 1998 Proposal: MMS received one comment on the July 1998 proposal. The comment and MMS's response follow.

Summary of Comments: MMS has not met the requirements of the Regulatory Flexibility Act because the rule does significantly impact small businesses.

MMS Response: As stated below, our analysis concludes that the requirements of this final rule will not significantly impact a substantial number of small businesses. In general, only integrated payors with either a refinery, a separate marketing entity, or both will pay additional royalties. Such lessees are typically larger in size and able to absorb any additional burden (however small) the rule may impose. In the few cases where small businesses may be affected, the impact will be minimal.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

See the Executive Order 12866 analysis later in this preamble for specific estimated effects of the rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. § 1531 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector. This rule will not change the relationship between MMS and State, local, or tribal governments. The historical relationship between MMS and State and local governments will not change in any way. The rule will, in fact, increase State royalty revenues without imposing additional costs. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

See the Executive Order 12866 analysis later in this preamble for specific estimated effects of the rule.

Fairness Board and National Ombudsman Program

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 regional fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call 1–888–734–3247.

Executive Order 13132 (Federalism)

In accordance with Executive Order 13132, this final rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. This final rule does not negatively affect the States' prerogatives regarding oil valuation or their share of oil royalty receipts. The affected States were heavily involved in the rulemaking process through their continued participation in MMS's numerous public workshops and submission of detailed comments at every stage of this lengthy rulemaking process.

The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with State governments on a percentage basis as prescribed by law. This final rule does not alter any lease management or royalty sharing provisions. It determines the value of production for royalty computation purposes only. This final rule does not impose costs on States or localities. Costs associated with the management, collection and distribution of royalties to States and localities are currently shared on a revenue receipt basis. This final rule does not alter that relationship.

Executive Order 12630

The Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Summary of Comments Related to the February 1998 and December 1999 Proposals: The proposed rule deprives lessees of their constitutionally protected property rights when royalties are paid based on a higher than actual lease sales price. This is a price that the lessee would find impossible to actually realize because it includes returns on investments and on downstream marketing profits. The commenter asserted that because such a taking will occur if the rule is approved, MMS must prepare a Takings Implication Assessment pursuant to Executive Order 12630.

MMS Response: Executive Order 12630 requires a Federal agency to justly compensate a private property owner if private property is taken for public use. Disagreements over methods of valuing production for royalty purposes do not change the property relationship between a lessee and the Federal lessor, and do not operate to deprive the lessee of any property interest. Even if a particular valuation method is held to be unlawful or unauthorized, the remedy is to overturn the unauthorized agency action. This does not have constitutional takings implications.

Executive Order 12866

The Office of Management and Budget (OMB) determined that this rule is a significant rule under Executive Order 12866 Section 3(f)(4). Although we estimate that the rule will have an effect less than $100 million on the economy, this order states that a rule is considered a significant regulatory action if it ''raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' OMB determined that this rule raises novel legal or policy issues.

MMS met the Executive Order 12866 regulatory compliance and review requirements when it developed its February 1998 proposal. MMS's analysis of the revisions it made to the February 1998 proposal indicated those changes would not have a significant economic effect, as defined by Section 3(f)(1) of this Executive Order.

This rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. In its February 1998 proposal, MMS's analysis of 1996 data estimated that the rule would have had an economic impact of approximately $66 million in increased royalty collections annually. Because a substantial period of time elapsed since the initial analysis, MMS has performed a similar analysis comparing actual 1998 royalties paid with those we estimate would have been required had

this rule been in effect. This recent analysis showed the rule would have had an economic impact of approximately $67 million in increased royalty collections annually, or about the same impact estimated earlier.

MMS completed a Record of Compliance (ROC), an internal document that was not published in the **Federal Register**, in conjunction with the December 1999 proposed rule. The conclusions that we reached in the ROC continue to apply to this final rule. The ROC contains the detailed analysis required under Executive Order 12866. Also, we present the economic analysis of this rule's impacts later in this section.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. We are not aware of any actions taken or planned by other agencies, State or Federal, that are similar to this one or that this rule would interfere with.

This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

As part of the procedural matters associated with the December 1999, July 1998, and February 1998 proposals, MMS accepted comments on the specific approach, assumptions, and methodology used in the Executive Order 12866 analysis. For the December 1999 proposal, MMS received detailed comments from groups representing industry, producing companies and a Senate group. For the February 1998 proposal, MMS received a detailed report from one commenter and comments from two other organizations regarding the analysis. For the July 1998 proposal, MMS received one comment (from the Barents Group). MMS's responses to all of those comments follow. MMS did not receive any additional comments on the Procedural Matters in response to the March 1999 notice.

Comments Related to the December 1999 Proposal:

(a) Necessity of E.O. 12866 Analysis

Summary of Comments: One party commented that MMS is required to perform an analysis under Executive Order 12866 because this rule raises novel legal requirements. Further, this analysis requires a complete examination of all feasible alternatives. MMS has not completed this required analysis.

MMS Response: MMS completed a ROC, an internal document that was not published in the **Federal Register**, in conjunction with the December 1999 proposed rule. The conclusions that we reached in the ROC continue to apply to this final rule. The ROC contains the same detailed analysis required under Executive Order 12866. Additionally, we examined alternatives in detail over the entirety of this four-plus year rulemaking process. See the discussion of alternatives after the same comment was presented in response to the February 1998 proposed rulemaking.

The Office of Management and Budget determined this rule is a significant rule under Executive Order 12866 Section 3(f)(4). This order states that a rule is considered a significant regulatory action if it ''raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' MMS met the Executive Order 12866 regulatory compliance and review requirements when it developed its February 1998 proposal.

MMS's analysis of the revisions it made to the February 1998 proposal indicated those changes would not have a significant economic effect, as defined by Section 3(f)(1) of this Executive Order.

In its February 1998 proposal, MMS's analysis of 1996 data showed the rule would have had an economic impact of approximately $66 million in increased royalty collections annually. This estimate was based on a comparison of Federal oil royalties received in 1996 for both onshore and offshore production to those we would have expected under the provisions of the February 1998 proposal. Since the proposal used separate valuation methodologies for three geographic areas, so did the analysis. Because a substantial period of time elapsed since the initial analysis, MMS has performed a similar analysis comparing actual 1998 royalties paid with those we estimate would have been required had this rule been in effect.

(b) The Analysis Does Not Account for Designee Payors

Summary of Comments: Payors who pay on behalf of lessees will pass the incremental cost of a royalty increase on to their lessees. This cost is not accounted for.

MMS Response: MMS does not anticipate significant additional costs associated with payors who pay on behalf of lessees. See discussion above in the *Regulatory Flexibility Act* section.

(c) General Compliance with and Understanding of Rule

Summary of Comments: The rule is not clear in some respects. Companies will have to incur additional expense for training on how to comply with the rule.

MMS Response: Although the rule departs from the current royalty valuation methods for oil not sold at arm's length, MMS believes the rule is actually easier to understand and comply with. The rule reflects the way oil is bought and sold in the marketplace today. MMS believes that many industry professionals are familiar with the terms and methodology used in this rule. We agree that as with any new rule, there will be an adjustment period as lessees review the rule, analyze its application to their business, and implement its requirements. However, we do not believe this will be a significant cost.

MMS also intends to provide payor training in several locations after the publication of the final rule. Additionally, MMS will revise the Payor Handbook.

(d) Revision of Lessees' Computer Systems

Summary of Comments: Several parties are concerned that the proposed rule will necessitate a change in the computer systems already in place for paying royalty under the current regulations.

MMS Response: We received this comment in response to the February 1998 proposal. See our response below. None of these comments have explained how any necessary computer systems changes cause the rule to be inconsistent with Executive Order 12866.

(e) Burden Associated With Two-Year Election Requirement

Summary of Comments: We received a comment that there are significant internal evaluation costs associated with electing valuation methods every 2 years.

MMS Response: Internal economic decisions regarding the disposition of oil and what alternatives are financially beneficial to a lessee are a necessary part of a lessee's business. We do not believe that evaluating whether to value oil on the basis of gross proceeds or index for a property once every 2 years, in cases to which § 206.102(d) applies, is an onerous or difficult decision. Moreover, a lessee does not have to undertake the analysis to decide which method to elect if it does not want to; arm's-length gross proceeds is the primary measure of value in these cases.

(f) Differentials

Summary of Comments: One commenter asserted that additional costs will be incurred that MMS did not

estimate for ''choosing and maintaining the acceptable recommendations for quality, location, and transportation differentials, and indexing methodology.''

MMS Response: Although we do not fully understand the comment, we did address the costs a company will incur to compute its own differentials.

(g) Affiliation Determinations

Summary of Comments: MMS did not account for the costs associated with companies asking MMS to determine if they are affiliated.

MMS Response: MMS believes that submitting facts relevant to determining if two persons are affiliated within the meaning of this rule is a straightforward and uncomplicated process and does not entail significant costs. MMS does not believe that submission of facts or documents for this purpose creates any inconsistency with Executive Order 12866.

(h) Audit Costs

Summary of Comments: MMS claims that the current audit burden will be reduced because the rule is simpler to comply with. All MMS is doing is replacing one audit cost for another because there is so much uncertainty in the rule. MMS does not provide enough specifics in the rule for a complete level of understanding.

MMS Response: MMS believes that the rule is understandable and that lessees should have all the elements necessary for proper valuation at its disposal. MMS believes this rule is more objective than some provisions in the predecessor rule. While any rule involves audit costs, MMS believes that this rule will reduce the overall audit burden.

(i) Requests for Valuation Determinations

Summary of Comments: MMS underestimates the number of determinations industry will request. The rule is so complex and uncertain that many companies will be requesting determinations.

MMS Response: MMS believes that the number of value determinations under § 206.107 of the final rule should be about the same as under the current rule, and they should be no more complex. We also believe that the number of other requests related to location and quality differentials should be less than or equal to the number we receive under the existing provisions concerning exceptions to computing actual costs of transportation. Additionally, MMS intends to provide ample payor training sessions and a revision of the Payor Handbook. We also added more examples to the preamble at industry's request to clarify how various provisions apply.

(j) Actual Transportation Cost Calculations

Summary of Comments: MMS does not address the burden of requiring a computation of ''actual costs'' as a result of disallowing FERC tariffs in non-arm's-length transportation arrangements. One industry commenter expressed concern about providing records to MMS.

MMS Response: We believe the burden estimates associated with the current approved Information Collection Request for Form MMS–2014 (OMB Control Number 1010–0022) already account for the task of computing non-arm's length transportation allowances as provided in the 1988 regulations. This allowance is based on a company's (or its affiliated pipeline's) actual costs of capital investment and operating and maintenance expenses.

That allowance calculation is based on the formula (D+R+E)/T, where D=annual depreciation of the pipeline's capital investment, R=return on undepreciated capital investment (the amount left each year after that year's depreciation has been deducted), E=annual operating and maintenance expenses, and T=the throughput volume of the pipeline.

While companies in the past may have been using FERC tariffs in lieu of this formula, we believe this cost information is readily available to the companies even in situations where an affiliate is involved. Additionally, we believe this calculation is relatively straightforward. While more lessees will have to calculate actual costs under this rule because it disallows FERC tariffs, the burden of calculating actual costs in each case has not changed substantially. Moreover, under the existing rules MMS has disallowed use of many FERC tariffs because FERC no longer ''approves'' tariffs for pipelines over which it has no jurisdiction.

The comment that these records must be sent to MMS is not accurate. We do not require lessees to submit this information initially for review (except in cases where lessees ask to exceed the presumptive allowance limits). We do, however, require that all information be available for audit. This is no different than the records maintenance requirement under the current regulations.

(k) MMS's Economic Analysis Understates Overall Costs

Summary of Comments: Several companies and industry groups expressed concern that MMS has underestimated the full impact of the rule. Many costs such as compliance, training, and the filing of additional guidance requests are not addressed. MMS claims of legal savings associated with the rule are not accurate because additional legal costs will be incurred in other areas.

MMS Response: MMS has attempted to categorize and accurately estimate all costs associated with the proposed rulemaking. Specific types of costs that commenters alleged that MMS did not take into account are discussed in other paragraphs of this section.

For the analysis associated with the December 1999 proposed rule, we did address and estimate the costs associated with compliance and filing of guidance requests. Determining the exact impact of these costs is very difficult and will vary for every organization affected by the rule. Our estimates attempt to categorize the average impact on an average payor affected by the rule. Some companies will spend more than others. Our estimates were intended to provide a general impact of the proposed rule.

Further, we have had discussions with OMB about our estimated impacts of the rule. OMB believes that our estimated impact analysis is sufficient and conforms with OMB requirements.

(l) MMS Fails to Account for Significant Costs to Small Businesses

Summary of Comments: Some commenters believe MMS fails to adequately address the impact on small businesses. The rule will affect all payors, not just a handful of major producers as MMS claims. Many small businesses have affiliates who will be forced to pay on the proposed index methodology.

MMS Response: MMS continues to believe this rule will not affect a substantial number of small businesses because we anticipate that most small businesses will continue to pay royalties based on their arm's-length gross proceeds, as they do under the current regulations. Approximately 800 businesses pay royalties to MMS on oil produced from Federal leases. MMS believes approximately 45 of the 800 total payors are likely to pay significant additional royalties under this rule. (We believe that most small businesses with affiliate sales will report the affiliate's arm's-length gross proceeds as value. Only small businesses with refinery

capability that do not sell oil at arm's length will be affected substantially by the rule.) We further believe that only nine of those 45 payors are small businesses as defined by the U.S. Small Business Administration (companies with less than 1,500 employees). MMS further estimates that 97 percent of the remaining 755 payors, or 732, would be considered small businesses. The nine payors that we consider small businesses that we anticipate would be affected substantially by the rule make up less than 1.15 percent of all the payors reporting to MMS on oil produced from Federal leases and less than 1.25 percent of all the small businesses reporting to MMS on oil produced from Federal leases.

Our internal economic analysis of impacts on small businesses shows that benefits of pricing simplification and the savings associated with transportation allowance changes are likely to outweigh any additional administrative costs associated with this rule.

(m) Burden Associated With Compliance, Information Requirements, and the Rule in General

Summary of Comments: Congressional comments stressed the point that an overly burdensome rule will discourage further domestic oil exploration and development, and that any further burden on industry for information should be limited to establishing the value at the lease—not downstream of the lease.

Several groups from industry commented that the rule will increase administrative burden on both MMS and the producer. For example, MMS will have many requests from industry about value and quality determinations whenever companies believe that index pricing overstates the real value of their Federal oil production. MMS will not be able to timely respond. Thus, industry will have less certainty than before. Ignoring the FERC tariff methodology requires a double burden on lessees, *i.e.,* having to apply two different sets of rules (FERC's and MMS's). The rule will drive producers to revamp business practices—especially in the mid-stream marketing arena.

On the other hand, a State commented that the December 1999 proposal puts too much trust in the industry to supply information. Industry should be required to tell MMS when a balancing agreement is in place or when oil is subject to a call. This State stressed that MMS needs this information up front, not just in an audit. Effectively, the burden is on MMS for collecting this information. A watchdog organization agrees that it is imperative that industry inform MMS of balancing agreements.

MMS Response: MMS acknowledges that the rule will change the current valuation procedures for some integrated producers. However, we believe the rule actually results in simpler methodologies that are less burdensome than the current regulations.

We anticipate that the overall impact of the rule will be to significantly reduce the time involved in the royalty calculation process. Under the rule, in most cases lessees without arm's-length sales would report the adjusted spot price applicable to their production. For other than production in the RMR, the need to work through and apply the current benchmarks for non-arm's-length transactions would be eliminated. Many of the variables in royalty calculation under the previous rule have been eliminated. This should lead to additional savings in audit costs.

The comments regarding ''value at the lease'' have been addressed elsewhere in this preamble. The substance of these comments actually relates to downstream sales and what deductions are or are not proper in light of the lessee's duty to market.

The comments regarding having to apply different sets of rules between FERC and MMS are, in our view, misplaced. FERC is not charged with determining lessees' actual transportation costs for royalty purposes. Indeed, many of the pipelines for which lessees may have to calculate actual transportation costs are not even within FERC's jurisdiction, as explained above.

The comments regarding the timing of information on balancing agreements do not appear to warrant a change from the December 1999 proposal. Balancing agreements are relevant to the question of whether a particular contract reflects the total consideration for disposition of the oil. This is typically a matter addressed in the audit context.

(n) MMS's Economic Analysis Fails to Analyze Alternatives as Required by Law

Summary of Comments: A group representing industry believes MMS fails to adequately analyze alternatives such as taking royalty in kind or tendering. The commenter says that the Administrative Procedure Act requires a full economic analysis of all feasible alternatives.

MMS Response: See response in paragraphs (b), (c), and (d) below in the discussion of MMS's responses to the comments on the February 1998 proposal.

Comments Related to the July 1998 Proposal

Summary of Comments: Since MMS has significantly changed the rule since the February 1998 proposal, a new and revised analysis should be performed.

MMS Response: We revised our analysis using 1998 data. The procedures followed in the latest analysis are basically the same as those followed with the original analysis.

Comments Related to the February 1998 Proposal: (a) Marketing Costs

Summary of Comments: Some commenters asserted that the proposed valuation methodology will not arrive at the value of oil at the lease. They said the adjustments MMS proposes will not account for all costs associated with assessing value downstream and away from the lease. They argued that for computing value in situations not involving arm's-length sales, the rule imposes the equivalent of a tax by not allowing marketing cost deductions.

MMS Response: MMS's detailed responses to the obligation of the lessee to market production free of cost to the Federal Government are discussed in detail in Section III(i).

(b) Alternatives

Summary of Comments: MMS has not considered the appropriateness of non-regulatory alternatives such as taking royalty in kind (RIK) instead of in value.

MMS Response: The MMS has in fact considered several non-regulatory alternatives to the rule including RIK. In 1995, MMS undertook an RIK pilot project for gas produced from the Gulf OCS and is currently operating RIK projects in Wyoming (crude oil in-kind), offshore Texas in the zone governed by section 8(g) of the OCSLA (natural gas in kind), and in the Gulf of Mexico (natural gas in kind). The objective of these pilots is to test the administrative and economic feasibility of a variety of methods and conditions of RIK programs. But until MMS completes these pilots and analyzes the results, revisions to the valuation regulations are needed to assure receipt of market value. Also, unless *all* Federal oil is taken in kind in the future—an occurrence we do not foresee—valuation regulations still will be needed.

Furthermore, MMS published a **Federal Register** notice on September 22, 1997 (62 FR 49460), requesting comments on alternatives before proceeding with the rulemaking. While these are not ''non-regulatory'' alternatives, they demonstrate MMS's attempts to involve the public in

suggesting different valuation methodologies. These alternatives were discussed above in Section V of this preamble.

In short, MMS has considered many alternatives to the rule and received numerous comments from interested parties along the way. The MMS believes the rule is a practical solution to establishing royalty valuation methods that capture the true market value of crude oil produced from Federal leases. MMS is considering non-regulatory alternatives such as RIK, but is not prepared to take a more significant portion of its oil in kind until or unless the results of its pilots so dictate. The other valuation alternatives mentioned above were deemed to be less desirable and more costly to implement than the final rule. For these reasons, MMS determined that they are not feasible alternatives or effective means to achieve the same results as the rule.

(c) Tendering Programs

Summary of Comments: Commenters on E.O. 12866 asserted that MMS is incorrect in assuming that a tendering program is costly and is only valid if a nearby index measure of value does not exist.

MMS Response: For areas other than the RMR, MMS views index prices as the most accurate measure of value for oil not sold at arm's length. As mentioned above, the costs of monitoring and establishing a workable tendering program, with adequate safeguards to prevent abuse, make it a less desirable alternative than index pricing. Because tendering is company-specific, information transfer costs and recordkeeping costs would be higher than the costs associated with using a transparent, reliable indicator of value, such as an index.

The reason that the final rule includes tendering as a valuation benchmark for the RMR is that there is no reliable spot or index price specific to that region.

(d) Industry-Proposed Benchmarks

Summary of Comments: Some commenters stated that MMS rejected an industry-proposed benchmark system based on the assumption that it was too costly and difficult to administer. It is not clear that the costs associated with the new rule are any less severe than the costs associated with this proposed benchmark system.

MMS Response: The Independent Petroleum Association of America (IPAA) originally submitted the proposed benchmark system referenced by this comment and has since submitted a modified valuation proposal they termed ''royalty valuation procedures'' (RVP's). MMS asked for comment on IPAA's original proposed benchmark system in a **Federal Register** notice on September 22, 1997 (62 FR 49460) (see above for specifics on the proposal and the responses we received). IPAA's modified proposal for sales not at arm's length allows the lessee to elect one of the following RVP's for a given period of time:

- Outright sales of significant quantities of like-quality crude in the field or area, including sales under ''tendering'' programs.
- Arm's-length purchases of significant quantities of like-quality crude in the field or area.
- Netback methodology using an index price or an affiliate's resale price minus all actual costs for transportation and value added by midstream activities.
- Potential use of outright arm's-length sales by third parties in the field or area once the trade press begins routinely to publish price data for a given field (this is something that the trade press currently does not do; nor are we aware of any trade press plans to publish such data).
- Potential use of prices published by MMS based on its RIK sales (this idea assumes that a RIK program is feasible and that data gathered from it would be applicable and in a usable form).

State commenters on the February 1998 proposal objected to IPAA's menu selection concept.

As discussed elsewhere in this preamble, the final rule uses index prices to value oil not sold at arm's length everywhere except in the RMR. While the final rule does not use RVP's for that region, it does use a set of benchmarks with some similarities to the RVP's. Also as discussed elsewhere in the preamble, MMS believes that except for the RMR, spot prices are the best indicators of value.

In the public workshops, MMS explained in detail the numerous problems associated with using area or regional sales and purchases as a measure of value. The potential for uncertainty in the terms ''significant quantities,'' ''like-quality,'' and ''field or area,'' leads to significant audit burdens on lessees and MMS. Likewise, the first and second RVP's require the lessee to timely obtain access to arm's-length contracts in the field or area. The final rule adopts part of the third RVP, with deductions limited to the actual costs of transportation as prescribed in the rule, as the single valuation method for all production not sold at arm's-length, except in the RMR, where an index price is used as the third benchmark. However, as discussed in Section III(i) of the preamble, the final rule does not allow a deduction for midstream marketing activities.

The last two of IPAA's proposed benchmarks are offered only as potential measures, and IPAA admits they cannot be implemented currently. MMS is open to studying these proposals in the future if they become viable.

Finally, MMS does not believe that lessees should be permitted to select a valuation method simply because it would be to the lessee's monetary benefit. Value should be based on uniform standards applicable to all lessees similarly situated. In other words, valuation should not be based on a menu, but rather on a hierarchy of established standards.

(e) Spot Prices

Summary of Comments: In their comments on E.O. 12866, commenters disagreed with MMS's assertion that spot and spot-related prices drive the manner in which crude oil is bought and sold today in the United States.

MMS Response: MMS's detailed response to the adequacy of spot prices is contained in Section VI(e).

(f) Cost-benefit Analysis of Alternatives

Summary of Comments: Commenters stated that MMS fails to meet the requirements of E.O. 12866 by not performing a cost-benefit analysis of any of the alternatives. They say MMS simply presents a few unsubstantiated reasons for not using alternatives, which does not allow MMS to choose the most efficient alternative. Further, according to the commenters, MMS has not investigated which, if any, alternatives arrive at value at the lease.

MMS Response: The final rule is the culmination of a four-plus year rulemaking effort. Throughout this process MMS explored and discussed numerous valuation alternatives with States, consultants, interest groups, industry groups, and congressional staff. MMS has adopted, at least partially, many of the alternatives suggested by commenters. However, several suggested alternatives were based on propositions for which no data exists for conducting a cost-benefit analysis. Furthermore, expert consultant feedback and State support substantiated our reasons for not using alternative valuation methods.

As mentioned previously, MMS is in the process of implementing several RIK pilot programs in order to determine the feasibility of such an approach. Regardless of the outcome of these pilots, it is still necessary to have oil

valuation regulations in place for the areas where RIK is not feasible.

(g) MMS's Costs Related to Form MMS–4415

Summary of Comments: Commenters stated that by MMS's own calculations, MMS assumes that it will receive approximately 1,750 Form MMS–4415 reports annually. The MMS assumes that its team of GS–9 employees would take only two minutes per form to collect, sort, and file the documents. It is likely that this cost is understated.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(h) Form MMS–4415 Data

Summary of Comments: Commenters asserted that MMS does not know what it is going to do with the collected data from the Form MMS–4415, so how can it accurately estimate the time required to analyze and publish the data?

MMS Response:

MMS has eliminated Form MMS–4415 in the final rule.

(i) Additional Industry Costs

Summary of Comments: Commenters on the E.O. 12866 asserted that MMS failed to estimate the additional costs that industry would be forced to incur under this rule. They include:

- The time required to calculate value under the rule.
- The cost of replacing or upgrading computer systems (the commenters say the proposed rule may require some companies to operate three different computer systems).
- The increased recordkeeping burden.
- The additional time required to complete other currently-approved MMS forms.

MMS Response: Industry stated that new computer systems are needed, with the possibility of three separate systems for the three regions of the country with separate valuation requirements. However, they did not provide any specifics on the costs of system modifications. While some payors will have to make some changes to comply with the final rule, as is the case with any new rule for a system involving automated reports and payments, industry has not shown that these costs will be excessive. Further, MMS believes that the majority of payors will continue to pay on the gross proceeds received under an arm's-length sale. This means that they will not incur any additional computer costs in complying with the arm's-length provisions of the new rule. For those not paying on gross proceeds, industry has not shown that the methods applicable to the three different regions of the country will require extensive computer systems overhaul or substantial additional staff. Therefore, the final rule includes three geographic regions as contained in the February 1998 proposal.

The new rule does not change statutory document retention requirements. There are no additional requirements associated with the rule that would result in additional information collection on any of MMS's current required forms.

(j) Lessees' Costs of Completing Form MMS–4415

Summary of Comments: Commenters asserted that MMS was correct in including the cost of completing proposed Form MMS–4415, but they said that MMS underestimated these costs.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(k) Sensitivity Analysis

Summary of Comments: Commenters assert that MMS has not used any sensitivity analysis in testing their assumptions.

MMS Response: The MMS believes that the assumptions made in formulating this rule are broad and basic enough that no sensitivity analysis is necessary.

(l) Market Distortions and Distributional Impacts

Summary of Comments: In their comments on E.O. 12866, commenters state that MMS has not considered the costs of market distortions or distributional impacts that would result from this rule. They say that MMS using an average of index prices to arrive at a market price in a month is not the same as arriving at a true market price for one particular individual. They assert that MMS ignores these distributional consequences under the apparent assumption that a single average market value concept is an adequate substitute for the range of market valuations that are established in the marketplace.

MMS Response: MMS believes that the index market price—adjusted for location, quality, and transportation costs—will approximate market values received for individual lease production.

(m) Lessees Will Avoid Filing Requirements

Summary of Comments: Commenters asserted that the costly filing requirements associated with Form MMS–4415 could cause lessees to restructure their transactions in such a way as to avoid triggering a filing requirement. They claim this is not a free-market outcome.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(n) FERC-Approved Tariffs

Summary of Comments: Commenters on the E.O. 12866 state that MMS requires the lessee to use ''actual costs'' of transportation rather than a FERC-approved tariff. They say this amounts to an additional cost or tax that the lessee must pay.

MMS Response: As explained above in the response to the comments received on the December 1999 proposed rule, this does not result in an extra cost or tax. All lessees claiming transportation allowances may deduct their actual costs of transportation. Those who pay others to transport their crude still may deduct a FERC tariff if that is the rate they pay at arm's length for the transportation.

(o) Baseline Years

Summary of Comments: Commenters assert that the choice of baseline years from which to calculate the benefits in MMS's impact analysis is very important. For example, in 1996, the average price per barrel of crude oil from Federal lands was $18.37, whereas recently oil prices have been as low as $13 per barrel. At lower prices, the relative differences become smaller.

MMS Response: MMS chose 1996 as a baseline year because that was the most recent year for which the normal corrections in royalty reporting were complete at the time the February 1998 proposal was published, and it represented a year with no market interruptions or anomalies. The implication that a lower oil price such as $13 per barrel could make MMS's estimates inaccurate, or the relative value differences smaller, is misplaced. It is expected that oil prices will vary over time, but the effect of a change in prices on the difference in royalty value between this rule and the existing rule is unknowable without a great deal of additional information. MMS therefore believes that there is no basis on which to argue that 1996 is an improper baseline year because prices supposedly were too high to be used in estimating the impact of the new rule.

Further, and not as a result of the comment above, we have updated the analysis using 1998 royalty data because a significant period of time had elapsed since our initial analysis. The results of the revised analysis are very similar to those of the study using 1996 data and reinforce its validity.

As stated earlier, 1996 was selected not because of absolute price levels but because it was the most recent year for which reasonably complete and corrected data were available. In any event, the relative difference in royalty collections at different price levels is irrelevant to the central purpose of the rule—ensuring payment of royalty on the market value of Federal crude oil.

(p) Assumptions Regarding Benefit Analysis

Summary of Comments: Commenters on the E.O. 12866 analysis believe that MMS's assumption that payors with no refining capacity would continue to pay on gross proceeds from arm's-length sales at the lease is incorrect. By the same token, producers/ marketers with refinery capacity will not always dispose of production at other than arm's length, and as a result may be forced to use the index methodology for all their oil.

MMS Response: MMS concedes that there may be cases where integrated lessees with refinery capacity sell their oil under true outright arm's-length sales. Contrary to the comments, they would be able to use their arm's-length proceeds in such cases. However, our audit work and the advice of various crude oil consultants indicate that most integrated producers are net purchasers of crude oil and either exchange their produced oil for oil closer to their refineries or directly transport their production to supply their refineries. In either case there is not an arm's-length sale of crude oil.

In contrast, lessees without refinery capacity generally either sell their oil at arm's-length or transfer their oil to an affiliate who subsequently sells the oil to an unaffiliated refiner. In either case, payors without refining capacity generally would value their production based on the gross proceeds received under an arm's-length contract. This is not a change from how they value production under the current rules. For purposes of estimating the revenue impacts of this final rule, MMS believes these assumptions are valid.

(q) Proprietary Data

Summary of Comments: Commenters assert that MMS used proprietary data in calculating its estimates, and disclosure was a problem with data used in the onshore analysis.

MMS Response: The Barents Group filed a Freedom of Information Act request to obtain all of the data supporting the E.O. 12866 analysis. MMS was able to provide all of the data for OCS leases. However, the data from onshore leases involves questions of proprietary information because of the limited number of payors on those leases, which would enable those who review that data to associate a price with an individual payor. MMS believes that the only way to accurately estimate the revenue impact of the rule is to use actual, company-submitted data.

(r) MMS's Spreadsheets

Summary of Comments: Commenters assert that MMS's spreadsheets are not easy to interpret or well documented. In many cases the steps have been aggregated into one, and as a result, it is difficult to determine how and why MMS proceeded as it did. Further, what MMS describes as its methodology is inconsistent with what the spreadsheets present.

MMS Response: MMS believes that the spreadsheets are adequate and the documentation is clear. From the detail of the comments provided it appears that the main ideas presented in the analysis were well understood.

(s) Analysis for Refiners Versus Non-Refiners

Summary of Comments: In its comments on the portion of the E.O. 12866 analysis for offshore California leases, one commenter asserted that producers without refinery capacity (*i.e.*, those who normally would be expected to pay on arm's-length gross proceeds) now pay royalty on a value that is 17.8 percent less than what they would pay if value were based on the index price. Further, they say that producers with refinery capacity (*i.e.*, those who normally do not have arm's-length gross proceeds) now pay royalty on a value that is 10.4 percent below an index price-based value. They implicitly accuse MMS of being contradictory in requiring producers with refinery capacity (who do not sell at arm's length) to pay on a higher index-based value, while at the same time accepting arm's-length gross proceeds that are lower than the value already reported by the producers who do not sell at arm's length.

MMS Response: First, MMS has no basis on which to evaluate the accuracy of the commenter's assertions, which amounted to summary figures in a table of the commenter's own making. The commenter did not submit the underlying documents on which its asserted figures were based or explain how it performed its calculations.

Second, even assuming arguendo that the commenter's calculations are accurate, the commenter tries to infer far too much from what may have occurred in 1 year in one area. While non-arm's-length reported values can be higher than some arm's-length gross proceeds in some circumstances, nothing in MMS's experience or the commenter's figures indicates that non-arm's-length transfer prices either are or could be expected to be consistently higher than arm's-length market prices.

Indeed, in most instances where oil is first transferred to an affiliated marketing entity and then resold at arm's length, the arm's-length resale price is higher than the inter-affiliate transfer price. As explained above, non-arm's-length transfer prices are not reliable indicators of what price production will bear in the market. Therefore, as discussed in detail throughout this preamble, MMS must look to other reliable indicators of value such as index prices to establish value in those cases.

(t) Transportation Adjustments in the Analysis

Summary of Comments: Commenters assert that MMS states that for its comparison, it used prices reported on the Form MMS–2014 less any reported transportation allowances. Yet they say that when the spreadsheets are examined, it appears that transportation adjustments are not included.

MMS Response: MMS compared the price reported on Form MMS–2014 to the location, quality- (if applicable) and gravity-adjusted spot price at the first onshore delivery point, assuming that all payors reported a royalty due line (Transaction Code 01) representing the value at the onshore delivery point and a separate transportation allowance line (Transaction Code 11) representing the costs of transporting the oil to shore. That is, MMS compared (1) the onshore spot price, adjusted for the actual reported gravity at the least or a weighted average gravity for a unit, to (2) the price reported by the payor for the royalty due line without deducting any reported transportation allowance for that line. This allows an ''apples to apples'' comparison rather than comparing values at two different points.

If a payor incorrectly netted its transportation allowance from the reported royalty due instead of reporting the transportation allowance on a separate line, or if the payor sold its oil at the lease and incurred no transportation to move the oil to shore, MMS acknowledges that the revenue impact estimate for offshore California and the Gulf of Mexico may be overstated to that extent. However, if a payor does not report a separate transportation allowance on Form MMS–2014, MMS has no way of knowing the costs of transporting the

production to shore to equate the reported price to the onshore spot price. Absent any other reasonable alternatives, MMS chose this methodology recognizing that the revenue impact could be slightly overstated, assuming at the same time that very few payors reported incorrectly. MMS correctly used the reported value on the Form MMS–2014 without including the reported adjustments for transportation.

(u) Gravity Adjustments

Summary of Comments: In their comments on the E.O. 12866 analysis, commenters stated that it is not clear why MMS does not use actual gravities in its offshore California analysis, but rather uses a weighted average gravity value within a unit and applies that value to all the leases in the unit. Commenters also believe that MMS does not account for gravity adjustments for oil in the range of 34° to 40° API and makes mistakes in calculating the gravity adjustments in several months.

MMS Response: MMS used the weighted average gravity for an entire unit because there were many cases where gravity was missing or reported incorrectly by royalty payors. In those cases, MMS believes that using a weighted average gravity is appropriate. However, the revised analysis that accompanied the December 1999 proposed rule used actual reported lease gravity. After an examination of the data, it appeared the reported gravity values were complete and accurate in 1998. Using a weighted average was not necessary.

MMS adjusted California crude oil production values using Chevron's posted price adjustment scale in effect for the month of production. The scale does indeed include adjustment values for the range of 34° to 40°; however, none of the weighted average gravities fell into this range. As a result, it was not necessary to include this adjustment in the calculations.

Additionally, there were months where the adjustment scale changed mid-month. As a result, some adjustments were based on a value that approximated the value in effect for the full month. For example, if the adjustment scale in effect for the first half of the month was $.15 per degree API gravity and for the last half of the month it changed to $.20 per degree, MMS used a value of $.17 per degree to approximate the value of the deduction for the entire month. So, although in such cases the commenters may have believed a mistake occurred, it did not.

(v) Use of Pipeline Tariffs in the Analysis

Summary of Comments: MMS uses pipeline tariffs in its estimates, yet the rule does not allow tariffs for payors with affiliated pipelines.

MMS Response: Absent other publicly-available information regarding transportation costs, MMS used tariffs in the analysis as a general proxy for location differentials between (1) the lease and (2) market centers for which spot prices are published. MMS has found that tariff rates generally exceed the actual costs of transportation, so using them in the analysis, if anything, would understate the revenue impact of the final rule.

(w) Analysis for New Mexico

Summary of Comments: Commenters assert that for MMS's onshore New Mexico estimates, a charge of $.25 per barrel is assessed for movement from aggregation points to Midland, Texas. The basis for this charge is never substantiated.

MMS Response: MMS based the $0.25 per barrel differential between aggregation points in New Mexico and the market center at Midland, Texas, on information it obtained from an industry contact who trades oil in that area.

(x) Differential Timing

Summary of Comments: Commenters said that lessees who are required to use differentials that are set once a year by MMS may overvalue or undervalue production because of the many changes in the market and oil quality over a year's time.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(y) Use of Unaudited Data

Summary of Comments: We received comments that MMS uses unaudited data for 1996, yet normal audit collections result in an average 3% revenue gain. This expected audit collection, the commenters allege, equals 71 percent of the MMS estimate of $66 million.

MMS Response: We do not know how much additional money will be collected through audit for any given period until audits are completed and money is collected. Nor do we know in advance exactly what the difference in royalty liability between this rule and the existing rule will be. Of necessity, our estimate of the revenue effects of this rule is just that—an estimate. But the objective in developing these regulations is to obtain a better measure of the real value of oil produced from Federal leases. We acknowledge that in many cases—arm's-length sales being a prominent example—royalty value will not change under this rule. In other cases, it will.

(z) Location Differentials, Rocky Mountain Region

Summary of Comments: Commenters asked if, as reported in its analysis, MMS could not calculate a differential for the RMR between Cushing, Oklahoma, and the fields of each State, how is industry expected to report this differential?

MMS Response: When MMS did its analysis, it did not have the necessary contracts in hand to calculate such differentials. Regardless, MMS believes that lessees that will be subject to index pricing generally will have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions. Only lessees who sell their oil to affiliates who then either move the oil to market for sale at arm's-length or move the oil to a refinery are required (or can elect) to use index pricing. In those cases, MMS believes that lessees will either physically transport or exchange their oil to either a market center or a refinery and will therefore have the information necessary to determine location/quality and transportation adjustments from the index price. As a result, MMS has eliminated Form MMS–4415 in the final rule.

(aa) Quality Adjustments, Rocky Mountain Region

Summary of Comments: The MMS analysis for the RMR does not account for crude oil quality. This may invalidate the results of the analysis.

MMS Response: For the analysis that accompanied the December 1999 proposed rule, we had more complete information; we were able to isolate production to specific areas within some States. This better accounts for quality differences that may be found by commingling all production within a State.

(ab) Federal Administrative Savings

Summary of Comments: Commenters asked, if the rule will result in administrative savings to the Federal government, why are these savings not quantified?

MMS Response: The MMS is confident that administrative costs will be reduced. In our latest analysis, we make reference to administrative savings for both industry and the government. However, specifically quantifying these benefits is difficult. Audit costs are expected to fall as higher, correctly-reported royalties are realized initially when royalty is due.

MMS verification still will be needed, but we expect that the process will be more efficient.

(ac) MMS's Onshore California Analysis

Summary of Comments: Commenters stated that when MMS analyzed the onshore California impact, they only analyzed the Midway-Sunset field because the majority of Federal onshore oil production in California comes from this field. According to the commenters, MMS does not say whether the results are for the Midway-Sunset field only or somehow extrapolated to all fields onshore.

MMS Response: This analysis is a refinement of our earlier analysis (that used 1996 data) and contains several significant differences. The earlier analysis treated all onshore California Federal oil production as if it were produced in the San Joaquin Valley (from the Midway Sunset field). The current analysis used 1998 data and matches production to the area produced.

Following is a summary of MMS's revised economic analysis, which provides additional details for onshore California as well as the rest of the country.

Economic Analysis—Royalty Impact on Federal Lessees

Note: The complete analysis is not reproduced here, only the sections that generated the most comment. The entire analysis is available upon request.

We are revising our original estimate of approximately $66 million in increased royalty revenue that accompanied previous proposals of this rule. We used the same general approach to estimate the impact of the December 1999 proposal, except with updated 1998 data.

To estimate the impact and additional royalties collected under the December 1999 proposal, we divided the analysis of quantifiable benefits into three sections, consistent with the three geographic divisions of the proposal:

- California (both onshore and offshore)
- Offshore Gulf of Mexico (this also includes onshore New Mexico, Texas, and Louisiana)
- Rocky Mountain Region

For each of the geographic areas, we compared the royalty paid in 1998 for oil and condensate either directly to MMS or through the small refiner royalty-in-kind program to what would have been required under the valuation requirements of the December 1999 proposal. We examined each month of 1998 separately. We chose the year 1998 because it:

- Is the last complete year in which all months of data were available.
- Includes wide variations in prices over the 12-month span.
- Reflects data incorporating most of the edits and corrections performed by the exception processing modules in MMS's Auditing and Financial System/Production and Accounting and Auditing System.

We focused on the onshore leases in California, Colorado, Montana, North Dakota, New Mexico, Utah, and Wyoming because together they account for about 95 percent of total onshore Federal oil production. For offshore California and the Gulf of Mexico, we used 100 percent of the oil volumes and values for this analysis.

When examining the payments received from Federal onshore and offshore leases, we grouped all the royalty reporters into five separate categories:

1. Major integrated producers with refinery capacity;
2. Large, independent producers/marketers with refinery capacity;
3. Large, independent producers/marketers with no refinery capacity;
4. Small, independent producers with refinery capacity (this category is different than small businesses as defined by the Small Business Administration); and
5. Small, independent producers with no refinery capacity.

Offshore California

Under the December 1999 proposal, the value of production sold under an arm's-length contract would be the gross proceeds received under that contract. Oil not sold at arm's length would be valued on either (1) the average of the daily mean Alaska North Slope (ANS) spot prices published in an MMS-approved publication during the calendar month preceding the production month, or (2) the gross proceeds received by the affiliate under an arm's-length contract. The lessee would have to adjust the value for applicable location and quality differentials, and may adjust it for transportation costs. We believe that all large, independent producers/marketers with no refinery capacity (Category 3) and small independent producers (Category 5) would value crude on the basis of arm's-length gross proceeds. Therefore, we did not include them in the analysis. We examined the other three categories of royalty payors using the following procedure:

- We grouped all production by unit (*i.e.* Beta, Santa Ynez, etc.).
- We determined an average gravity for each lease in the unit.
- We made gravity adjustments to equate the unit oil to the 26.5° API ANS oil, using Chevron's California posted price gravity adjustment scale in effect during the month of production.
- We subtracted a location differential from the ANS value in Los Angeles to arrive at a value at the first onshore delivery point, which coincides with the value reported on Form MMS–2014. We used the following per-barrel location differentials relying on several sources, but primarily tariff schedules:

Beta: $0.10
Pitas Point: $0.50
Point Hueneme: $0.50
Point Pedernales: $0.50
Rocky Point: $2.20
Santa Clara: $0.50
Santa Ynez: $2.20

- We subtracted sulfur penalties from the ANS price where appropriate. These penalties were based on All-American Pipeline sulfur bank adjustments and consultant reports. We used a value of $0.56 for each percent sulfur above the benchmark ANS sulfur content of 1.1 percent. The per-barrel sulfur adjustments are:

Beta: $1.46
Point Pedernales: $1.62
Rocky Point: $1.79
Santa Ynez: $1.74
Santa Clara $1.46

- We then compared, for each month in 1998, (1) the location and quality-adjusted ANS price to (2) the actual price reported by each royalty reporter on Form MMS–2014. We then multiplied this incremental value by the royalty quantities reported on Form MMS–2014 to arrive at an overall net gain or loss associated with the rulemaking.

Our earlier analysis (using 1996 data) involved several factual differences. For example, the unadjusted average ANS price for 1996 was $20.45, versus $12.55 in 1998. (We wouldn't have expected different relative prices, in and of themselves, to cause a major difference in the results of the revised study, and that observation is borne out here.) Also, oil production from Federal Offshore California leases declined from 67,804,200 to 40,636,231 barrels—a drop of approximately 40 percent from 1996 to 1998. Further, the effective royalty rate for offshore California crude oil dropped by 1.6 percent (largely due to MMS-approved royalty rate reductions).

We updated the sulfur content related to various offshore fields and added a sulfur adjustment for the Santa Clara Unit. We made further revisions to the transportation rates from the onshore delivery points to the refining centers

for offshore California production. While we recognize that not all payors will pay the same transportation rates, we used rates that we believe capture a reasonable representation on average of the rates paid by lessees.

Estimated 1998 revenue gains under this final rule are:

• Category (1)	$4,363,837
• Category (2)	241,247
• Category (4)	126,429
Total	$4,731,513

In 1998, California received about 4 percent of the Federal oil royalties from the California OCS—$1.96 million of $48.5 million total—under OCSLA section 8(g), 43 U.S.C. 1337(g), which provides for coastal States to share in royalties from Federal leases lying wholly or partially within three miles from the State's seaward boundary. Applying the same 4 percent to the above estimate equates to $189,261 in additional revenue for the State of California.

Onshore California

To determine the impact of the December 1999 proposal on onshore payors in California, we aggregated the production for Categories (1) and (4). This comprised over 80 percent of the Federal onshore California production. We assumed that Category (5) payors would pay royalties based on their gross proceeds. There was no Federal onshore California production for Categories (2) and (3) in 1998.

We arrived at a monthly price at the lease by taking the ANS spot price adjusted for:

1. Gravity (using Chevron's posted price gravity adjustment scales in effect during production year 1998 to reflect differences in ANS and onshore field reported gravity from Form MMS–2014).

2. Transportation charges:

San Joaquin Valley to Los Angeles—$1.00 per barrel

North San Joaquin Valley to Bay Area—$0.50 per barrel

Ventura Basin to Los Angeles—$.50 per barrel

Salinas Basin to Santa Maria—$1.50 per barrel

These four production areas represent over 80 percent of all Federal onshore California production.

We then compared, for each month in 1998, (1) the location and quality-adjusted ANS price to (2) the actual price reported by each category 1 and 4 royalty reporter on Form MMS–2014. We then multiplied this incremental value by the royalty quantities reported on Form MMS–2014 to arrive at an overall net gain or loss associated with the rulemaking.

As noted above, this analysis is a refinement of our earlier analysis (but using 1996 data) and contains some significant differences. The earlier analysis treated all onshore California Federal oil production as if it were produced from the Midway Sunset field. The current analysis used 1998 data and matches production to the area produced. Also, transportation rates are more reflective of lease locations than in the previous analysis. The rate for Salinas Basin crude assumes that all Federal oil produced there is transported by truck.

Oil production increased from onshore Federal California leases by about 8 percent from 1996 to 1998 although the effective royalty rate declined by 2.5 percent (largely due to stripper well royalty rate reductions). Again, while we recognize that not all payors will pay the same transportation rates, we used rates that we believe capture a reasonable representation, on average, of the rates paid by lessees.

Using the procedures in the December 1999 proposal, we estimate a 1998 revenue impact of:

• Category (1)	$1,638,053
• Category (2)	0
• Category (4)	9,277
Total	1,647,330

This revenue is shared 50% with the State of California.

Offshore Gulf of Mexico

The December 1999 proposal established the value of oil not sold at arm's length as either:

(1) The average of the daily mean spot price published in an MMS-approved publication—

(a) For the market center nearest the lease for crude oil similar in quality to the lessee's production, and

(b) For deliveries during the production month, or

(2) the gross proceeds received by the affiliate under an arm's-length contract.

The lessee would have to adjust the value for applicable location and quality differentials, and may adjust it for transportation costs.

There were three different spot prices published for Gulf of Mexico oil in 1998: Eugene Island (30° API, 1.61 percent sulfur), Heavy Louisiana Sweet (32° API, .3 percent sulfur), and Light Louisiana Sweet (37–38° API, .3 percent sulfur).

We believe that all large, independent producers/ marketers with no refinery capacity (Category 3) and small independent producers with no refinery capacity (Category 5) would value crude oil on the basis of arm's-length gross proceeds. Therefore, they were not included in the analysis. We examined the other three categories using the following procedure:

- We identified each individual area and block for each Federal offshore Gulf of Mexico lease.
- We assigned an oil type that most closely represented the oil and condensate specific to each area and block.
- The assigned oil type typically translated directly to the same spot price (e.g., Eugene Island Oil translates directly to the Eugene Island spot price), but in some limited cases, there was no spot price published for the identified oil type (e.g. Mars grade crude). In these cases, we used the spot oil with the characteristics that most closely matched the identified oil (e.g., we used the Eugene Island spot price for Mars oil).
- We calculated the average gravities by payor reported for each lease.
- We made gravity adjustments to the spot price using Equilon Oil Company's (Shell Oil Company in January 1998) offshore oil posted price adjustment scale in effect at the time of production.
- We deducted location differentials from the spot price for the actual movement of the oil from its first onshore location to the spot market. This value was based on FERC tariffs in effect for transport from major onshore gathering points to the spot market centers.
- We then compared the location- and quality-adjusted spot price to the value reported on Form MMS–2014 for each month in 1998. We then multiplied any difference by the royalty quantity for each lease and aggregated the differences.

Under the December 1999 proposal, we estimate a 1998 revenue gain of:

• Category (1)	$52,450,062
• Category (2):	4,658,893
• Category (4):	2,076,900
Total	59,185,855

In 1998, Texas and Louisiana received about 0.5 percent of the Federal oil royalties from the Gulf OCS—$4.9 million of $860 million total—under OCSLA section 8(g). Applying the same 0.5 percent to the above estimate equates to $295,929 in additional revenue for Texas and Louisiana.

Onshore New Mexico

For New Mexico, we split production into two subgroups: the Permian Basin and San Juan Basin. Since the production from New Mexico is roughly 60 percent sweet and 40 percent sour, we used the same 60/40 proportion to calculate a weighted average of the spot prices for West Texas Intermediate (at

Midland, Texas) and West Texas Sour. We then arrived at a monthly price at the lease by taking this weighted average spot value at Midland, Texas, less a charge for transportation specific to the production basin ($0.36 for Permian Basin Crude and $0.59 for San Juan Basin), and a gravity deduction based on 1998 Form MMS–2014 data. The transportation deductions came from the actual per-barrel tariff rates charged by pipelines in the area.

We compared (1) the monthly spot price at the lease to (2) the Category 1, 2, and 4 unit prices less any transportation allowances reported on Form MMS–2014. We multiplied this per-barrel incremental difference by the reported royalty quantity to compute the theoretical royalty gain or loss. We assumed there would be no revenue impact for the large independent producers/marketers without refinery capacity (Category 3) or the small independent producers without refinery capacity (Category 5) because they would pay on gross proceeds accruing from arm's-length sales.

Estimated 1998 revenue gains under the December 1999 proposal for onshore New Mexico are:

• Category (1)	$343,354
• Category (2)	185,883
• Category (4)	240,283
Total	769,520

This additional revenue would be shared 50% with New Mexico.

Rocky Mountain Region

We determined that calculating royalty value differences by State under the benchmark criteria for the RMR would not be meaningful due to lack of information. It is difficult to estimate what unit value a tendering program would have yielded, and we could not reasonably estimate how much production would be offered for sale. It is also difficult to determine the volume-weighted average price of a lessee's arm's-length sales and purchases from a field/area or whether that volume met the 50-percent threshold since we could not determine what sales or purchases were at arm's length. Also, we could not determine a location/quality differential from Cushing, Oklahoma, to the relevant fields/areas in each State due to lack of such transaction information.

In order to arrive at a fair market price that approximated arm's-length sales (i.e., attempting to mirror the valuation criteria), we utilized the monthly weighted average unit value per barrel for the large and small independent producers/marketers with no refining capacity (Categories 3 and 5). Those prices usually were higher than any of the three refiners' categories (1, 2, and 4) unit prices. We decided that this calculated arm's-length price would be a conservative, yet reasonable proxy for unit value payable under this final rule.

For Montana, North Dakota, and Utah we were unable to split the oil volumes into sweet and sour crudes (or Yellow and Black Wax for Utah), so we assumed that the lessees grouped into the five categories produced proportional volumes of the various crude types. Since we utilized unit prices that had already been adjusted for quality, we did not make any further quality adjustments.

For Wyoming, we split production into three distinct areas for review: Big Horn Basin, Green River Basin, and Powder River Basin (including the Wind River, Hanna, Laramie, and Denver-Julesberg Basins). The Powder River Basin contains roughly proportionate volumes of sweet and sour production. For Colorado, we split the analysis into the two dominant areas of production: Rangely and Denver-Julesburg.

Once we grouped the production into areas, we took the monthly weighted average unit price for the large and small independent producers/marketers with no refining capacity (Categories 3 and 5) and compared that price to unit prices of leases in the refiner categories (1, 2, and 4) as reported on Form MMS–2014. We multiplied the price difference per barrel by the royalty quantity to compute the royalty gains or losses. We assumed there would be no revenue impact for the large independent producers/marketers (Category 3) or the small independent producers (Category 5), because they would continue to pay on gross proceeds.

Estimated 1998 revenue gains under this final rule for the RMR (see Appendix A for actual State-by-State breakdown) are:

• Category (1)	$880,417
• Category (2)	196,127
• Category (4)	384,316
Total	$1,460,860

This amount would be shared 50% with the States.

Overall Increase in Revenue:

In summary, based on the 1998 comparison, we estimate the following additional revenues:

• Category 1, major integrated producers with refiner capacity	$59,675,723
• Category 2, large, independent producers with refiner capacity	5,282,150
• Category 4, small, independent producers with refiner capacity	2,837,205
• Grand Total	67,795,078

This estimate does not include estimated benefits to industry which bring the net increase in cost to industry to approximately $67.3 million.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the civil justice reform requirements of sections 3(a) and 3(b)(2) of this Executive Order.

Paperwork Reduction Act

The collections of information associated with this final rule were approved by OMB on February 22, 2000 (OMB Control Number 1010–0136, expiration date February 28, 2003). We estimate that there will be 45 respondents who will submit 85 responses. The frequency of response varies by rulemaking section. We estimate that the total annual burden is 17,711.5 hours, and, using a cost of $50 per hour, the total annual cost is $885,575.

For estimating the burden on industry, we divided the information collection requirements of the rule into the five areas which are summarized below in table format with specific supporting details following each table.

a. Proper valuation of oil not sold at arm's-length.

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of respondents	Burden (in hours)	Annual burden hours
206.103	Calculate value of oil not sold at arm's-length..	Annually	45	Category 1–222.5 Category 2–116 Category 3–31.25	4,231.5

For the reporting requirements associated with Section 206.103, we estimate that there are 45 respondents (lessees of Federal oil leases) that will be required to perform certain calculations and adjustments. We estimate that the total initial burden for all lessees without arm's-length transactions is 4,231.5 hours at a cost of $211,575.

We anticipate that companies would have to sort through their exchange agreement contracts before the relevant ones can be compiled and the required information extracted and used in their royalty computations. We believe the final rule would impact approximately 45 Federal oil lessees that would be required to use index pricing. For purposes of estimating the burden impact of this rule, we have categorized these lessees into three categories:

Category 1 lessees are companies with over 30 million barrels of annual production (this included 13 Federal lessees from our impact analysis).

Category 2 lessees are companies with annual domestic production between 10 and 30 million barrels (this included four Federal lessees from our impact analysis).

Category 3 lessees are companies with less than 10 million barrels of annual domestic production (this included 28 Federal lessees from our impact analysis).

We estimate that Category 1 lessees each would have approximately 1,000 exchange agreement contracts to review annually to identify the relevant contracts needed for proper valuation under this final rule. Of those contracts, we estimate that each company would have to use 250 exchange agreements in its royalty reporting. We estimate that the reporting burden for a Category 1 company is 222.5 hours, including 80 hours to aggregate the exchange agreement contracts to a central location, 80 hours to sort and identify the relevant ones, and 62.5 additional hours to extract the relevant information and apply it in reporting royalties. We estimate the total reporting burden for the 13 Category 1 companies would be 2,892.5 hours (222.5 hours $\times$ 13 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $144,625.

We estimate that Category 2 lessees each would have approximately 250 exchange agreement contracts to review annually to identify the relevant contracts needed for valuation under this rule. Of those contracts, we estimate that each Category 2 company would have to use 63 exchange agreements. We estimate that the reporting burden for a Category 2 company would be 116 hours, including 60 hours to aggregate the exchange agreement contracts to a central location, 40 hours to sort them, and 16 additional hours to extract the relevant information and apply it in reporting royalties. For the four Category 2 companies, we estimate the total burden would be 464 hours (116 hours $\times$ 4 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $23,200.

We estimate that Category 3 lessees each would have approximately 50 exchange agreements to review annually to identify the relevant contracts needed for valuation under this rule. Of those contracts, we estimate that each Category 3 company would have to use 13 exchange agreements. We estimate that the burden for each Category 3 company would be 31.25 hours, including 20 hours to aggregate the exchange agreement contracts to a central location, eight hours to sort them, and 3.25 additional hours to extract the relevant information and apply it in reporting royalties. For the 28 Category 3 companies, we estimate that the burden would be 875 hours (31.25 hours $\times$ 28 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $43,750.

We expect the annual burden to decline somewhat as industry becomes more familiar with the proposed valuation requirements.

b. *Approval of benchmarks in the Rocky Mountain Region.*

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.103(b)(1)	Obtain MMS approval for tendering program ..	1–2 annually	2	400	800
206.103(b)(4)	Obtain MMS approval for alternative valuation methodology.	1–2 annually	2	400	800

For the reporting requirements related to MMS approval of using the benchmarks, we estimate that there will be two responses for each of the two reporting requirements. On occasion, they will be required to submit requests to us in writing.

We anticipate that a lessee will undertake the following four steps in the formulation of specifics surrounding a tendering program or alternate valuation strategy: (1) formulation of valuation methodology: 100 hours, (2) economic evaluation of methodology: 100 hours, (3) legal review of methodology: 150 hours, and (4) presentation to MMS: 50 hours, for a total of 400 hours.

We anticipate four requests a year for an annual burden of 1,600 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate that the cost to industry is $80,000.

c. *Requirements related to requested valuation determinations and approval of location/quality adjustments from MMS.*

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.107(a)(1)–(6)	Request a value determination from MMS	1–2 monthly	8	330	2,640
206.112(b)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	1–2 monthly	8	330	2,640

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.112(f)	Request MMS for location/quality adjustment when information is not available.	1–2 monthly	8	330	2,640

We anticipate that companies may request value determinations on how royalty statutes, regulations, administrative decisions, and policies apply to a specific set of facts. Their requests would have to: (1) Be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the above written requests, we estimate that there will be eight responses annually for each of the reporting requirements. We estimate the annual burden for each of these is 2,640 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $132,000. The total burden is estimated at 7,920 hours and $396,000.

d. *Requirements related to special requests due to unique circumstances.*

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.103(e)(1) and (2)(i)–(iv).	Obtain MMS approval to use value determined at refinery.	1–2 annually	2	330	660
206.110(b)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	1–2 annually	2	330	660
206.110(c)(1) and (3) ...	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	1–2 annually	2	330	660
206.111(g) and (g)(1) ...	Elect actual transportation cost method and depreciation method for non-arm's-length transportation allowances.	1–2 annually	2	330	660
206.111(i)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	1–2 annually	2	330	660
206.111(j)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid product under a non-arm's-length contract..	1–2 annually	2	330	660

There are several provisions in the rule that allow the lessee to propose some special consideration because the existing provisions of the rule may not precisely fit their situation. Like the written requests outlined above, their requests would have to: (1) Be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the reporting requirements related to special requests because of unique circumstances, we estimate that there will be two responses for each of the six situations above. We estimate the annual burden for each of these is 660 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $33,000. The total burden is estimated to be 3,960 hours and $198,000.

e. Currently-approved information collections.

30 CFR 206 Subpart D	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden	Annual burden hours
206.105	Retain all records showing how value was determined.	Burden covered under OMB Control No. 1010–0061			
206.109(c)(2)	Request to exceed regulatory limit—Form MMS–4393.	Burden covered under OMB Control No. 1010–0095			
206.114 and 115(a)	Report a separate line for transportation allowances—Form MMS–2014.	Burden covered under OMB Control No. 1010–0022			
206.114 and 115(c)	Submit transportation documents upon MMS request.	Burden covered under OMB Control No. 1010–0061			

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians lands, Mineral royalties, Natural gas, Petroleum, Pubic lands-mineral resources, Reporting and recordkeeping requirements.

Dated: March 6, 2000.

Sylvia V. Baca,

Acting Assistant Secretary for Land and Minerals Management.

For the reasons given in the preamble, 30 CFR part 206 is amended as set forth below:

Part 206—Product Valuation

1. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Subpart C—Federal Oil is revised to read as follows:

Subpart C—Federal Oil

Sec.

206.100 What is the purpose of this subpart?
206.101 What definitions apply to this subpart?
206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?
206.103 How do I value oil that is not sold under an arm's-length contract?
206.104 What index price publications are acceptable to MMS?
206.105 What records must I keep to support my calculations of value under this subpart?
206.106 What are my responsibilities to place production into marketable condition and to market production?
206.107 How do I request a value determination?
206.108 Does MMS protect information I provide?
206.109 When may I take a transportation allowance in determining value?
206.110 How do I determine a transportation allowance under an arm's-length transportation contract?
206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?
206.112 What adjustments and transportation allowances apply when I value oil using index pricing?
206.113 How will MMS identify market centers?
206.114 What are my reporting requirements under an arm's-length transportation contract?
206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?
206.116 What interest and assessments apply if I improperly report a transportation allowance?
206.117 What reporting adjustments must I make for transportation allowances?
206.118 Are actual or theoretical losses permitted as part of a transportation allowance?
206.119 How are the royalty quantity and quality determined?
206.120 How are operating allowances determined?
206.121 Is there any grace period for reporting and paying royalties after this subpart becomes effective?

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms ''you'' and ''your'' in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee's oil by applying the rules in this subpart to your disposition of the lessee's oil.

(c) If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to ''you'' and ''your'' in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(d) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the MMS Director establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) MMS may audit and adjust all royalty payments.

§ 206.101 What definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope (ANS).

Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that

month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index pricing means using ANS crude oil spot prices, West Texas Intermediate (WTI) crude oil spot prices at Cushing, Oklahoma, or other appropriate crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS-approved publication means a publication MMS approves for determining ANS spot prices, other spot prices, or location differentials.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form MMS–2014.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the ''Four Corners'' area that lie within Colorado and Utah.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such

as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tendering program means a producer's offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit.

Trading month means the span of time during which crude oil trading occurs and spot prices are determined, generally for deliveries of production in the following calendar month. For example, for ANS spot prices, the trading month includes all business days in the calendar month. For other spot prices, for example, the trading month may include the span of time from the 26th of the previous month through the 25th of the current month.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under §§ 206.110 or 206.111. This value does not apply if you exercise an option to use a different value provided in paragraph (d)(1) or (d)(2)(i) of this section, or if one of the exceptions in paragraph (c) of this section applies. Use this paragraph (a) to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract, unless you exercise the option provided in paragraph (d)(2)(i) of this section.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) In conducting reviews and audits, if MMS determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(B) The fact that the price received by the seller under an arm's length contract is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

(d)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(i) If you use § 206.102(a), your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 206.102(d)(1) to use § 206.102(a) or § 206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every 2 years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(ii) When you elect under § 206.102(d)(2)(i) to use § 206.102(a) or § 206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's length. You may not change your election more often than once every 2 years.

(e) If you value oil under paragraph (a) of this section:

(1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(2) You must base value on the highest price the seller can receive through legally enforceable claims under the contract.

(i) If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. But you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits, if:

(A) The seller makes timely application for a price increase or benefit allowed under the contract;

(B) The purchaser refuses to comply; and (C) The seller takes reasonable documented measures to force purchaser compliance.

(ii) Paragraph (e)(2)(i) of this section will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled

must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that is not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 206.102 or that you elect under § 206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with MMS approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the trading month most concurrent with the production month. (For example, if the production month is June, compute the average of the daily mean prices using the daily ANS spot prices published in the MMS-approved publication for all the business days in June.)

(1) To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication.

(2) Use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(4) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations.

(1) If you have an MMS-approved tendering program, value your oil under paragraph (b)(2) of this section. If you do not have an MMS-approved tendering program, you may value your oil under either paragraph (b)(3) or paragraph (b)(4) of this section.

(i) You must apply the same subparagraph of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that you cannot value under § 206.102 or that you elect under § 206.102(d) to value under this section.

(ii) After you select either paragraph (b)(3) or (b)(4) of this section, you may not change to the other method more often than once every 2 years, unless the method you have been using is no longer applicable and you must apply one of the other paragraphs. If you change methods, you must begin a new 2-year period.

(2) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest winning bid price for tendered volumes.

(i) You must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area under your tendering program.

(ii) You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(iii) MMS will provide additional criteria for approval of a tendering program in its ''Oil and Gas Payor Handbook.''

(3) Value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month. Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arms-length purchases or sales to the same gravity as that of the oil produced from the lease.

(4) Value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, during the trading month most concurrent with the production month. (For example, if the production month is June and the trading month is May 26—June 25, compute the average of the daily mean prices using the daily Cushing spot prices published in the MMS-approved publication for all the business days between and including May 26 and June 25.)

(i) Calculate the daily mean spot price by averaging the daily high and low prices for the period in the selected publication.

(ii) Use only the days and corresponding spot prices for which such prices are published.

(iii) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(iv) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(5) If you demonstrate to MMS's satisfaction that paragraphs (b)(2) through (b)(4) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.*

(1) Value is the average of the daily mean spot prices published in any MMS-approved publication:

(i) For the market center nearest your lease for crude oil similar in quality to that of your production (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils—their quality specifications differ significantly); and

(ii) During the trading month most concurrent with the production month. (For example, if the production month is June and the trading month is May 26–June 25, compute the average of the daily mean prices using the daily spot prices published in the MMS-approved publication for all the business days between and including May 26 and June 25 for the applicable market center.)

(2) Calculate the daily mean spot price by averaging the daily high and low prices for the period in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(3) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(d) *Unavailable or unreasonable index prices.* If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *Production delivered to your refinery and index price is unreasonable.*

(1) Instead of valuing your production under paragraph (a), (b), or (c) of this section, you may apply to the MMS Director to establish a value representing the market at the refinery if:

(i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and

(ii) You must value your oil under this section at an index price; and

(iii) You believe that use of the index price is unreasonable.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director establishes a value representing market value at the refinery, you may not take an allowance against that value under § 206.112(b) unless it is included in the Director's approval.

§ 206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable index price publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

(d) MMS may revoke its approval of a particular publication if it determines that the prices published in the publication do not accurately represent spot market values.

§ 206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must be able to show:

(1) How you calculated the value you reported, including all adjustments for location, quality, and transportation, and

(2) How you complied with these rules.

(b) Recordkeeping requirements are found at part 207 of this chapter.

(c) MMS may review and audit your data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 206.107 How do I request a value determination?

(a) You may request a value determination from MMS regarding any Federal lease oil production. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases;

(3) Completely explain all relevant facts. You must inform MMS of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) MMS will reply to requests expeditiously. MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS; or

(3) Inform you in writing that MMS will not provide a value determination. Situations in which MMS typically will not provide any value determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay late payment interest under 30 CFR 218.54.

(3) A value determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) A value determination issued by MMS is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS (for MMS-issued value determinations) or the Assistant Secretary modifies or rescinds it.

(1) A value determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B.

(2) If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

(e) In making a value determination, MMS or the Assistant Secretary may use any of the applicable valuation criteria in this subpart.

(f) A change in an applicable statute or regulation on which any value determination is based takes precedence over the value determination, regardless of whether the MMS or the Assistant Secretary modifies or rescinds the value determination.

(g) The MMS or the Assistant Secretary generally will not retroactively modify or rescind a value determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 206.108.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations

permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *Transportation allowances permitted when value is based on gross proceeds.* MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under §§ 206.110 or 206.111, as applicable. This paragraph applies when:

(1) You value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and

(2) The movement to the sales point is not gathering.

(b) *Transportation allowances and other adjustments that apply when value is based on index pricing.*

If you value oil using an index price under § 206.103, MMS will allow a deduction for certain location/quality adjustments and certain costs associated with transporting oil as provided under § 206.112.

(c) *Limits on transportation allowances.*

(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under § 206.102 or § 206.103 of this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(d) *Allocation of transportation costs.* You must allocate transportation costs among all products produced and transported as provided in §§ 206.110 and 206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *Liability for additional payments.* If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate entry, MMS may assess you an amount under § 206.116.

§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting oil under that contract, except as provided in paragraphs (a)(1) and (a)(2) of this section and subject to the limitation in § 206.109(c). You must be able to demonstrate that your contract is arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.111.

(2) You must calculate the transportation allowance under § 206.111 if MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) MMS will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(1) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(2) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(3) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(c) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.

(1) You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.

(d) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(e) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, do not separately report the transportation factor as a transportation allowance on Form MMS–2014.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?

(a) If you or your affiliate have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform your

own transportation services, calculate your transportation allowance based on your or your affiliate's reasonable, actual transportation costs using the procedures provided in this section.

(b) Base your transportation allowance for non-arm's-length or no-contract situations on your or your affiliate's actual costs for transportation during the reporting period, including:

(1) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(2) Overhead under paragraph (f) of this section;

(3) Depreciation under paragraphs (g) and (h) of this section;

(4) A return on undepreciated capital investment under paragraph (i) of this section; and

(5) Once the transportation system has been depreciated below ten percent of total capital investment, a return on ten percent of total capital investment under paragraph (j) of this section.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(d) Allowable operating expenses include:

(i) Operations supervision and engineering;

(ii) Operations labor;

(iii) Fuel;

(iv) Utilities;

(v) Materials;

(vi) Ad valorem property taxes;

(vii) Rent;

(viii) Supplies; and

(ix) Any other directly allocable and attributable operating expense which you can document.

(e) Allowable maintenance expenses include:

(i) Maintenance of the transportation system;

(ii) Maintenance of equipment;

(iii) Maintenance labor; and

(iv) Other directly allocable and attributable maintenance expenses which you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without MMS approval. You may not depreciate equipment below a reasonable salvage value.

(h) This paragraph describes the basis for your depreciation schedule.

(1) If you or your affiliate own a transportation system on June 1, 2000, you must base your depreciation schedule used in calculating actual transportation costs for production after June 1, 2000, on your total capital investment in the system (including your original purchase price or construction cost and subsequent reinvestment).

(2) If you or your affiliate purchased the transportation system at arm's length before June 1, 2000, you must incorporate depreciation on the schedule based on your purchase price (and subsequent reinvestment) into your transportation allowance calculations for production after June 1, 2000, beginning at the point on the depreciation schedule corresponding to that date. You must prorate your depreciation for calendar year 2000 by claiming part-year depreciation for the period from June 1, 2000 until December 31, 2000. You may not adjust your transportation costs for production before June 1, 2000, using the depreciation schedule based on your purchase price.

(3) If you are the original owner of the transportation system on June 1, 2000, or if you purchased your transportation system before March 1, 1988, you must continue to use your existing depreciation schedule in calculating actual transportation costs for production in periods after June 1, 2000.

(4) If you or your affiliate purchase a transportation system at arm's length from the original owner after June 1, 2000, you must base your depreciation schedule used in calculating actual transportation costs on your total capital investment in the system (including your original purchase price and subsequent reinvestment). You must prorate your depreciation for the year in which you or your affiliate purchased the system to reflect the portion of that year for which you or your affiliate own the system.

(5) If you or your affiliate purchase a transportation system at arm's length after June 1, 2000, from anyone other than the original owner, you must assume the depreciation schedule of the person who owned the system on June 1, 2000.

(i)(1) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (i)(2) of this section.

(2) The rate of return is the industrial bond yield index for Standard and Poor's BBB rating. Use the monthly average rate published in ''Standard and Poor's Bond Guide'' for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(j)(1) After a transportation system has been depreciated at or below a value equal to ten percent of your total capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your total capital investment in the transportation system multiplied by a rate of return under paragraph (i)(2) of this section.

(2) You may apply this paragraph to a transportation system that before June 1, 2000, was depreciated at or below a value equal to ten percent of your total capital investment.

(k) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs consistently and equitably to each of the liquid products transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method if it is consistent with the purposes of the regulations in this subpart.

(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS.

(2) You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.

§ 206.112 What adjustments and transportation allowances apply when I value oil using index pricing?

When you use index pricing to calculate the value of production under § 206.103, you must adjust the index price for location and quality differentials and you may adjust it for certain transportation costs, as specified in this section.

(a) If you dispose of your production under one or more arm's-length exchange agreements, then each of the conditions in this paragraph applies.

(1) You must adjust the index price for location/quality differentials. You must determine those differentials from each of your arm's-length exchange agreements applicable to the exchanged oil.

(i) Therefore, for example, if you exchange 100 barrels of production from a given lease under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, separately determine the location/quality differential under each of those exchange agreements, and apply each differential to the corresponding index price.

(ii) As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, total the three adjustments from those exchanges to determine the adjustment under this subparagraph. (If one of the three exchanges was not at arm's length, you must request MMS approval under paragraph (b) of this section for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

(2) You may adjust the index price for actual transportation costs, determined under § 206.110 or § 206.111:

(i) From the lease to the first point where you give your oil in exchange; and

(ii) From any intermediate point where you receive oil in exchange to another intermediate point where you give the oil in exchange again; and

(iii) From the point where you receive oil in exchange and transport it without further exchange to a market center, or to a refinery that is not at a market center.

(b) For non-arm's-length exchange agreements, you must request approval from MMS for any location/quality adjustment.

(c) If you transport lease production directly to a market center or to an alternate disposal point (for example, your refinery), you may adjust the index price for your actual transportation costs, determined under § 206.110 or § 206.111.

(d) If you adjust for location/quality or transportation costs under paragraphs (a), (b), or (c) of this section, also adjust the index price for quality based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center. Make this adjustment only if and to the extent that such adjustments were not already included in the location/quality differentials determined from your arm's-length exchange agreements.

(e) For leases in the Rocky Mountain Region, for purposes of this section, the term ''market center'' means Cushing, Oklahoma, unless MMS specifies otherwise through notice published in the **Federal Register**.

(f) If you cannot determine your location/quality adjustment under paragraph (a) or (c) of this section, you must request approval from MMS for any location/quality adjustment.

(g) You may not use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under this section.

§ 206.113 How will MMS identify market centers?

MMS periodically will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

(a) Points where MMS-approved publications publish prices useful for index purposes;

(b) Markets served;

(c) Input from industry and others knowledgeable in crude oil marketing and transportation;

(d) Simplification; and

(e) Other relevant matters.

§ 206.114 What are my reporting requirements under an arm's-length transportation contract?

You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur. MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 207 of this chapter.

§ 206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?

(a) You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.

(b) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems. Section 206.117 will apply when you amend your report based on your actual costs.

(c) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 207 of this chapter.

§ 206.116 What interest and assessments apply if I improperly report a transportation allowance?

(a) If you or your affiliate net a transportation allowance rather than report it as a separate entry against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease selling arrangement per sales period.

(b) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under § 206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate file an exception request that MMS approves. If you do not file an exception request, or if MMS does not approve your request, you must pay interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

§ 206.117 What reporting adjustments must I make for transportation allowances?

(a) If your or your affiliate's actual transportation allowance is less than the amount you claimed on Form MMS–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under 30 CFR 218.54 from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form MMS–2014 for any month during the allowance form reporting period, you are entitled to a

credit plus interest under applicable rules.

§ 206.118 Are actual or theoretical losses permitted as part of a transportation allowance?

You are allowed a deduction for oil transportation which results from payments that you make (either volumetric or for value) for actual or theoretical losses only under an arm's-length contract. You may not take such a deduction under a non-arm's-length contract.

§ 206.119 How are royalty quantity and quality determined?

(a) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases or MMS for offshore leases.

(b) If the value of oil determined under this subpart is based upon a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for onshore leases or MMS for offshore leases, adjust the value for those differences in quantity or quality.

(c) You may not claim a deduction from the royalty volume or royalty value for actual or theoretical losses except as provided in § 206.118. Any actual loss that you may incur before the royalty settlement metering or measurement point is not subject to royalty if BLM or MMS, as appropriate, determines that the loss is unavoidable.

(d) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either before or after the approved point of royalty settlement.

§ 206.120 How are operating allowances determined?

MMS may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. MMS will specify the allowance amount or formula in the notice of sale and in the lease agreement.

§ 206.121 Is there any grace period for reporting and paying royalties after this subpart becomes effective?

You may adjust royalties reported and paid for the three production months beginning June 1, 2000, without liability for late payment interest. This section applies only if the adjustment results from systems changes needed to comply with new requirements imposed under this subpart that were not requirements under the predecessor rule.

[FR Doc. 00–6049 Filed 3–14–00; 8:45 am]

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Federal Register

Wednesday,
March 15, 2000

Part III

Department of Energy

Bonneville Power Administration

Proposed Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Hearing on Proposed Open Access Transmission Tariff.

SUMMARY: BPA File No.: TC–02. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file designation number TC–02.

BPA's Transmission Business Line (TBL) is proposing open access non-rate terms and conditions for transmission services over the Federal Columbia River Transmission System (FCRTS). Such terms and conditions are proposed to be effective October 1, 2001. By this notice, the TBL is announcing commencement of a formal administrative proceeding, procedures for intervention, and a comment period for non-party participants.

DATES: Persons wishing to become formal parties to the proceeding must notify BPA's TBL in writing of their intention to do so, in accordance with the requirements stated in this Notice. Petitions to intervene must be received by 4:30 p.m. on March 27, 2000.

The formal administrative proceeding will begin with a pre-hearing conference at 9:00 a.m. on March 29, 2000. The Initial Proposal will be available to parties at that time.

Persons wishing to comment on the proposed transmission terms and conditions who are not formal parties to the proceeding (''participants'') must submit written comments on the proposal by June 15, 2000, to be considered in the Record of Decision (ROD).

ADDRESSES:

1. Petitions to intervene should be addressed as follows: Todd Miller, Hearing Clerk–LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon 97232. In addition, a copy of the petition must be served concurrently on and directed to BPA's General Counsel, Attention Mr. Stephen R. Larson LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232.

2. Written comments by participants should be submitted to the Corporate Communication Manager-KC–7, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. You may also e-mail your comments to: comment@bpa.gov. Comments from participants are incorporated into the Official Record and will be considered by the Hearing Officer and the Administrator.

3. The pre-hearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon, on March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Information may also be obtained from Mr. Michael Hansen-KC–7, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621; by phone (503) 230–4328, toll free at 1–800–622–4519; or via e-mail to mshansen@bpa.gov.

Responsible Official: Mr. Dennis Metcalf, Transmission Rate Case Manager, is the official responsible for the development of BPA's Open Access Tariff.

SUPPLEMENTARY INFORMATION:

Electronic Access and Copies

The proposed Open Access Tariff may be obtained from the TBL website at www.transmission.bpa.gov/ratecase.httm. To receive a hard copy, contact BPA's Public Information Office at 905 NE 11th Ave., 1st floor, Portland, Oregon 97232; by phone to (503) 230–4328 or toll-free 1–800–622–4519.

Concurrent Transmission Rate Adjustment Proceeding

BPA will hold a Transmission Rate Adjustment proceeding concurrently with this proceeding. BPA is also publishing in the **Federal Register** a separate notice regarding the proposed 2002–2003 transmission and ancillary services rates.

Issued in Portland, Oregon, on February 28, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

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Part I—Introduction and Procedural Background

BPA's existing Open Access Tariff was approved by the Federal Energy Regulatory Commission (Commission) as an acceptable reciprocity open access tariff. BPA's TBL is now proposing to establish revised terms and conditions of general applicability for transmission services over the FCRTS. The Federal Power Act amendments, passed by Congress in the Energy Policy Act of 1992, provide that BPA may institute a formal regional hearing on transmission terms and conditions which it proposes to establish for general applicability, 16 U.S.C. 824k(i)(2). If the BPA Administrator determines to hold such a hearing, notice of the hearing is to be provided in the **Federal Register** with a written explanation of the reasons why the terms and conditions are being proposed. The hearing must adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(i), except that the Hearing Officer shall make a recommended decision to the Administrator, including the reasons and bases for such recommendations, on all material issues of fact, law, or discretion presented on the record. The BPA Administrator shall then make a determination based on the record, setting forth the reasons for reaching any findings and conclusions which may differ from those of the Hearing Officer. At the conclusion of this hearing, BPA intends to again file the Administrator's decision with the Commission for approval as a reciprocity tariff.

This proceeding will be governed by Section 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings (Procedures), 51 FR 7611 (1986), as modified by the Hearing Officer at the pre-hearing conference. Section 1010.7 of the Procedures prohibits *ex parte* communications. *Ex parte* limitations were imposed beginning January 24, 2000. Because it is the TBL's largest customer, BPA's Power Business Line (PBL) is expected to intervene as a party to this proceeding. Consequently, the *ex parte* rules will apply to communications between the PBL and the TBL.

A proposed Schedule for the formal hearing is stated below. A final Schedule will be established by the Hearing Officer at the pre-hearing conference.

March 27, 2000—Petitions to Intervene
March 29, 2000—Pre-hearing Conference and Filing of BPA Direct Case
May 22, 2000—Parties File Direct Cases
June 15, 2000—Close of Participant Comments
June 19, 2000—Litigants File Rebuttal Testimony
July 11, 2000—Cross-Examination Begins
August 14, 2000—Initial Briefs Filed
August 18, 2000—Oral Argument Before the Administrator

September 11, 2000—Hearing Officer's Recommendations
September 29, 2000—Draft ROD issued
October 13, 2000—Briefs on Exceptions
November 3, 2000—Final ROD—Final Studies

Part II—Scope and Purpose of Hearing

These revised terms and conditions are being proposed to (1) incorporate more of the wording of the Commission's *pro forma* open access tariff than is the case with BPA existing Open Access Tariff; (2) implement a Network Contract Demand transmission service in addition to the *pro forma* Point-to-Point and Network Integration Transmission services; and (3) implement various other modifications to the *pro forma* tariff, including a congestion management mechanism, which BPA believes will provide more reliable and efficient transmission services to its customers. The proposed revised Open Access Tariff is proposed to be effective October 1, 2001.

One non-rate term and condition issue is being decided in BPA's current 2002 power rate proceeding. That issue is whether BPA's TBL will pay for the acquisition of transmission service over intervening network equivalent non-Federal transmission facilities for delivery of non-Federal power to certain of its customers (''GTA customers''). This issue will not be revisited in this proceeding. The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing regarding this issue.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participant's written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the pre-hearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Additional information may be obtained from the TBL website at www.transmission.bpa.gov/ratecase.httm.

Written comments by participants will be included in the record if they are received by June 15, 2000. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in the **ADDRESSES** section.

Persons wishing to become a party to this Open Access Transmission Terms and Conditions proceeding must notify BPA in writing. Petitioners may designate no more than two (2) representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status, and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 4:30 p.m. on March 27, 2000. The petitions should be directed to: Todd Miller, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the pre-hearing conference. Any opposition to an intervention petition may instead be made at the pre-hearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to a late petition to intervene filed after the pre-hearing conference shall be filed and received by BPA within two (2) days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written material submitted entered into the record by BPA and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop Final Open Access Transmission terms and conditions based on the entire record, including the hearing record certified by the Hearing Officer, the recommendations of the Hearing Officer, and comments received from participants. The Administrator will then issue a Draft Record of Decision. Parties will have an opportunity to respond to the Draft Record of Decision as provided in BPA's Procedures. The Administrator will then issue a Final Record of Decision with the Final Open Access Tariff and will serve copies of the Final Record of Decision on all parties. At the conclusion of the proceeding, BPA will file its Open Access Tariff with the Commission for review and approval as an acceptable reciprocity tariff.

BPA must continue to meet with customers in the ordinary course of business during this proceeding. To comport with the procedural rule prohibiting *ex parte* communications, BPA will provide necessary notice of meetings involving issues raised in the proceeding to allow for participation by all parties to the proceeding. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to participate fully in every aspect of the proceeding.

Part IV—Summary of Proposal

BPA is proposing an Open Access Tariff based on the *pro forma* tariff contained in the Commission's Order 888–A. The following is a brief summary of the major modifications being proposed to the *pro forma* tariff:

- Addition of a third Open Access Transmission service, Network Contract Demand service, which combines flexible use of Network Resources with the ability either to serve native load or to make third party sales; the flexibility to use Network Resources at Points of Receipt is matched by the flexibility at Points of Delivery to take firm service at Secondary Points of Delivery, if capacity is available.
- Addition of a redispatch congestion management mechanism based on incremental and decremental bids from resource owners.
- Change from a first-come, first-served approach to a first-to-confirm approach.
- Addition of an option for customers requesting Long-Term Firm Point-to-Point or Network Contract Demand service to maintain priority access prior to executing a service agreement by paying a Capacity Holding Fee which will be credited towards the customer's first month's bill if the customer executes a Service Agreement.

• Addition of the right of applicants for Short-Term Firm Point-to-Point service to pre-confirm their requests.

• The ability of Point-to-Point customers to request Daily Firm service with a term ranging from one (1) day to 364 days.

• The addition of Hourly Firm service.

• The elimination of any reference to BPA native load.

• The elimination of the BPA Power Business Line's obligation to redispatch its generation to provide transmission capacity in response to service requests.

• The elimination of ''bumping'' rights among requests for Firm Point-to-Point service.

• Clarification of the mechanism for postponing the commencement of firm transmission service.

• The elimination of any application deposit or processing fee.

• Addition of an explicit obligation to transfer service under the Open Access Tariff to the tariff of a Regional Transmission Organization (RTO), when formed.

• Elimination of the Load Ratio Share concept from Network Integration Service.

• Addition of a right of Network Integration Customers to deduct Customer-Served Load from the base charge applied to Network Load.

• Addition of a definition for dynamic scheduling.

• Elimination of the reservation priority for existing customers when their contracts expire.

• Losses—Consistent with the pro forma tariff, TBL is including loss percentages in the tariffs. Because of time constraints, TBL has not rerun the loss studies, so the loss percentages have not changed from the current ones in place since October 1, 1996. These losses are based on average losses by segment. TBL believes a methodology based on incremental losses (perhaps constrained to just recover total losses) would provide a more accurate price signal concerning the impact of resource and load location and their shape over time. This could result in more efficient resource location, more efficient generation dispatch, and a more equitable assignment of the cost of losses. TBL is considering developing such a loss recovery methodology after the conclusion of this Terms and Condition proceeding. TBL requests comments on this idea from customers and other interested parties.

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Wednesday,
March 15, 2000

Part IV

Department of Energy

Bonneville Power Administration

2002–2003 Proposed Transmission Rate Adjustment Public Hearing and Opportunities for Public Review and Comment; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of 2002–2003 Proposed Transmission Rate Adjustment.

SUMMARY: BPA Files No. TR–02. BPA requests that all comments and documents intended to become part of the Official Record in this proceeding contain the file number designation TR–02.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its transmission rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the transmission of electric power, the Federal investment in the Federal Columbia River Transmission System (FCRTS), and other costs and expenses incurred by BPA. The Northwest Power Act also requires that BPA's rates be established based on the record of a formal hearing. The Federal Columbia Transmission System Act requires that transmission costs be equitably allocated between Federal and non-Federal power using the system. The Federal Power Act requires that no BPA transmission rate applicable to transmission service ordered by the Federal Energy Regulatory Commission shall be unjust, unreasonable, or unduly discriminatory or preferential as determined by the Commission. By this notice, BPA announces its proposed transmission and ancillary service rates to be effective on October 1, 2001, and the commencement of a transmission rate adjustment proceeding.

DATES: Persons wishing to become formal parties to the proceeding must notify BPA in writing of their intention to do so by the requirements stated in this Notice. Petitions to intervene must be received by BPA no later than 4:30 pm on March 27, 2000.

The rate adjustment proceeding will begin with a pre-hearing conference at 9:00 am on March 29, 2000, in Portland, Oregon.

Written comments by non-party participants must be received by June 15, 2000, to be considered in the Record of Decision (ROD).

ADDRESSES: 1. Petitions to intervene should be directed to Todd Miller, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon, 97232. In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Stephen R. Larson—LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232 (see Part III, A for more information).

2. Written comments by participants should be submitted to the Manager, Corporate Communication—KC–7, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212. You may also e-mail your comments to: comment@bpa.gov.

3. The pre-hearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Information may also be obtained from Mr. Michael Hansen—KC–7, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; by phone at (503) 230–4328 or toll free at 1–800–622–4519; or via e-mail to mshansen@bpa.gov.

Responsible Official: Mr. Dennis Metcalf, Transmission Rate Case Manager, is the official responsible for the development of BPA's transmission and ancillary service rates.

SUPPLEMENTARY INFORMATION: BPA will be holding a formal proceeding to establish its Open Access Transmission terms and conditions concurrently with this transmission rate adjustment proceeding. BPA is also publishing a separate notice in the **Federal Register** regarding the Open Access terms and conditions proceeding.

Issued in Portland, Oregon, on February 28, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

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2002 Transmission and Ancillary Service Rate Schedules and General Rate Schedule Provisions

FPT–02.1 Formula Power Transmission Rate
FPT–02.3 Formula Power Transmission Rate
IR–02 Integration of Resources Rate
NT–02 Network Integration Rate
NCD–02 Network Contract Demand Rate
PTP–02 Point-to-Point Rate
IS–02 Southern Intertie Rate
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Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, publication of notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986) (Procedures). These Procedures implement the statutory Section 7(i) requirements. This rate proceeding will be governed by section 1010.9 of the Procedures providing for a general rate proceeding, as modified by the Hearing Officer at the pre-hearing conference. BPA, however, will not hold any field hearings to provide for non-party participant oral comments. Section 1010.7 of the Procedures prohibits *ex parte* communications. BPA imposed *ex parte* limitations beginning January 24, 2000.

The Bonneville Project Act, 16 U.S.C. 832; the Flood Control Act of 1944, 16 U.S.C. section 825s; the Federal Columbia River Transmission System Act, 16 U.S.C. 838; the Northwest Power Act, 16 U.S.C. 839; and the Federal Power Act, 16 U.S.C. 212(i)(1)(B)(ii) provide guidance regarding BPA's ratemaking. With regard to transmission rates, the Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of transmitting electric power, including amortization of the Federal investment over a reasonable period of years, and the other costs and expenses incurred by the Administrator. The Federal Columbia Transmission System Act requires that the costs of the Federal Columbia River Transmission System be equitably allocated between Federal and non-Federal power utilizing the system. In addition, rates for Commission-ordered transmission service shall be at rates and charges that permit the recovery of all costs incurred in connection with the transmission service and necessary associated services. BPA must satisfy section 212(i) of the Federal Power Act, 16 U.S.C. 824k(i), which requires that no BPA transmission rate applicable to transmission service ordered by the Commission shall be unjust, unreasonable, or unduly discriminatory or preferential as determined by the Commission.

BPA's proposed 2002 Transmission Rate Schedules are published in Part V below. Rate studies and documentation listed in Part IV will be provided to parties at the pre-hearing conference to be held on March 29, 2000, from 9:00 am to 12:00 pm, BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon.

To request any of the studies by telephone, call BPA's document request line, (503) 230–4328 or call toll-free 1–800–622–4519. Please request the document by its listed title. Also state whether you require the accompanying documentation (these can be quite lengthy), otherwise the study alone will be provided. The studies and documentation will also be available on BPA's website at http://www.transmission.bpa.gov/ratecase.

A proposed schedule for the formal hearing is stated below. A final schedule will be established by the Hearing Officer at the pre-hearing conference.

March 27, 2000: Petitions to Intervene

March 29, 2000: Pre-hearing Conference and Filing of BPA Direct Case

May 22, 2000: Parties File Direct Cases

June 15, 2000: Close of Participant Comments

June 19, 2000: Litigants File Rebuttal Testimony

July 11, 2000: Cross-Examination Begins

August 14, 2000: Initial Briefs Filed

August 18, 2000: Oral Argument Before the Administrator

September 11, 2000: Hearing Officer's Recommendations

September 29, 2000: Draft ROD Issued

October 13, 2000: Briefs on Exceptions

November 3, 2000: Final ROD—Final Studies

Part II—Purpose and Scope of Hearing

A. Key Components

1. Overview

BPA is committed to marketing its power and transmission services separately in a manner that is modeled after the regulatory initiatives to promote competition in wholesale power markets that were adopted by the Commission in 1996. The Commission's initiatives in Orders 888[1] and 889[2] directed public utilities regulated under the Federal Power Act to separate their power merchant functions from their transmission reliability functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by statute to follow the Commission's regulatory directives promoting competition and open access transmission service, BPA has elected to separate its power and transmission operations and unbundle its rates in a manner consistent with the directives to the extent permitted by law. Accordingly, in 1996 BPA established separate business lines: BPA's Power Business Line (PBL) which performs BPA's wholesale merchant functions, and BPA's Transmission Business Line (TBL) which performs BPA's transmission system operations and reliability functions.

2. Bifurcated Rate Case

In setting rates for the period beginning October 1, 2001, BPA decided to bifurcate its general rate proceeding into separate power and transmission rate proceedings. Establishing BPA's power rates and transmission and ancillary services rates in separate rate cases is consistent with the Commission's functional separation and unbundling paradigm because it permits BPA to resolve power and transmission issues in separate rate proceedings. The proceeding to establish BPA's wholesale power rates was noticed in the **Federal Register** on August 13, 1999, and a formal proceeding began on August 24, 1999.

This notice announces a proceeding to establish BPA's transmission and ancillary services rates for the period October 1, 2001, to September 30, 2003.

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Pubic Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats & Regs ¶ 31,036 (1996).

[2] Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, FERC Stats & Regs ¶ 31,035 (1996).

BPA's Standards of Conduct do not permit preferential access by the PBL to information about BPA's transmission or ancillary service pricing. The PBL will therefore be a party to the transmission rate proceeding. The PBL will file its own testimony and briefs, and will be subject to the rules regarding *ex parte* communications.

3. Two-Year Transmission Rate Period

Based on customer input in BPA's transmission workshops, the rate period for the rates proposed in this transmission rate adjustment proceeding will be two years (FY2002–2003). The two-year rate period was adopted in anticipation of the formation of a Regional Transmission Organization (RTO). BPA considers that setting rates for this interim period will bridge a gap between the expiration of its current rates on September 30, 2001, and the formation of an RTO which could incorporate BPA's transmission facilities.

B. Cost Increases

In the 1996 Rate proceeding, BPA originally proposed a 36 percent transmission rate increase to cover forecasted costs over the five-year rate period (FY1997–2001). As part of the global settlement of power and transmission issues, the 1996 transmission rate increase was limited to 13.5 percent for the five-year rate period. The TBL implemented cost cuts and efficiencies in its transmission operation and maintenance programs over the last few years, and deferred transmission system improvements in an attempt to stay within the cost levels forecasted for the FY1997–2001 rate period. A number of factors have caused costs to be greater than levels forecasted in the 1996 case and BPA expects further increases in the next rate period. These factors include:

- Business line separation costs including the implementation of separate systems for scheduling, billing, contracting and marketing functions.
- TBL's obligation to fully fund payments to the Civil Service Retirement System (an additional $27.6 million in FY02 and $17.6 million in FY03), and negotiated wage and benefits increases for the 50 percent of all TBL positions covered by the Columbia Power Trades Council (CPTC) Agreement.
- Increased capital investments that are needed due to load growth, reactive needs, new generation reinforcements, constrained paths, changes in reliability criteria, and system replacements.
- Increased investments in technology and personnel to address significantly higher and more complex uses of BPA's transmission system.
- Planning for replacements of an aging TBL workforce, one-half of which is eligible to retire within five (5) years.
- The costs of generation inputs needed to provide ancillary services which are now the responsibility of the TBL as a result of functional unbundling. A portion of these costs were previously bundled in the power rates.

C. Overview of the Public Process

1. Transmission Rate Case Customer Workshops

In preparation for the formal rate hearing, 17 customer workshops were held during 1999. TBL held 12 rate case workshops in early 1999 with individual customer and constituent groups to solicit feedback on broad alternatives for the transmission and ancillary services rates and the transmission terms and conditions proposals, the timing of the formal proceedings, and the term of the rate period. In an August 1999 workshop, TBL discussed how it had incorporated customer input regarding the timing of the proceeding, the length of the rate period, proposed transmission terms and conditions and key rate issues. Four additional workshops were held in the fall of 1999 to discuss specific rate and terms and conditions issues. Two final workshops were held in January 2000 to present preliminary transmission and ancillary service rates, and proposed open access terms and conditions to interested parties.

2. Program Level Funding Workshops

Issues concerning future capital investments in the transmission system and transmission expense levels for transmission system development, operation and reliability are being addressed in a public process separate from the transmission rate adjustment proceeding announced in this notice. The public process consists of numerous regional workshops to solicit public comment on BPA's proposed spending levels for transmission system operations and reliability. Oral and written comments are provided by workshop participants regarding the planned transmission capital spending and expenses associated with supporting a reliable and safe transmission system. Notices of the workshops were widely distributed to TBL's customers and interested parties and were published on BPA's Transmission external website. Five public workshops were held in November 1999 and two in February 2000. Written comments on the planned transmission capital spending and expenses were accepted through February 25, 2000. The workshops explored customer and constituent views on:

- Maintaining system reliability commensurate with national and regional guidelines.
- Meeting local load growth.
- Improving areas where the transmission system is constrained.
- Upgrading communications systems with fiber optics.
- Replacing aging equipment.
- Succession planning for the aging workforce, specifically in critical positions.

BPA will close out the public process by issuing a decision by the Administrator on transmission spending levels. The results of the Administrator's decision on transmission program spending levels will be reflected in the revenue requirement study in the final rate proposal.

D. Scope of the Transmission Rate Proceeding

Many of the decisions that determine TBL's costs have been or will be made in public review processes other than the transmission rate proceeding. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the transmission rate proceeding and those that are outside the scope.

1. Spending Levels

As described above, Program Level Funding workshops were held throughout the region to clarify, discuss, and provide the public the opportunity to comment orally and in writing on the proposed capital expenditures and expenses for transmission. BPA will consider the comments. The Administrator will close out the public process by issuing a final decision on the spending levels. The results of that decision will serve as the basis for the transmission capital and expense levels that will be reflected in the revenue requirements study in the final rate proposal. In addition, decisions may be made by Congress during this proceeding regarding spending levels for transmission investments and expenses including fiber optic communication equipment on federal transmission facilities. Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to

challenge the appropriateness or reasonableness of the Administrator's decision on transmission spending levels, including capital and expense budgets currently under review in the Program Level Funding public process. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate proceeding. Excluded from this direction are matters such as sources of capital for investments, interest rate forecasts, scheduled amortization, forecasted depreciation, forecasts of system replacements for repayment studies, and interest expense. Also excluded are expense and revenue uncertainties and risks included in the risk analysis.

2. Issues Decided in Power Rate Proceeding

As BPA's August 13, 1999, **Federal Register** notice indicates, a number of issues that affect BPA's transmission and ancillary service rates are addressed in BPA's wholesale power rate proceeding. In the Power rate proceeding, BPA proposed the following: A methodology for functionalizing generation and transmission costs, including a methodology for functionalizing corporate overhead costs to the business lines; unit costs for generation inputs for operating reserves and regulation ancillary services; the generation input cost for reactive supply and voltage control from generation resources; the generation costs of station service and remedial action schemes; and the allocation of generation integration and generator step-up transformers costs to the business lines. BPA also proposed in that proceeding a treatment for costs over third party transmission systems (General Transfer Agreements or their replacement) for the delivery of Federal and non-Federal power.

A decision in the Power rate proceeding is expected before the conclusion of the Transmission rate proceeding. Therefore, the initial proposal in the Transmission rate proceeding reflects BPA's proposals in the Power rate proceeding. It is BPA's intent that the Administrator's final decision on these issues in the Power rate proceeding will be reflected and implemented in the final studies in the final transmission rate proposal. The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to address final decisions in the Power rate proceeding.

The National Environmental Policy Act. BPA's initial rate proposal falls within the scope of the final Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995), completed in June 1995. The analysis in the EIS includes an evaluation of the environmental impacts of rate design issues for BPA's transmission products and services. Comments on the Business Plan EIS were received outside the formal rate hearing process and were included in the 1996 rate case record and considered by the Administrator in the final rate proposal. BPA will review the Business Plan EIS to ensure the impacts of BPA's 2002 Transmission rate proposal is within the range of alternatives. If a supplemental analysis is needed, BPA will seek comments outside of the formal rate proceeding. Comments, if received, will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 2002 transmission and ancillary services rates.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the pre-hearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by June 15, 2000. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in the **ADDRESSES** section of this Notice.

Persons wishing to become a party to this transmission rate adjustment proceeding must notify BPA in writing. Petitioners may designate no more than two (2) representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status, and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 4:30 pm on March 27, 2000. The petition should be directed to: Todd Miller, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the pre-hearing conference. Any opposition to an intervention petition may instead be made at the pre-hearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to a petition to intervene filed after the pre-hearing conference shall be filed and received by BPA within two (2) days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written material entered into the record by BPA and the parties, written comments from participants and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement, if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the record, information from the program level funding workshops, documents prepared pursuant to the National Environmental Policy Act and other environmental statutes and such other material or information as may have been submitted to or developed by the Administrator. The basis for the final proposed rates first will be expressed in the Administrator's Draft Record of Decision. Parties will have an opportunity to respond to the Draft Record of Decision as provided in BPA's Procedures. The Administrator will serve copies of the Final Record of Decision on all parties. BPA will file its rates with the Commission for

confirmation and approval after issuance of the Final Record of Decision.

BPA must continue to meet with customers in the ordinary course of business during the rate proceeding. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving rate proceeding issues to provide an opportunity for participation by all rate proceeding parties. Parties should be aware, however, that such meetings may be held on very short notice and should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding.

Part IV—Major Studies and Summary of Proposal

A. Major Studies

1. Revenue Requirement—Calculates transmission revenue requirements for the FY 2002–2003 rate period and assigns revenue requirements to transmission segments and ancillary services. The Revenue Requirement Study also demonstrates cost recovery for the transmission function.

2. Segmentation—Assigns the transmission facilities to segments according to the types of services they provide. Six transmission segments are identified: Generation Integration, Integrated Network, Southern Intertie, Eastern Intertie, Utility Delivery, and DSI Delivery. In addition, a new Ancillary Services segment is identified which is subdivided into the specific ancillary services.

3. Transmission Rate Study—Forecasts sales, allocates costs to the various services, and designs rates to recover allocated costs.

B. Summary of Proposal

1. Transmission Rates

TBL is proposing five different rates for the use of its Integrated Network segment:

• Formula Power Transmission (FPT–02) rate—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis. FPT customers are not subject to charges for the two required ancillary services, Reactive Supply and Voltage Control from Generation Sources, and Scheduling, System Control and Dispatch. Although TBL is not offering new FPT contracts, a number of FPT contracts continue in place during the rate period.

• Integration of Resources (IR–02) rate—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to the PTP service. It includes a Short Distance discount. Although TBL is not offering new IR contracts, a number of IR contracts remain in place during the rate period.

• Network Integration Transmission (NT–02) rate—The NT rate applies to customers taking service under the NT open access tariff, which allows customers to flexibly serve their retail load. It includes a Load Shaping Charge applied to the customer's total load, and a Base Charge applied to the total load less Customer Served Load, if any. Customer Served Load is the amount of load that the customer agrees to serve without using its NT service. NT customers also must participate in redispatch protocols and pay a share of redispatch costs.

• Point to Point (PTP–02) rate—The PTP rate is a contract demand rate that applies to customers taking service on BPA's network facilities under the PTP open access tariff, which provides customers with flexible service from identified Points of Receipt (PORs) to identified Points of Delivery (PODs). There are separate PTP rates for long-term firm service; daily firm and non-firm service; and hourly firm and non-firm service. The rate for long-term firm service contains a Short Distance discount. All daily and hourly PTP rates are downwardly flexible.

• Network Contract Demand (NCD–02) rate—The NCD rate is a contract demand rate that applies to service under the NCD open access tariff, which provides customers with flexible long term service from Network Resources to identified Points of Delivery. The flexibility that NCD customers have to utilize Network Resources is matched by the flexibility to receive firm service at secondary PODs. NCD customers also must participate in redispatch protocols and pay a share of redispatch costs.

In addition to the five rates for network use, other proposed transmission rates include:

• Southern Intertie (IS–02) and the Montana Intertie (IM–02) rates are contract demand rates that apply to customers taking service under the PTP open access tariff on the Southern Intertie and Montana Intertie. These rates are structured similarly to the PTP rate for service on network facilities.

• The Townsend-Garrison Transmission (TGT–02) rate and the Eastern Intertie rate (IE–02) are developed pursuant to the Montana Intertie agreement.

• The Use-of-Facilities (UFT–02) rate establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.

• The Advance Funding (AF–02) rate allows TBL to collect the capital and related costs of specific facilities through an advance-funding mechanism.

Other charges that may apply include a Delivery Charge for the use of low-voltage delivery substations, a Power Factor Penalty Charge, a Reservation Fee for customers who delay start of requested long-term firm service, a redispatch charge to NT and NCD customers for the net cost of redispatch, Incremental Rates for transmission requests that require new facilities, a penalty charge for failure to comply with TBL's curtailment, redispatch or load shedding orders, and an Unauthorized Increase Charge for customers who exceed their contracted amounts.

2. Ancillary Services Rates

TBL is proposing rates for the six (6) ancillary services that FERC Order 888 requires transmission providers to offer:

• Scheduling, System Control, and Dispatch Service is required to schedule and secure the movement of power through, out of, within, or into the BPA Control Area. All transmission contract holders, except FPT customers, are required to purchase this service from BPA. The billing factor is the same as the billing factor for the transmission service being provided. For NT customers, the billing factor is the same as for the NT Base charge.

• Reactive Supply and Voltage Control from Generation Sources Service provides reactive support to the transmission system, and is required to maintain transmission system voltages within acceptable limits. All transmission contract holders, except FPT customers, are required to purchase this service from BPA. The billing factor is the same as the billing factor for the transmission service being provided. For NT customers, the billing factor will be the same as for the NT Base charge.

• Regulation and Frequency Response Service provides the continuous balancing of resources (generation and interchange) with load and maintains frequency at 60 Hz. This service is accomplished by committing on-line generation (predominantly through the use of automatic generation control equipment) whose output is raised or lowered to follow the moment to moment changes in load. Rates for this service will be applied to load in the BPA control area.

• Energy Imbalance Service is delivered when a difference occurs between the scheduled and actual

delivery of energy to a load located within the control area over a single hour. The rate for energy imbalance differs based on whether the imbalance is inside or outside tolerance limits.

• Operating Reserve-Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. The billing factor for this service is the customer's share of the reserve obligation of the control area, as defined by the Western Systems Coordinating Council and the Northwest Power Pool.

• Operating Reserve-Supplemental Reserve Service is available within a short period of time to serve load in the event of a system contingency. This service may be provided by units that are on-line but unloaded, quick-start generation, or by interruptible load. The billing factor for this service is the customer's share of the reserve obligation of the control area, as defined by the WSCC and the Northwest Power Pool.

In addition to the rates for Ancillary Services, the TBL is proposing rates for four (4) Control Area services.

3. Issues

Risk Analysis: For the first time, BPA will include an independent risk analysis performed for the transmission function. The Risk Analysis is used to ensure that BPA has sufficient end-of-year cash reserves to meet its U.S. Treasury payment obligations on time and in full during the two-year rate period with a 95 percent probability of success. In prior rate cases, the Risk Analysis was performed at the agency level and focused on power-related risks. The Risk Analysis for this transmission rate proposal evaluates uncertainty in transmission costs and revenues to estimate the amount of planned net revenue for risk needed to achieve the BPA Treasury payment probability standard associated with transmission cost recovery.

Segmentation: TBL proposes to divide its transmission system into segments in order to assign the costs of the Federal transmission system to the users of those segments. Those segments include the Generation Integration, Integrated Network, Southern Intertie, Eastern Intertie, Utility Delivery, and DSI Delivery segments. BPA also proposes a new segment in this rate proceeding to determine the revenue requirement for Ancillary Services.

Transmission Rate Development: The Transmission Rate Study forecasts sales and calculates the transmission rates based on the segmented revenue requirement. Revenues from various rates and charges that will not be adjusted or revised in this rate case are forecasted and revenue credited against the segmented revenue requirements. The FPT rate, which includes many separate charges for the use of specific types of transmission facilities, is then calculated. For the 2002 rate case, TBL proposes that all the FPT–96 component charges be scaled up by the overall increase in unit Network costs. Unit Network costs are calculated by adding the Network component of required ancillary services to Network costs and dividing by annual peak usage as determined in a power flow analysis.

Rates for Contract Demand service on the Network (PTP, NCD, and IR) are calculated by dividing the remaining Network costs after crediting revenues from FPT by total peak load. Peak load for the contract demand services is equal to the forecasted contract demands; for NT service, the peak load used in the divisor is the NT load on the hour of the annual transmission system peak. TBL proposes to use a 1CP (one coincidental peak) method for calculating rates in this rate period.

The rates for short-term PTP use are developed from the annual rates. The TBL is proposing to eliminate monthly and weekly PTP service and instead allow customers to purchase any number of consecutive days, providing the total is less than one year. Transmission system loads are higher during weekdays than weekends, so TBL is proposing a higher rate for the first five (5) days of any daily block than for all remaining days. Similarly, the transmission system usage is higher during the 16 daily peak hours, so the hourly rate is set by dividing the daily rate by only 16 hours. All of the short-term PTP rates can be discounted.

The NT base charge, applied to the Network Load (i.e., total retail load), minus Customer-Served Load, on the hour of the transmission system's monthly peak, is set equal to the PTP rate. The NT load-shaping charge, applied to the total Network Load, is calculated to recover the remaining NT revenue requirement.

The rates for the use of the Southern Intertie are calculated from the segmented costs and forecasted use in a manner similar to the PTP calculations on the Network. Usage of the Southern Intertie tends to be higher during the summer, when more power from hydro is available in the PNW and power usage and prices are higher in California. To reflect this fact, the TBL is proposing higher rates for North-to-South use in the summer months and lower prices for North-to-South use in the winter. Rates for South-to-North use are not seasonally differentiated.

At some of the workshops the TBL has conducted, a number of customers suggested that the TBL should sell Southern Intertie capacity using an auction. The TBL believes that the idea of an auction has considerable merit, but has not developed a specific proposal for an auction. The TBL invites parties that favor the use of an auction to make specific proposals in their testimony in the rate case.

The proposed 2002 rates include charges for the use of the Utility Delivery Segment and DSI Delivery segment. The Utility Delivery charge is a uniform charge applied to all use of the segment. The DSI Delivery charge is a Use-of-Facility charge based on the cost of the individual delivery substation being used. The TBL is proposing some changes to the charge and how it is applied to insure that the charge fully recovers the cost of the segment.

The TBL is changing the name of the Reactive Power Charge to the Power Factor Penalty charge to avoid confusion with the Ancillary Service, Reactive Supply and Voltage Control from Generation Sources service. The Charge is increased due to the ''penalty'' nature of the charge and BPA's desire to send an appropriate price signal to customers to install equipment and manage their reactive requirements.

Part V—2002 Transmission and Ancillary Service Rate Schedules

Bonneville Power Administration Transmission Business Line; 2002 Transmission and Ancillary Service Rate Schedules and General Rate Schedule Provisions

Schedule FPT–02.1 Formula Power Transmission Rate

Section I. Availability

This schedule supersedes Schedule FPT–96.1 for all firm transmission agreements which provide for application of FPT rates that may be adjusted not more frequently than once a year. This schedule is applicable only to such transmission agreements executed prior to October 1, 1996. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to TBL's

General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement.

A. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Main Grid Distance: $0.0557 per mile.
2. Main Grid Interconnection Terminal: $0.58.
3. Main Grid Terminal: $0.65.
4. Main Grid Miscellaneous Facilities: $3.18.

B. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Secondary System Distance: $0.5478 per mile.
2. Secondary System Transformation: $5.99.
3. Secondary System Intermediate Terminal: $2.31.
4. Secondary System Interconnection Terminal: $1.64.

Section III. Billing Factors

Unless otherwise stated in the agreement, the Billing Factor for the rates specified in section II shall be the largest of:

1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support FPT transmission service are available under the ACS rate schedule. FPT customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in FPT service.

B. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C. of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

Schedule FPT–02.3 Formula Power Transmission Rate

Section I. Availability

This schedule supersedes Schedule FPT–96.3 for all firm transmission agreements which provide for application of FPT rates that may be adjusted not more frequently than once every three years. This schedule is applicable only to such transmission agreements executed prior to October 1, 1996. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement.

A. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Main Grid Distance: $0.0557 per mile.
2. Main Grid Interconnection Terminal: $0.58.
3. Main Grid Terminal: $0.65.
4. Main Grid Miscellaneous Facilities: $3.18.

B. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Secondary System Distance: $0.5478 per mile.
2. Secondary System Transformation: $5.99.
3. Secondary System Intermediate Terminal: $2.31.
4. Secondary System Interconnection Terminal: $1.64.

Section III. Billing Factors

Unless otherwise stated in the agreement, the Billing Factor for the rates specified in section II shall be the largest of:

1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support FPT transmission service are available under the APS rate schedule. FPT customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in FPT service.

B. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C. of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

Schedule IR–02 Integration of Resources Rate

Section I. Availability

This schedule supersedes Schedule IR–96 and is available for transmission of non-Federal power for full-year firm transmission service and nonfirm transmission service in amounts not to exceed the customer's total Transmission Demand using Federal Columbia River Transmission System Network and Delivery facilities. This schedule is applicable only to Integration of Resource (IR) agreements executed prior to October 1, 1996. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge shall be A or B.

A. Base Rate

$1.132 per kilowatt.

B. Short Distance Discount (SDD) Rate

For Points of Integration (POI) specified in the IR agreement as being short-distance POIs, for which Network facilities are used for a distance of less than 75 circuit miles, the monthly rate shall be:

$[0.6 + (0.4 \times \text{transmission distance}/75)]$ * $1.132 per kilowatt

Where:

The transmission distance is the circuit miles between the POI for a generating resource of the customer and

a designated Point of Delivery serving load of the customer. Short-distance POIs are determined by BPA after considering factors in addition to transmission distance.

Section III. Billing Factors

To the extent that the agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the agreement, at the Point-to-Point Hourly Nonfirm Rate, such transmission service shall not contribute to the Billing Factor for the IR rate provided that the customer requests such treatment and TBL approves in accordance with the prescribed provisions in the agreement.

The Billing Factor for rates specified in section II shall be the largest of:

1. The annual Transmission Demand, or, if defined in the agreement, the annual Total Transmission Demand;

2. The highest hourly Scheduled Demand for the month; or

3. The Ratchet Demand.

When the Scheduled Demand or Ratchet Demand is the Billing Factor, short-distance POIs shall be charged the Base Rate specified in section II.A for the amount in excess of Transmission Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that may be required to support IR transmission service are available under the ACS rate schedule.

B. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

D. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A. of the GRSPs.

Schedule NT–02 Network Integration Rate

Section I. Availability

This schedule supersedes Schedule NT–96. It is available to Transmission Customers taking Network Integration Transmission (NT) Service over Federal Columbia River Transmission System Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge will be the sum of A and B.

A. Base Charge

$1.132 per kilowatt per month.

B. Transmission Load Shaping Charge

$0.326 per kilowatt per month.

Section III. Billing Factors

A. Base Charge

1. If no Declared Customer-Served Load (CSL) is specified in the customer's NT Service Agreement, the monthly Billing Factor for the Base Charge specified in section II.A shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load.

2. If an amount of Declared CSL is specified in the customer's NT Service Agreement, the monthly Billing Factor for the Base Charge specified in section II.A shall be a or b:

a. For the billing month, if the sum of the Actual CSLs occurring during Heavy Load Hours (HLH) is greater than or equal to 60 percent of the Declared CSL multiplied by the number of HLHs in the billing month, the monthly Billing Factor shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load, less Declared CSL.

b. For the billing month, if the sum of the Actual CSLs occurring during HLH is less than 60 percent of the Declared CSL multiplied by the number of HLHs in the billing month, the monthly Billing Factor shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load. The Billing Factor will be reduced by any megawatts charged the NT Unauthorized Increase Charge under section IV.D. for the month.

Where:

''Declared Customer-Served Load (CSL)'' is the monthly amount of the Transmission Customer's Network Load in megawatts that the Transmission Customer elects to serve on a firm basis from sources internal to its system or over non-Federal transmission facilities or pursuant to contracts other than the Network Integration Service Agreement. The customer's Declared CSL is contractually specified for each month.

''Actual Customer-Served Load (CSL)'' is the actual hourly amount of the Network Load in megawatts that the customer serves on a firm basis from sources internal to its system or over non-Federal transmission facilities or pursuant to contracts other than the Network Integration Service Agreement.

B. Transmission Load Shaping Charge

The monthly Billing Factor for the Transmission Load Shaping Charge specified in section II.B shall be the Network Load on the hour of the Monthly Transmission Peak Load.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support NT transmission service are also available under the ACS rate schedule.

B. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Metering Adjustment

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall be calculated by substituting (1) the sum of the highest hourly demand that occurs during the billing month at all Points of Delivery multiplied by 0.66 for (2) Network Load on the hour of the Monthly Transmission Peak Load.

D. NT Unauthorized Increase Charge

If the customer's Actual Customer-Served Load (CSL) is less than its Declared CSL, the NT Unauthorized Increase Charge shall be assessed.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: In each billing month on the hour of the Monthly

Transmission Peak Load, the Billing Factor shall equal the Declared CSL minus the Actual CSL.

E. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

F. Redispatch

For each hour that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, NT and NCD Transmission Customers shall be subject to:

1. The Redispatch Adjustment for Accepted Bids specified in section II.E of the GRSPs, and

2. The Redispatch Charge specified in section II.F of the GRSPs.

G. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

H. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Integration Transmission customer under an applicable rate schedule.

I. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. NT customers that integrate new Network Resources, new Member Systems, or new native load customers that would require TBL to construct Network Upgrades shall be subject to the higher of the rates specified in section II. or incremental cost rates for service over such facilities. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

J. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule NCD–02 Network Contract Demand Rate

Section I. Availability

This schedule is available to Transmission Customers taking Network Contract Demand (NCD) Transmission Service over Federal Columbia River Transmission System (FCRTS) Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

$1.132 per kilowatt per month.

Section III. Billing Factor

The Billing Factor shall be the sum of the Point of Delivery Transmission Demands.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ASC–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support NCD Transmission Service are available under the ASC rate schedule.

B. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

D. NCD Unauthorized Increase Charge

Customers who exceed their Point of Delivery (POD) Transmission Demand at their PODs or at their Network Resources shall be subject to the NCD Unauthorized Increase Charge.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: The billing factor shall be the higher of a or b.

a. POD Unauthorized Increase. For each hour of the monthly billing period, BPA shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled. Actual demands at all other PODs will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA will sum these amounts that exceed Transmission Demands for all PODs. The POD unauthorized increase for the monthly billing period shall be the highest one-hour POD sum.

b. Network Resource Unauthorized Increase. For each hour of the monthly billing period, BPA shall determine the amount by which the sum of the actual demands at Network Resources exceeds the total Transmission Demand, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at Network Resources that are one-way dynamically scheduled. Actual demands at all other Network Resources will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA will determine the amount that the demand at Network Resources exceeds the total Transmission Demand. The Network Resource unauthorized increase for the monthly billing period shall be the highest hourly amount.

E. Redispatch

For each hour that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, NT and NCD Transmission Customers shall be subject to:

1. The Redispatch Adjustment for Accepted Bids specified in section II.E of the GRSPs, and

2. The Redispatch Charge specified in section II.F of the GRSPs.

F. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

G. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee specified in section II.G of the GRSPs.

H. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Contract Demand

Transmission customer under an applicable rate schedule.

I. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

J. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule PTP–02 Point-to-Point Rate

Section I. Availability

This schedule supersedes Schedules PTP–96, RNF–96, and ET–96. It is available to Transmission Customers taking Point-to-Point (PTP) Transmission Service over Federal Columbia River Transmission System (FCRTS) Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

A. Long-Term Firm Service

$1.132 per kilowatt per month.

B. Short-Term Firm and Nonfirm Service

The charges for Short-Term Firm and Nonfirm Service shall not exceed:

1. Daily: For each reservation:

a. Days 1 to 5: $0.052 per kilowatt per day.

b. Day 6 and beyond: $0.037 per kilowatt per day.

2. Hourly: 3.26 mills per kilowatthour.

Section III. Billing Factors

A. The Billing Factor for Long-Term Firm Service, Short-Term Firm Service, and Daily Nonfirm Service shall be the greater of:

1. The sum of the Point of Receipt Transmission Demands, or

2. The sum of the Point of Delivery Transmission Demands.

B. The Billing Factor for Hourly Nonfirm Service shall be the monthly sum of scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP transmission service on the Network are available under the ACS rate schedule.

B. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

D. Short-Distance Discount (SDD)

When a Point of Receipt (POR) and Point of Delivery (POD) use FCRTS facilities for a distance of less than 75 circuit miles and are designated as being short distance in the PTP Service Agreement, the monthly Transmission Demands for the relevant POI and POD shall be adjusted, for the purpose of computing the monthly bill for annual service, by the following factor:

$0.6 + (0.4 \times \text{transmission distance}/75)$

Such adjusted monthly POR and POD Transmission Demands shall be used to compute the billing factors in section III.A.1. to calculate the monthly bill for Long-Term Firm PTP service. The POD Transmission Demand eligible for the SDD may be no larger than the POR Transmission Demand. The distance used to calculate the SDD will be contractually specified and based upon path(s) identified in power flow studies.

E. Unauthorized Increase Charge

Customers who exceed their Transmission Demand at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: For each hour of the monthly billing period, BPA shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD and POR, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA will sum these amounts that exceed Transmission Demands: (a) For all PODs, and (b) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

F. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee specified in section II.G of the GRSPs.

G. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

H. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Point-to-Point Customer under an applicable rate schedule.

I. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

J. Interruption of Daily Nonfirm Service

If Daily Nonfirm Service is interrupted, the rates charged under section II.B.1 shall be prorated over the total hours in the day to give credit for the hours of such interruption.

K. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule IS–02 Southern Intertie Rate

Section I. Availability

This schedule supersedes Schedule IS–96. It is available to Transmission Customers taking Point-to-Point Transmission Service over Federal Columbia River Transmission System (FCRTS) Southern Intertie facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff or, for customers who executed Southern Intertie agreements with BPA before October 1, 1996, will be as provided in the customer's agreement with BPA. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

A. Long-Term Firm Service

1. North to South:
a. April–September: $1.299 per kilowatt per month.
b. October–March $0.974 per kilowatt per month.
2. South to North: $1.157 per kilowatt per month.

B. Short-Term Firm and Nonfirm Service—North to South

The charges for Short-Term Firm and Nonfirm Service shall not exceed:
1. Daily: For each reservation:
a. April–September:
(1) Days 1 to 5: $0.060 per kilowatt per day.
(2) Day 6 and beyond: $0.043 per kilowatt per day.
b. October–March:
(1) Days 1 to 5: $0.045 per kilowatt per day.
(2) Day 6 and beyond: $0.032 per kilowatt per day.
2. Hourly
a. April–September: 3.74 mills per kilowatthour.
b. October–March: 2.81 mills per kilowatthour.

C. Short-Term Firm and Nonfirm Service—South to North

The charges for Short-Term Firm and Nonfirm Service shall not exceed:
1. Daily: For each reservation:
a. Days 1 to 5: $0.053 per kilowatt per day.
b. Day 6 and beyond: $0.038 per kilowatt per day.
2. Hourly: 3.33 mills per kilowatthour.

Section III. Billing Factors

A. The Billing Factor for Long-Term Firm Service, Short-Term Firm Service, and Daily Nonfirm Service, shall be the greater of:
1. The sum of the Point of Receipt Transmission Demands, or
2. The sum of the Point of Delivery Transmission Demands. For Southern Intertie transmission agreements executed prior to October 1, 1996, the Billing Factor shall be as specified in the agreement.
B. The Billing Factor for Hourly Nonfirm Service shall be the monthly sum of scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Southern Intertie are available under the ACS rate schedule.

B. Interruption of Daily Nonfirm Service

If Daily Nonfirm Service is interrupted, the rates charged under sections II.B.1. and II.C.1. shall be prorated over the total hours in the day to give credit for the hours of such interruption.

C. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service will be subject to the Reservation Fee specified in section II.G of the GRSPs.

D. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs

E. Unauthorized Increase Charge

Customers who exceed their Transmission Demand at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge.
1. Rate: $6.79 per kilowatt per month.
2. Billing Factor: For each hour of the monthly billing period, BPA shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD and POR, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.
For each hour, BPA will sum these amounts that exceed Transmission Demands: (a) For all PODs, and (b) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

F. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

G. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Transmission Customer under an applicable rate schedule.

H. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

I. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule IM–02 Montana Intertie Rate

Section I. Availability

This schedule supersedes Schedule IM–96. It is available to Transmission

Customers taking Point-to-Point (PTP) Transmission Service on BPA's share of Montana Intertie transmission capacity. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

A. Long-Term Firm Service

$1.239 per kilowatt per month.

B. Short-Term Firm and Nonfirm Service

The charges for Short-Term Firm and Nonfirm Service shall not exceed:

1. Daily: For each reservation:

a. Days 1 to 5: $0.057 per kilowatt per day.

b. Day 6 and beyond: $0.041 per kilowatt per day.

2. Hourly: 3.56 mills per kilowatthour.

Section III. Billing Factors

A. The Billing Factor for Long-Term Firm Service, Short-Term Firm Service, and Daily Nonfirm Service shall be the greater of:

1. the sum of the Point of Receipt Transmission Demands, or

2. the sum of the Point of Delivery Transmission Demand.

B. The Billing Factor for Hourly Nonfirm Service shall be the monthly sum of scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Montana Intertie are available under the ACS rate schedule.

B. Unauthorized Increase Charge

Customers who exceed their Transmission Demand at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: For each hour of the monthly billing period, TBL shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD and POR, to the extent practicable. TBL shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.

For each hour, TBL will sum these amounts that exceed Transmission Demands: a) for all PODs, and b) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

C. Interruption of Daily Nonfirm Service

If Daily Nonfirm Service is interrupted, the rates charged under section II.B.1. shall be prorated over the total hours in the day to give credit for the hours of such interruption.

D. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service will be subject to the Reservation Fee specified in section II.G of the GRSPs.

E. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

F. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Transmission Customer under an applicable rate schedule.

G. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under EPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule UFT–02 Use-of-Facilities Transmission Rate

Section I. Availability

This schedule supersedes Schedule UFT–96 unless otherwise provided in the agreement, and is available for firm transmission over specified Federal Columbia River Transmission System (FCRTS) facilities. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt of Transmission Demand specified in the agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once a year, TBL shall determine the following data for the facilities which have been constructed or otherwise acquired by TBL and which are used to transmit electric power:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the Federal Columbia River Power System financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

The annual cost per kilowatt of facilities listed in the agreement, which are owned by another entity, and used by TBL for making deliveries to the transferee, shall be determined from the costs specified in the agreement between TBL and such other entity.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands. The annual cost per kilowatt of Transmission Demand for a facility constructed or otherwise

acquired by TBL shall be determined in accordance with the following formula:

$$\frac{A}{D}$$

Where:

A = The annual cost of such facility as determined in accordance with A.1. above.

D = The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

1. For facilities used solely by one customer, TBL may charge a monthly amount equal to the annual cost of such sole-use facilities, determined in accordance with section III.A.1, divided by 12.

2. For facilities used by more than one customer, TBL may charge a monthly amount equal to the annual cost of such facilities prorated based on relative use of the facilities, divided by 12.

Section IV. Determination of Billing Factor

Unless otherwise stated in the agreement, the factor to be used in determining the kilowatts of Billing Factor shall be the largest of:

A. The Transmission Demand in kilowatts specified in the agreement;

B. The highest hourly Measured or Scheduled Demand for the month; or

C. The Ratchet Demand.

Section V. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary services that are required to support UFT transmission service are available under the ACS rate schedule.

B. Power Factor Penalty Charge

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

Schedule AF–02 Advance Funding Rate

Section I. Availability

This schedule supersedes Schedule AF–96 and is available to customers who execute an agreement that provides for TBL to collect capital and related costs through advance funding or other financial arrangement for specified BPA-owned Federal Columbia River Transmission System (FCRTS) facilities used for:

A. Interconnection or integration of resources and loads to the FCRTS;

B. Upgrades, replacements, or reinforcements of the FCRTS for transmission service; or

C. Other transmission service arrangements, as determined by TBL.

Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The charge is the sum of the actual capital and related costs for specified FCRTS facilities, as provided in the agreement. Such actual capital and related costs include, but are not limited to, costs of design, materials, construction, overhead, spare parts, and all incidental costs necessary to provide service as identified in the agreement.

Section III. Payment

A. Advance Payment

Payment to TBL shall be specified in the agreement as either:

1. A lump sum advance payment;

2. Advance payments pursuant to a schedule of progress payments; or

3. Other payment arrangement, as determined by TBL.

Such advance payment or payments shall be based on an estimate of the capital and related costs for the specified FCRTS facilities as provided in the agreement.

B. Adjustment to Advance Payment

TBL shall determine the actual capital and related costs of the specified FCRTS facilities as soon as practicable after the date of commercial operation, as determined by TBL. The customer will either receive a refund from TBL or be billed for additional payment for the difference between the advance payment and the actual capital and related costs.

Schedule TGT–02 Townsend-Garrison Transmission Rate

Section I. Availability

This schedule supersedes Schedule TGT–96 and is available to Companies that are parties to the Montana Intertie Agreement (Contract No. DE–MS79–81BP90210, as amended) which provides for firm transmission over TBL's section (Garrison to Townsend) of the Montana Intertie. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500-kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs for succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the government provides firm transmission service in its section of the Montana [Eastern] Intertie in exchange for firm transmission service in a customer's section of the Montana Intertie, the payment by the government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1-to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such

transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge

This charge will be filed as a separate rate schedule, the Eastern Intertie (IE) rate, and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service

Intertie Charge = [((TAC/12)–NFR) × (CR–EC)] TCR

Section III. Definitions

A. *TAC* = Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of: (1) Interest and amortization of associated Federal investment and the appropriate allocation of general plant costs; (2) operation and maintenance costs; (3) allowance for BPA's general administrative costs which are appropriately allocable to such facilities, and (4) payments made pursuant to section 7(m) of Public Law 96–501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received, under agreements for firm transmission service over the Montana Intertie, by the government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. *NFR* = Nonfirm Revenues, which are equal to: (1) The product of the Nonfirm Transmission Charge described in II(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month; plus (2) the product of the Nonfirm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. *CR* = Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. *TCR* = Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section I; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. *EC* = Exchange Credit for each customer which is the product of: (1) the ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

Schedule IE–02 Eastern Intertie Rate

Section I. Availability

This schedule supersedes IE–96 and is available to Companies that are parties to the Montana Intertie Agreement (Contract No. DE–MS79–81BP90210, as amended), for nonfirm transmission service on the portion of Eastern Intertie capacity above TBL's firm transmission rights. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The charge shall not exceed 1.38 mills per kilowatthour.

Section III. Billing Factors

The Billing Factor shall be the monthly sum of the scheduled kilowatthours, unless otherwise specified in the agreement.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary services that may be required to support IE transmission service are available under the ACS rate schedule.

B. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

Schedule ACS–02 Ancillary Services and Control Area Services Rate

Section I. Availability

This schedule supersedes Schedule APS–96. It is available to all Transmission Customers taking service under the Open Access Transmission Tariff and other contractual arrangements. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide, and the Transmission Customer is required to purchase, the following Ancillary Services: (a) Scheduling, System Control and Dispatch, and (b) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required to offer to provide the following Ancillary Services to Transmission Customers serving load or integrating generation within the Transmission Provider's Control Area: (a) Regulation and Frequency Response, (b) Energy Imbalance, (c) Operating Reserve—Spinning, and (d) Operating Reserve—Supplemental. The Transmission Customer serving load or integrating generation within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source in a manner that is technically achievable, which conforms to the criteria and standards established by the Transmission Provider for the provision of the specific Ancillary Services including the relevant North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC) and Northwest Power Pool (NWPP), criteria. Any such self-supply or third-party supply arrangements shall be specified in the Transmission Customer's Service Agreement.

Ancillary Service rates available under this rate schedule are:

1. Scheduling, System Control, and Dispatch Service.
2. Reactive Supply and Voltage Control from Generation Sources Service.
3. Regulation and Frequency Response Service.
4. Energy Imbalance Service.
5. Operating Reserve—Spinning Reserve Service.
6. Operating Reserve—Supplemental Reserve Service.

Control Area Services are available to meet the Reliability Obligations of a party with resources or loads in the BPA Control Area. A party that is not satisfying all of its Reliability Obligations through the purchase or self-provision of Ancillary Services must purchase Control Area Services to meet its Reliability Obligations. Control Area Services are also available to parties with resources or loads in the BPA Control Area that have Reliability Obligations, but do not have a transmission agreement with BPA. Reliability Obligations for resources or loads in the BPA Control Area shall be determined consistent with the applicable NERC, WSCC, and NWPP criteria.

Control Area Service rates available under this rate schedule are:

1. Load Regulation and Frequency Response Service.
2. Generation Imbalance Service.
3. Operating Reserve—Spinning Reserve Service.
4. Operating Reserve—Supplemental Reserve Service.

Section II. Ancillary Service Rates

A. Scheduling, System Control and Dispatch Service

The rates below apply to Transmission Customers taking Scheduling, System Control and Dispatch Service from TBL. These rates apply to both firm and non-firm transmission transactions. Transmission on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately for Scheduling, System Control and Dispatch Service.

1. Rate:

a. Long-Term Firm Service.

The rate shall not exceed $0.170 per kilowatt per month.

b. Short Term Firm and Nonfirm Service.

The rates for Short-Term Firm and Nonfirm Service shall not exceed:

(1) Daily: For each reservation:

Days 1 through 5 $0.008 per kilowatt per day.

Day 6 and beyond $0.005 per kilowatt per day.

(2) Hourly: 0.49 mills per kilowatthour.

2. Billing Factors: For Transmission Customers taking Point-to-Point Transmission Service (PTP, IS, and IM rates), Network Contract Demand Transmission Service (NCD rate), and Integration of Resources service (IR rate), the Billing Factor is Transmission Demand. Transmission Demands on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately.

For Transmission Customers taking Network Integration Transmission Service, the Billing Factor shall equal the NT Base Charge Billing Factor determined pursuant to section III.A of the Network Integration Rate Schedule (NT–02).

B. Reactive Supply and Voltage Control From Generation Sources Service

The rates below apply to Transmission Customers taking Reactive Supply and Voltage Control from Generation Sources Service from TBL. These rates apply to both firm and non-firm transmission transactions. Transmission on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately for Reactive Supply and Voltage Control from Generation Sources Service.

1. Rate: a. Long Term Firm Service.

The rate shall not exceed $0.080 per kilowatt per month.

b. Short Term Firm and Nonfirm Service.

The rates for Short-Term Firm and Nonfirm Service shall not exceed:

(1) Daily: For each reservation:

Days 1 through 5: $0.004 per kilowatt per day.

Day 6 and beyond: $0.003 per kilowatt per day.

(2) Hourly: 0.23 mills per kilowatt per hour.

2. Billing Factors: a. For Transmission Customers taking Point-to-Point Transmission Service (PTP, IS, and IM rates), Network Contract Demand Transmission Service (NCD rate), and Integration of Resources service (IR rate), the Billing Factor is Transmission Demand. Transmission Demands on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately.

For Transmission Customers taking Network Integration Transmission Service, the Billing Factor shall equal the NT Base Charge Billing Factor determined pursuant to section III.A of the Network Integration Rate Schedule (NT–02).

b. The Billing Factor in section 2.a. above may be reduced as specified in the Transmission Customer's Service Agreement to the extent the Transmission Customer demonstrates to TBL's satisfaction that it can self-provide Reactive Supply and Voltage Control from Generation Sources Service.

C. Regulation and Frequency Response Service

The rate below for Regulation and Frequency Response Service applies to Transmission Customers serving loads in the BPA Control Area. Regulation and Frequency Response Service provides the generation capability to follow the moment-to-moment variations of loads in the BPA Control Area and maintain the power system frequency at 60 Hz in conformance with NERC and WSCC reliability standards.

1. Rate: The rate shall not exceed 0.30 mills per kilowatthour.

2. Billing Factor: The Billing Factor is the customer's total load in the BPA Control Area, in kilowatthours.

D. Energy Imbalance Service

The rates below apply to Transmission Customers taking Energy Imbalance Service from TBL. Energy Imbalance Service is taken when there is a difference between scheduled and actual energy delivered to a load in the BPA Control Area during a schedule hour. The rates for this service differ depending upon whether the Energy Imbalance occurs within the Energy Imbalance Deviation Band or outside the Energy Imbalance Deviation Band. The Energy Imbalance Deviation Band is + or − 1.5% of the schedule amount of energy or 2 MW, whichever is larger (absolute value).

1. Rate: a. For Energy Imbalance Within the Energy Imbalance Deviation Band.

TBL will maintain a deviation account showing the net Energy Imbalance (the sum of positive and negative deviations from schedule for each hour). Return energy must be scheduled to bring the deviation account balance to zero each month. TBL will designate the hours and amounts of return energy for each hour that will be scheduled. The customer shall make the arrangements and submit the schedule for the balancing transaction.

b. For Energy Imbalance Outside the Energy Imbalance Deviation Band.

(1) When energy taken in a schedule hour by the Transmission Customer exceeds the energy scheduled, the charge will be the greater of (i) BPA's incremental cost plus 10%, or (ii) 100 mills per kilowatthour.

BPA's incremental cost will be based on an hourly energy index in the PNW, if one exists. If one does not exist, an alternative index will be used based on: the Dow-Jones Mid-Columbia, California PX, or NYMEX Mid-Columbia index prices. On September 30 of each year, TBL will post on the OASIS the index to be used for the ensuing fiscal year.

(2) When energy taken by the Transmission Customer is less than the scheduled amount, a credit equal to 90% of BPA's decremental cost may be given for deviations.

2. Billing Factors: For each hour an Energy Imbalance occurs, the Billing Factor for the rates specified in section 1.b., Energy Imbalance Outside the Energy Imbalance Deviation Band, is:

a. the amount of energy that the Transmission Customer takes, in kilowatthours, in excess of the Energy Imbalance Deviation Band, or

b. the Transmission Customer's qualifying energy difference, in kilowatthours, between the energy taken and the lower limit of the Energy Imbalance Deviation Band (a negative balance).

No credit will be given for an energy difference if: (a) The imbalance was an Intentional Deviation (as determined by TBL); or (b) the Federal System was in a Spill Condition at any time during the month.

E. Operating Reserve—Spinning Reserve Service

The rates below apply to Transmission Customers taking Operating Reserve—Spinning Reserve Service from TBL. Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. For a Transmission Customer's load served by generation located in the BPA Control Area, the Transmission Customer's Spinning Reserve Requirement shall be determined consistent with applicable NERC, WSCC and NWPP standards.

1. Rate:

a. The rate shall not exceed 8.27 mills per kilowatthour of Spinning Reserve Requirement.

b. For energy delivered, the Transmission Customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by TBL.

2. Billing Factors:

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WSCC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and a half percent (2½%) of the hydroelectric generation dedicated to the Transmission Customer's firm load responsibility; and

(ii) Three and a half percent (3½%) of non-hydroelectric generation dedicated the Transmission Customer's firm load responsibility.

b. The Billing Factor for energy delivered when Spinning Reserve Service is called upon is the energy delivered, in kilowatthours.

F. Operating Reserve—Supplemental Reserve Service

The rates below apply to Transmission Customers taking Operating Reserve—Supplemental Reserve Service from TBL. Supplemental Reserve Service is available within a short period of time to serve load in the event of a system contingency. For a Transmission Customer's load served by generation located in the BPA Control Area, the Transmission Customer's Supplemental Reserve Requirement shall be determined consistent with applicable NERC, WSCC and NWPP standards.

1. Rate:

a. The rate shall not exceed 8.27 mills per kilowatthour of Supplemental Reserve Requirement.

b. For energy delivered, the Transmission Customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by TBL.

2. Billing Factors:

a. The Billing Factor for Supplemental Reserve Service is determined in accordance with applicable WSCC and NWPP standards. Application of current standards establish a minimum Supplemental Reserve Requirement equal to the sum of:

(i) Two and one half percent (2½%) of the hydroelectric generation dedicated to the Transmission Customer's firm load responsibility, plus

(ii) Three and one half percent (3½%) of non-hydroelectric generation dedicated the Transmission Customer's firm load responsibility, plus

(i) Any power scheduled into the BPA Control Area that can be interrupted on ten (10) minutes' notice.

b. The Billing Factor for energy delivered when Supplemental Reserve Service is called upon is the energy delivered, in kilowatthours.

Section III. Control Area Service Rates

A. Regulation and Frequency Response Service

The rate below applies to all loads in the BPA Control Area that are receiving Regulation and Frequency Response Service from the BPA Control Area, and such Regulation and Frequency Response Service is not provided for under a TBL transmission agreement. Regulation and Frequency Response Service provides the generation capability to follow the moment-to-moment variations of loads in the BPA Control Area and maintain the power system frequency at 60 Hz in conformance with NERC and WSCC reliability standards.

1. Rate: The rate shall not exceed 0.30 mills per kilowatthour.

2. Billing Factor: The Billing Factor is the customer's total load in the BPA Control Area, in kilowatthours.

B. Generation Imbalance Service

The rates below apply to all generation resources in the BPA Control Area. Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from generation resources in the BPA Control Area during a schedule hour. The rates for this service differ depending upon whether the Generation Imbalance occurs within the Generation Imbalance Deviation Band or outside the Generation Imbalance Deviation Band. The Generation Imbalance Deviation Band is + or −1.5% of the scheduled amount of energy, or 2 MW, whichever is larger (absolute value).

1. Rates:

a. For Imbalance Within the Generation Imbalance Deviation Band: TBL will maintain a deviation account showing the net Generation Imbalance (the sum of positive and negative deviations from schedule for each hour). Return energy must be scheduled to bring the deviation account balance to zero each month. TBL will designate the hours and amounts of return energy for each hour that will be scheduled. The customer shall make the arrangements and submit the schedule for the balancing transaction.

b. For Imbalance Outside the Generation Imbalance Deviation Band: i. When energy delivered in a schedule hour by the generation resource is less than the energy scheduled, the charge will be the greater of (i) BPA's incremental cost plus 10%, or (ii) 100 mills per kilowatthour.

BPA's incremental cost will be based on an hourly energy index in the PNW, if one exists. If one does not exist, an alternative index will be based on: the Dow-Jones Mid-Columbia, California PX, or NYMEX Mid-Columbia index prices. On September 30 each year, TBL will post on the OASIS the index to be used for the ensuing fiscal year.

ii. When energy delivered by the generation resource is greater than the scheduled amount, a credit equal to 90% of BPA's decremental cost may be given for deviations.

2. Billing Factor: For each hour a Generation Imbalance occurs, the Billing Factor for the rates specified in section 1.b., Imbalance Outside the Generation Imbalance Deviation Band, is:

a. the amount of energy that the customer delivers, in kilowatthours, less than the lower limit of the Generation Imbalance Deviation Band, or

b. the amount of energy the customer delivers, in kilowatthours, in excess of the upper limit of the Generation Imbalance Deviation Band.

No credit will be given for an energy difference if: (a) The imbalance was an Intentional Deviation (as determined by TBL); or (b) the Federal System was in a Spill Condition at any time during the month.

C. Operating Reserve—Spinning Reserve Service

Operating Reserve—Spinning Reserve Service must be purchased by a party with generation in the BPA Control Area that is receiving this service from TBL, and such Spinning Reserve Service is not provided for under a TBL transmission agreement. Service is being received if there are no other qualifying resources providing this required reserve service in conformance with NERC, WSCC and NWPP standards.

1. Rate:

a. The rate shall not exceed 8.27 mills per kilowatthour of Spinning Reserve Requirement

b. For energy delivered, the customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA.

2. Billing Factors:

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WSCC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and one half percent (2½%) of the hydroelectric generation dedicated to the customer's firm load responsibility, plus

(ii) Three and one half percent (3½%) of non-hydroelectric generation dedicated the customer's firm load responsibility.

b. The Billing Factor for energy delivered when Spinning Reserve Service is called upon is the energy delivered, in kilowatthours.

D. Operating Reserve—Supplemental Reserve Service

Operating Reserve—Supplemental Reserve Service must be purchased by a party with generation in the BPA Control Area that is receiving this service from TBL, and such Supplemental Reserve Service is not provided for under a TBL transmission agreement. Service is being received if there are no other qualifying resources providing this required reserve service in conformance with NERC, WSCC and NWPP standards.

1. Rates:

a. The rate shall not exceed 8.27 mills per kilowatthour of Supplemental Reserve Requirement.

b. For energy delivered, the customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA.

2. Billing Factors:

a. The Billing Factor for Supplemental Reserve Service is determined in accordance with applicable WSCC and NWPP guidelines. Application of current guidelines establish a minimum Supplemental Reserve Requirement equal to the sum of:

(i) Two and one half percent (2½%) of the hydroelectric generation dedicated to the customer's firm load Responsibility, plus

(ii) Three and one half percent (3½%) of non-hydroelectric generation dedicated the customer's firm load responsibility, plus

(iii) Any power scheduled into the BPA Control Area that can be interrupted on ten (10) minutes' notice.

b. The Billing Factor for energy delivered when Supplemental Reserve Service is called upon is the energy delivered, in kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

General Rate Schedule Provisions for Transmission and Ancillary Service Rates

Section I. Generally Applicable Provisions

A. Approval of Rates

These 2002 rate schedules and General Rate Schedule Provisions for Transmission and Ancillary Service Rates (GRSPs) shall become effective upon interim approval or upon final confirmation and approval by the Federal Energy Regulatory Commission (FERC). Bonneville Power Administration (BPA) has requested that FERC make these rates and GRSPs effective on October 1, 2001. All rate schedules shall remain in effect until they are replaced or expire on their own terms.

B. General Provisions

These 2002 rate schedules and the GRSPs associated with these schedules supersede BPA's 1996 rate schedules (which became effective October 1, 1996) to the extent stated in the Availability section of each rate schedule. These schedules and GRSPs shall be applicable to all TBL contracts, including contracts executed both prior to, and subsequent to, enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). All sales under these rate schedules are subject to the following acts as amended: the Bonneville Project Act (Pub. L. 75–329), the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act (Pub. L. 93–454), the Northwest Power Act (Pub. L. 96–501), and the Energy Policy Act of 1992 (Pub. L. 102–486).

These 2002 rate schedules do not supersede any previously established rate schedule that is required, by agreement, to remain in effect.

If a provision in an executed agreement is in conflict with a provision contained herein, the former shall prevail.

C. Notices

For the purpose of determining elapsed time from receipt of a notice applicable to rate schedule and GRSP administration, a notice shall be deemed to have been received at 0000 hours on the first calendar day following actual receipt of the notice.

D. Billing and Payment

1. Billing: BPA's Transmission Business Line (TBL) shall render monthly bills to the Transmission Customer for transmission services. Failure to receive a bill shall not release the Transmission Customer from liability for payment. If requested by the Transmission Customer, the TBL shall electronically transmit the Transmission Customer's monthly bill to the Transmission Customer on the issue date of the bill, provided the parties have compatible electronic equipment. The TBL may elect to electronically transmit only that portion of the bill showing the amount owed. If the entire bill is not provided by electronic means, the TBL shall also send the Transmission Customer a complete copy of its monthly bill by mail.

(a) Due Date:

Payment shall be due by close of business on the twentieth (20th) day

after the issue date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or Federal holiday, the Due Date shall be the next Business Day.

(b) Payments:

(1) The Transmission Customer must pay by electronic funds transfer using procedures established by the TBL. However, exceptions to the method of payment may be made on a case by case basis according to the criteria listed below. All payment amounts are due and payable on the Due Date.

(2) The Transmission Customer may pay its bill by an alternate method, provided the following criteria can be met:

(A) The Transmission Customer requests to pay by an alternate method at least thirty (30) days in advance of the billing date; and

(B) The Transmission Customer ensures that the TBL receives full payment by the above-stated Due Date; and

(C) The Transmission Customer has not previously incurred late payment charges while paying its bills by an alternate method; and

(D) The TBL approves the alternate payment method requested by the Transmission Customer.

(c) Payments by Mail:

If the Transmission Customer requests to pay its bill by mail as an alternate payment method, meets the requirements of section D.1(b)(2) above, and the TBL approves such request, payments shall be mailed to: Bonneville Power Administration, PO Box 6040, Portland, OR 97228–6040.

The TBL must receive payment for such bills by the Due Date.

(d) Pre-authorized Debit:

The Transmission Customer may elect, with the TBL's concurrence, to pay through the use of a pre-authorized debit which is an electronic payment option authorizing the TBL to automatically withdraw a Transmission Customer's payments from its bank account.

(e) Computation of Bills:

Bills for products and services may be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents, and increasing any amount from 50 cents through 99 cents to the next higher dollar.

(f) Estimated Bills:

At its option, the TBL may elect to render an estimated bill for a month to be followed at a subsequent billing date by a final bill for that month. Such estimated bill shall have the validity of, and is subject to, the same payment provisions as a final bill.

(g) Late Payment:

Bills not paid in full with payment received by the TBL before close of business on the Due Date shall be subject to a late payment charge of one-twentieth percent (0.05 percent) applied each day to the unpaid balance. This late payment charge shall be assessed on a daily basis until such time as the TBL receives the unpaid amount.

(h) Revised Bills:

As necessary, the TBL may render revised bills. The date of a revised bill shall be its issue date.

(1) If the amount of the revised bill is more than the amount of the previous bill, the previous bill remains due on its Due Date, and the additional amount is due on the Due Date of the revised bill.

(2) If the amount of the revised bill is less than the amount of the previous bill, the obligation to pay the previous bill is satisfied by payment of the revised bill on the Due Date of the previous bill.

(3) If the revised bill changes the party to whom money is due prior to payment of the previous bill, the previous bill is canceled and the amount owed the other party is due on the Due Date of the revised bill.

(4) If payment of the previous bill results in an overpayment, a refund is due on the later of (a) the Due Date of the revised bill, or (b) twenty (20) days from the receipt of the payment for the original bill. Should refund not be made by the TBL by the above date, late payment interest shall accrue and be paid by the TBL pursuant to the Prompt Payment Act.

(i) Disputed Bills:

(1) In the event of a billing dispute between the TBL and the Transmission Customer, the TBL will continue to provide service under the Service Agreement as long as the Transmission Customer: (1) Continues to make all payments not in dispute; and (2) pays into an escrow account the portion of the invoice in dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the TBL may provide notice of its intent to suspend service to the Transmission Customer in sixty (60) days.

(2) If it is determined that the Transmission Customer is entitled to a refund of any portion of the disputed amount, then TBL will make such refund with interest computed from the date of receipt of the disputed payment to the date the refund is made. The TBL shall make such refund with simple interest. The daily interest rate used to determine the interest is calculated by dividing the Prompt Payment Act Interest by 365. The applicable Prompt Payment Act Interest Rate shall be the rate that is in effect on the date in which the TBL receives payment. Should a third party escrow account service be necessary, the escrow fees will be split evenly between the TBL and the Transmission Customer and interest on the disputed funds will be the interest paid by the institution providing the escrow service.

2. Customer Default: In the event the Transmission Customer fails, for any reason other than a billing dispute as described above, to make payment to the TBL on or before the Due Date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the TBL notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of default the TBL may notify the Transmission Customer that it plans to terminate service in sixty (60) days. The Transmission Customer may use dispute resolution procedures in its agreement to contest such termination.

3. Records: The TBL and the Transmission Customer shall keep such records as may be needed to afford a clear history of all transactions. The originals of all such records shall be retained for a minimum of two (2) years plus the current year (or such longer period as may be required by any regulatory commission having jurisdiction), and copies shall be delivered to the other party on request.

Section II. Adjustments, Charges, and Special Rate Provisions

A. Delivery Charge

Transmission Customers shall pay a Delivery Charge for service over DSI Delivery facilities, Utility Delivery facilities.

1. Rates:

a. DSI Delivery:

i. Use-of-Facilities (UFT–02) Rate, section III.B.1 or III.B.2, multiplied by

ii. 1.197.

b. Utility Delivery:

$1.299 per kilowatt per month.

2. Billing Factors:

a. Utility Delivery:

The monthly Billing Factor for the Utility Delivery rate in section 1.b. shall be the total load on the hour of the Monthly Transmission Peak Load at the Points of Delivery specified as Utility Delivery facilities.

b. Metering Adjustment:

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Factor under section 2.a. shall equal the highest hourly demand that occurs during the billing month at the Point of Delivery multiplied by 0.66.

c. Utility Delivery Charge Billing Factor Adjustment:

The monthly Utility Delivery Billing Factor in section 2.a shall be adjusted for customers who pay for Utility Delivery facilities under the Use-of-Facilities (UFT) rate schedule. The kilowatt credit shall equal the transmission service over the Delivery facilities used to calculate the UFT charge. This adjustment shall not reduce the Utility Delivery Charge billing factor below zero.

B. Failure To Comply Penalty

If a party fails to comply with the TBL's curtailment, redispatch, or load shedding orders, the party will be assessed the Failure to Comply Penalty charge.

Parties who are unable to comply with a curtailment, load shedding, or redispatch order due to a force majeure on their system will not be subject to this penalty provided that they immediately notify the TBL of the situation upon occurrence of the force majeure.

1. Rate:

a. 100 mills per kilowatthour;

b. any costs incurred by the TBL in order to manage the reliability of the FCRTS due to the failure to comply;

c. an hourly market price index plus 10%.

The hourly market price index will be the larger of the California ISO Ex-Post Supplemental Energy Price or the Dow Jones Mid-Columbia Firm Index Price for the hour(s) when the failure to comply occurred.

2. Billing Factor: The Billing Factor shall be the kilowatthours that were not curtailed or redispatched in any of the following situations:

a. Failure to raise generation if chosen as an incremental bidder for redispatch.

b. Failure to lower generation if chosen as a decremental bidder for redispatch.

c. Failure to shed load when required as specified by the Load Shedding provisions of the Tariff or any other applicable agreement between the parties. This includes failure to respond within the time period specified by NERC, WSCC, or NWPP criteria.

d. Failure of a generator in the BPA Control Area or which directly interconnects to the FCRTS to change generation levels when directed to do so by the TBL. This includes failure to respond within the time period specified by NERC, WSCC, or NWPP criteria.

e. Failure to curtail a schedule in the time period specified by NERC, WSCC, or NWPP criteria when directed to do so by the TBL.

C. Power Factor Penalty Charge

1. Description of the Power Factor Penalty Charge: Any party that is interconnected with the Federal Columbia River Transmission System (FCRTS) shall be charged for its reactive power requirements as described in this section, unless otherwise specified in an agreement existing prior to October 1, 1995. Each point of interconnection or point of delivery shall be monitored and billed independently for determining the party's total reactive power requirements and all associated billing factors, including the Reactive Deadband. If a party is taking transmission service under multiple rate schedules, the party will pay for its reactive power requirements as if it is taking delivery under only one rate schedule.

2. Conditions for Application of the Power Factor Penalty Charge

a. Measured Data:

The Power Factor Penalty Charge will apply to only the party's reactive power requirements for which measured data exist.

b. Party's Generating Resource Connected to the FCRTS:

Irrespective of the direction of real power flow, the Power Factor Penalty Charge shall apply to points of interconnection where a party's generating resource is directly connected to the FCRTS, unless the party's generating resource is either:

i. a synchronous generator equipped with a voltage regulator, or

ii. equipped with reactive power control devices that comply with TBL's applicable interconnection standards.

Such resource must actively support the voltage schedule at the point of integration at all times when the resource is in service, as determined by BPA Transmission Business Line, for this exemption to apply. Generating resources that do not satisfy the above criteria shall not be exempt from the Power Factor Penalty Charge.

c. Bi-directional Real Power Flow:

For points other than those specified in section 2(b), the Power Factor Penalty Charge will not be applied, and no new Ratchet Demand for reactive power will be established, at a specific point if the metered real power (on an hourly integrated basis) flows from the party's system to the FCRTS at that point for as little as one hour during the billing period. However, the party will still pay any previously incurred demand ratchet charges. The direction of the real power flow will be determined based on metered quantities, not on scheduled quantities.

d. Service by Transfer:

Points of delivery that are served by transfer over another utility's transmission system will not be subject to the Power Factor Penalty Charge unless there are significant TBL Network facilities between the party's points of delivery and the transferor's system.

e. Specific Points Exempt from the Power Factor Penalty Charge:

The Power Factor Penalty Charge will not apply to the following points: Nevada-Oregon Border (NOB), Big Eddy 500 kV, Big Eddy 230 kV, John Day 500 kV, Malin 500 kV, Captain Jack 500 kV, Garrison 500 kV, Townsend 500 kV.

f. Special Circumstances:

The party may submit requests to BPA Transmission Business Line for consideration of unique circumstances. BPA Transmission Business Line will evaluate the request and may make arrangements with the party to address the special circumstances.

3. Rate: TBL will bill the party for reactive power at each point each month as follows:

Reactive Demand:

$0.28 per kVAr of lagging reactive demand in excess of the Reactive Deadband during HLH in all months of the year.

$0.24 per kVAr of leading reactive demand in excess of the Reactive Deadband during LLH in all months of the year.

No charge for leading reactive demand during HLH.

No charge for lagging reactive demand during LLH.

4. Billing Factors:

a. Reactive Deadband:

The Reactive Deadband (measured in kVAr) is used to determine the Reactive Billing Demand and Ratchet Demand for the Power Factor Penalty Charge.

The Reactive Deadband for each billing period is the maximum hourly integrated metered real power demand (measured in kW) at each point during the billing period multiplied by 25 percent.

The Reactive Deadband for either HLH or LLH:

i. is computed once per billing period (the same quantity is used for both HLH and LLH),

ii. does not vary during the billing period, and

iii. is based on the maximum hourly integrated metered real power demand during that billing period.

b. Reactive Billing Demand:

The party's Reactive Billing Demand shall be calculated independently for lagging reactive power and leading reactive power at each point for which a Power Factor Penalty Charge is assessed.

All reactive demands shall be established in the particular HLH or LLH at each point during which the party's maximum applicable reactive demand is placed on TBL, regardless of the time of the real power peak at each point.

All reactive demand at each point shall be established on a non-coincidental basis, regardless of whether the party is billed for real power or transmission at such point on a coincidental or non-coincidental basis, unless otherwise specified in the agreement between TBL and the party, or coincidental billing is, in TBL's sole determination, more practical for TBL.

There will be separate reactive demands for lagging (HLH) and leading (LLH) demands. The party's Reactive Billing Demand for each point for the billing month shall be the larger of:

i. the largest measured reactive demand in excess of the Reactive Deadband during the billing period, or

ii. the Ratchet Demand for reactive power.

The Ratchet Demand for reactive power is equal to 100 percent of the largest measured reactive demand in excess of the Reactive Deadband during the preceding 11-month period. Each point shall have a separate Ratchet Demand for lagging (HLH) and leading (LLH) reactive demand.

5. Adjustments for Reactive Losses: Measured data shall be adjusted for reactive losses, if applicable, before determination of the Reactive Billing Demand.

D. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, the NT, NCD, PTP, IS, IM or ACS rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. § 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to the rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of the rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under the rate schedule prior to the effective date of such prospective modification.

E. Redispatch Adjustment for Accepted Bids

When the TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, the party submitting a bid that is accepted for redispatch shall receive a credit or charge for such accepted bid. The amount of the credit or charge shall be based on the incremental or decremental bid, respectively, submitted by the party and the amount of power redispatched. The credit or charge shall appear on the party's monthly transmission bill. If a credit is due to a party not taking other transmission services, TBL will pay the party for such redispatch within 30 days following the end of the month that the redispatch occurred.

F. Redispatch Charge

For each hour that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff (Tariff), all NT and NCD Transmission Customers using the congested path during the hour(s) that redispatch is implemented shall be subject to the Redispatch Charge.

1. Rate: For each hour and each congested transmission path that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, the rate shall be:

$$\frac{\text{Redispatch Cost}}{\text{Total NT / NCD Transmission Usage of Congested Path}}$$

where:

''Redispatch Cost'' is the hourly net cost in dollars incurred by TBL to implement redispatch procedures.

''Total NT/NCD Customer Usage of Congested Path'' is the total NT and NCD Transmission Customers' hourly use in megawatts of the congested transmission path.

2. Billing Factor: For each hour and constrained transmission path that redispatch procedures are implemented, the Billing Factor shall be the NT or NCD Transmission Customer's use in megawatts of the congested path.

G. Reservation Fee

The Reservation Fee shall be charged to PTP and NCD customers electing to postpone the commencement of service pursuant to sections 29.5 or 38.7 of the Open Access Transmission Tariff.

The Reservation Fee shall be a nonrefundable fee equal to one month's charge for the requested firm transmission service for each year or fraction of a year for which the customer chooses to postpone service. The Reservation Fee for the first year shall be paid in a lump sum within 30 days of the date the agreement is executed, and, for subsequent years, within 30 days of the anniversary date of execution of the agreement. The Reservation Fee shall be assessed annually until transmission service begins or the reservation period ends, whichever occurs first. The Reservation Fee shall be specified in the executed agreement for transmission service.

H. Transmission and Ancillary Services Rate Discounts

TBL may offer discounted rates for transmission and ancillary services available under the Open Access Transmission Tariff and to the extent provided for in the specific rate schedule. Any offer of a discount for transmission services or for ancillary services in support of basic transmission services must be announced to all potential customers solely by posting on the OASIS. Any customer-initiated requests for such discounts must occur solely by posting on the OASIS. Once TBL and a Transmission Customer agree to a discounted transaction, the details shall be immediately posted on the OASIS. If TBL offers a transmission service discount on a particular path, it shall offer the same discount for the same time period on all unconstrained paths that go to the same point(s) of delivery on TBL's system. If TBL offers an ancillary service discount, it shall offer the same discount for the same time period to all eligible customers on TBL's system.

Section III. Definitions

1. Ancillary Services

Ancillary Services are those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of TBL's Transmission System in accordance with Good Utility Practice. Ancillary Services include: Scheduling, System

Control and Dispatch; Reactive Supply and Voltage Control from Generation Sources; Regulation and Frequency Response; Energy Imbalance; Operating Reserve—Spinning; and Operating Reserve—Supplemental. Ancillary Services are available under the ACS–02 rate schedule.

2. Billing Factor

The Billing Factor is the quantity to which the charge specified in the rate schedule is applied. When the rate schedule includes charges for several products, there may be a Billing Factor for each product.

3. Control Area

A Control Area is an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

4. Control Area Services

Control Area Services are available to meet the Reliability Obligations of a party with resources or loads in the BPA Control Area. A party that is not satisfying all of its Reliability Obligations through the purchase or self-provision of Ancillary Services may purchase Control Area Services to meet its Reliability Obligations. Control Area Services are also available to parties with resources or loads in the BPA Control Area that have Reliability Obligations, but do not have a transmission agreement with TBL. Reliability Obligations for resources or loads in the BPA Control Area are determined by applying the North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP) reliability criteria. Control Area Services, include, without limitation:

a. Regulation and Frequency Response Service

b. Generation Imbalance Service

c. Operating Reserve—Spinning Reserve Service

d. Operating Reserve—Supplemental Reserve Service

e. Other Control Area services.

5. Daily Firm Service

Daily Firm Service is firm transmission service under Part II of the Open Access Transmission Tariff in consecutive daily increments of one day or greater but less than one year.

6. Daily Nonfirm Service

Daily Nonfirm Service is nonfirm transmission service under Part II of the Open Access Transmission Tariff in consecutive daily increments of one day or greater but less than or equal to 31 days.

7. Direct Assignment Facilities

Facilities or portions of facilities that have been or are constructed by the TBL for the sole use and benefit of a particular Transmission Customer requesting service under the Open Access Transmission Tariff, the costs of which may be directly assigned to the Transmission Customer in accordance with applicable Federal Energy Regulatory Commission policy. Direct Assignment Facilities shall be specified in the agreement that governs service to the Transmission Customer.

8. Direct Service Industry (DSI) Delivery

The DSI Delivery segment is the segment of the FCRTS that provides service to DSI customers at voltages of 34.5 kV and below.

9. Dynamic Schedule

A Dynamic Schedule is a telemeter reading or value which is updated in real time and which is used as a schedule in the Automatic Generation Control (AGC) and Area Control Error (ACE) equation of the TBL and the integrated value of which is treated as a schedule for interchange accounting purposes. One way Dynamic Schedules are commonly used for scheduling remote generation or remote load to or from another Control Area. Two-way Dynamic Schedules are commonly used to provide supplemental regulation or operating reserve support from one entity to another, usually between Control Areas. The Receiving Party sends the Delivering Party a requested Dynamic Schedule (the first part of the two-way schedule). The Delivering Party then responds with the official Dynamic Schedule of what actually is delivered to the Receiving Party (the second part of the two-way schedule).

10. Eastern Intertie

The Eastern Intertie is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment, including related terminals at Garrison.

11. Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy over a single hour to a load located within the BPA Control Area. The TBL must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the TBL or make alternative comparable arrangements specified in the Transmission Customer's Service Agreement to satisfy its Energy Imbalance Service obligation.

12. Federal Columbia River Transmission System

The Federal Columbia River Transmission System (FCRTS) is the transmission facilities of the Federal Columbia River Power System, which include all transmission facilities owned by the government and operated by TBL, and other facilities over which TBL has obtained transmission rights.

13. Federal System

The Federal System is the generating facilities of the Federal Columbia River Power System, including the Federal generating facilities for which BPA is designated as marketing agent; the Federal facilities under the jurisdiction of BPA; and any other facilities:

a. from which BPA receives all or a portion of the generating capability (other than station service) for use in meeting BPA's loads to the extent BPA has the right to receive such capability. ''BPA's loads'' do not include any of the loads of any BPA customer that are served by a non-Federal generating resource purchased or owned directly by such customer which may be scheduled by BPA;

b. which BPA may use under contract or license; or

c. to the extent of the rights acquired by BPA pursuant to the 1961 U.S.-Canada Treaty relating to the cooperative development of water resources of the Columbia River Basin.

14. Generation Imbalance

Generation Imbalance is the difference between the hourly scheduled amount and actual delivered amount of energy from a generation resource in the BPA Control Area.

15. Generation Imbalance Service

Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from generation resources in the BPA Control Area during a schedule hour.

16. Heavy Load Hours (HLH)

Heavy Load Hours (HLH) are all those hours in the peak period: Hour ending 7:00 a.m. to the hour ending 10:00 p.m., Monday through Saturday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable). There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday.

17. Hourly Firm Service

Hourly Firm Service is firm transmission service under Part II of the Open Access Transmission Tariff in consecutive hourly increments.

18. Hourly Nonfirm Service

Hourly Nonfirm Service is nonfirm transmission service under Part II of the Open Access Transmission Tariff in hourly increments.

19. Integrated Demand

Integrated Demand is the quantity derived by mathematically ''integrating'' kilowatthour deliveries over a 60-minute period. For one-way dynamic schedules, demand is integrated on a rolling ten-minute basis.

20. Intentional Deviation

BPA, in its sole determination, may find that an Intentional Deviation exists if:

(a) a deviation is persistent during multiple consecutive hours or at specific times of the day;

(b) a pattern of under-delivery or over-use of energy occurs; or

(c) persistent over-generation or under-use during LLH, particularly when the customer does not respond by adjusting schedules for future days to correct these patterns.

21. Light Load Hours (LLH)

Light Load Hours (LLH) are all those hours in the offpeak period: hour ending 11:00 p.m. to hour ending 6:00 a.m. Monday through Saturday and all hours Sunday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable).

22. Long-Term Firm Service

Long-Term Firm Service is Firm Transmission service under Part II of the Open Access Transmission Tariff with a term of one year or more.

23. Main Grid

As used in the FPT rate schedule, the Main Grid is that portion of the Network facilities with an operating voltage of 230 kV or more.

24. Main Grid Distance

As used in the FPT rate schedules, Main Grid Distance is the distance in airline miles on the Main Grid between the Point of Integration (POI) and the Point of Delivery (POD), multiplied by 1.15.

25. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid Interconnection Terminal refers to Main Grid terminal facilities that interconnect the FCRTS with non-TBL facilities.

26. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, Main Grid Miscellaneous Facilities refers to switching, transformation, and other facilities of the Main Grid not included in other components.

27. Main Grid Terminal

As used in the FPT rate schedules, Main Grid Terminal refers to the Main Grid terminal facilities located at the sending and/or receiving end of a line, exclusive of the Interconnection terminals.

28. Measured Demand

The Measured Demand is that portion of the customer's Metered or Scheduled Demand for transmission service from TBL under the applicable transmission rate schedule. If transmission service to a point of delivery, or from a point of receipt, is provided under more than one rate schedule, the portion of the measured quantities assigned to any rate schedule shall be as specified by contract. The portion of the total Measured Demand so assigned shall be the Measured Demand for transmission service for each transmission rate schedule.

29. Metered Demand

Except for dynamic schedules, the Metered Demand in kilowatts shall be the largest of the 60-minute clock-hour Integrated Demands at which electric energy is delivered (received) for a transmission customer:

a. at each point of delivery (receipt) for which the Metered Demand is the basis for the determination of the Measured Demand;

b. during each time period specified in the applicable rate schedule; and

c. during any billing period.

Such largest Integrated Demand shall be determined from measurements made in accord with the provisions of the applicable contract and these GRSPs. This amount shall be adjusted as provided herein and in the applicable agreement between TBL and the customer.

For dynamic schedules, the Metered Demand in kilowatts shall be the largest 10 minute moving average of the load (generation) at the point of delivery (receipt). The 10 minute moving average shall be assigned to the hour in which the 10 minute period ends.

30. Montana Intertie

The Montana Intertie is the double-circuit 500 kV transmission line and associated substation facilities from Broadview Substation to Garrison Substation.

31. Monthly Transmission Peak Load

Monthly Transmission Peak Load is the peak loading on the Federal transmission system during any hour of the designated billing month, determined by the largest hourly integrated demand produced from the sum of Federal and non-Federal generating plants in BPA's Control Area and metered flow into BPA's Control Area.

32. Network (or Integrated Network)

The Network is the segment of the Federal Columbia River Transmission System (FCRTS) which provides the bulk of transmission of electric power within the Pacific Northwest.

33. Network Load

Network Load is the load that a Network Integration Customer designates for Network Integration Transmission Service under Part III of the Open Access Transmission Tariff (Tariff). The Network Integration Customer's Network Load shall include all Network Load served by the output of any Network Resources designated by the Network Integration Customer. A Network Integration Customer may elect to designate less than its total load as Network Load but may not designate only part of the load as Network Load at a discrete Point of Delivery. Where a Network Integration Customer has elected not to designate a particular load at discrete Points of Delivery as Network Load, the Network Integration Customer is responsible for making separate arrangements under Part II or Part IV of the Tariff that may be necessary for such non-designated load.

34. Network Upgrades

Network Upgrades are modifications or additions to transmission-related facilities that are integrated with and

support the TBL's overall Transmission System for the general benefit of all users of such Transmission System.

35. Nonfirm Service

Nonfirm Service is Daily Nonfirm and Hourly Nonfirm Service under Part II of the Open Access Transmission Tariff.

36. Operating Reserve—Spinning Reserve Service

Operating Reserve—Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The TBL must offer this service when the transmission service is provided to load served by generation located in the BPA Control Area. The Transmission or Control Area Service Customer must either purchase this service from the TBL or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The Transmission or Control Area Service Customer's obligation is determined consistent with North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC) and Northwest Power Pool (NWPP) criteria.

37. Operating Reserve—Supplemental Reserve Service

Operating Reserve—Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The TBL must offer this service when the transmission service is provided to load served by generation located in the BPA Control Area. The Transmission or Control Area Service Customer must either purchase this service from the TBL or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The Transmission Customer's obligation is determined consistent with North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC) and Northwest Power Pool criteria.

38. Operating Reserve Requirement

Operating Reserve Requirement is a party's total reserve obligation to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserves associated with its transactions which impose a reserve obligation on the BPA Control Area. Operating Reserve Requirement is composed of two parts: regulating reserve obligation and contingency reserve obligation.

A party's regulating reserve obligation is met by purchasing Regulation and Frequency Response Service. The contingency reserve obligation is satisfied by purchasing or otherwise providing operating Reserve—Spinning Reserve Service and Operating Reserve—Supplemental Reserve Service.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) policies, the Northwest Power Pool (NWPP) Operating Manual, ''Contingency Reserve Sharing Procedure,'' and the Western Systems Coordinating Council (WSCC) ''Minimum Operating Reliability Criteria'' (MORC).

39. Point of Delivery (POD)

Point(s) on the TBL's Transmission System, or transfer points on other utility systems pursuant to Section 15.3 of the Open Access Transmission Tariff (Tariff), where capacity and energy transmitted by the TBL will be made available to the Receiving Party under Parts II, III, or IV of the Tariff or to the Transmission Customer under other BPA transmission service agreements.

40. Point of Integration (POI)

A Point of Integration is the contractual interconnection point where power is received from the customer. Typically, a point of integration is located at a resource site, but it could be located at some other interconnection point.

41. Point of Interconnection (POI)

A Point of Interconnection is a point where the facilities of two entities are interconnected. This term has the same meaning as ''Point of Integration'' and ''Point of Receipt'' in certain pre-Open Access Transmission Tariff service agreements.

42. Point of Receipt (POR)

Point(s) of Receipt are the point(s) of interconnection on the TBL's Transmission System where capacity and energy will be made available to the TBL by the Delivering Party under Parts II, III, or IV of the Open Access Transmission Tariff. The Point(s) of Receipt shall be specified in the Service Agreement.

43. Ratchet Demand

The Ratchet Demand in kilowatts or kilovars is the maximum demand established during a specified period of time either during, or prior to, the current billing period. The Ratchet Demand shall be the maximum demand established during the previous 11 billing months. If a Transmission Demand has been decreased pursuant to the terms of the transmission agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand. The Ratchet Demand for reactive power is defined in the Power Factor Penalty Charge at section II.C of these GRSPs.

44. Reactive Power

Reactive Power is the out-of-phase component of the total voltamperes in an electric circuit. Reactive Power has two components: reactive demand (expressed in kilovars or kVAr) and reactive energy (expressed in kilovarhours or kVArh).

45. Reactive Supply and Voltage Control from Generation Sources Service

Reactive Supply and Voltage Control from Generation Sources Service is required to maintain voltage levels on the TBL's transmission facilities within acceptable limits. In order to maintain transmission voltages on the TBL's transmission facilities within acceptable limits, generation facilities (in the Control Area where the TBL's transmission facilities are located) are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the TBL's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the TBL. The Transmission Customer must purchase this service from the TBL.

46. Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) as necessary to follow the moment-by-moment changes in load.

The obligation to maintain this balance between resources and load lies with the TBL. The TBL must offer this service when the transmission service is used to serve load within the BPA Control Area. The Transmission Customer must either purchase this service from the TBL or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation.

47. Reliability Obligations

Reliability Obligations are the obligations for reliability-based services that a party with resources or loads in the BPA Control Area must provide in order to meet minimum reliability standards. Reliability Obligations shall be determined consistent with applicable North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), and Northwest Power Pool (NWPP) standards. TBL offers Ancillary Services and Control Area Services to allow resources or loads to meet their Reliability Obligations.

48. Scheduled Demand

Scheduled Demand is the hourly demand at which electric energy is scheduled for transmission on the FCRTS.

49. Scheduling, System Control and Dispatch Service

Scheduling, System Control and Dispatch Service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is to be provided directly by the TBL (if the TBL is the Control Area operator) or indirectly by the TBL making arrangements with the Control Area operator that performs this service for the TBL's Transmission System. The Transmission Customer must purchase this service from the TBL or the Control Area operator.

50. Secondary System

As used in the FPT rate schedules, Secondary System is that portion of the Network facilities with an operating voltage between 69 kV to less than 230 kV.

51. Secondary System Distance

As used in the FPT rate schedules, Secondary System Distance is the number of circuit miles of Secondary System transmission lines between the secondary Point of Integration and either the Main Grid or the secondary Point of Delivery (POD), or between the Main Grid and the secondary POD.

52. Secondary System Interconnection Terminal

As used in the FPT rate schedules, Secondary System Interconnection Terminal refers to the terminal facilities on the Secondary System that interconnect the FCRTS with non-TBL facilities.

53. Secondary System Intermediate Terminal

As used in the FPT rate schedules, Secondary System Intermediate Terminal refers to the first and final terminal facilities in the Secondary System transmission path, exclusive of the Secondary System Interconnection terminals.

54. Secondary Transformation

As used in the FPT rate schedules, Secondary Transformation refers to transformation from Main Grid to Secondary System facilities.

55. Short-Term Firm Service

Short-Term Firm Service is Daily Firm and Hourly Firm Transmission Service under Part II of the Open Access Transmission Tariff.

56. Southern Intertie

The Southern Intertie is the segment of the FCRTS that includes, but is not limited to, the major transmission facilities consisting of two 500 kV AC lines from John Day Substation to the Oregon-California border; a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation; and the 500 kV AC Intertie facilities, which include Captain Jack Substation, the Alvey-Meridian AC line, one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

57. Spill Condition

Spill Condition, for the purpose of determining credit or payment for Deviations under the Energy Imbalance and Generation Imbalance rates, exists when any one or more of the following conditions exist or events occur on the BPA system: high flows and full reservoirs; flood control implementation; spill priority implementation procedures; spill due to lack of Federal load; spill past unloaded turbines; minimum generation requirements; increased spill due to storage; BPA is not accepting Coordination storage due to lack of storage or a specified flow requirement. Discretionary spill, where BPA may choose whether to spill does not constitute a Spill Condition.

58. Spinning Reserve Requirement

Spinning Reserve Requirement is a portion of a party's Operating Reserve Requirement to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserve—Spinning Reserve Service associated with its transactions which impose a reserve obligation on the BPA Control Area.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) policies, the Northwest Power Pool (NWPP) Operating Manual, ''Contingency Reserve Sharing Procedure,'' and the Western Systems Coordinating Council (WSCC) ''Minimum Operating Reliability Criteria'' (MORC).

59. Supplemental Reserve Requirement

Supplemental Reserve Requirement is a portion of a party's Operating Reserve Requirement to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserve—Supplemental Reserve Service associated with its transactions which impose a reserve obligation on the BPA Control Area.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) policies, the Northwest Power Pool (NWPP) Operating Manual, ''Contingency Reserve Sharing Procedure,'' and the Western Systems Coordinating Council (WSCC) ''Minimum Operating Reliability Criteria'' (MORC).

60. Total Transmission Demand

Total Transmission Demand is the sum of all the transmission demands as defined in the applicable agreement.

61. Transmission Customer

A Transmission Customer is an entity that (a) has executed a Service Agreement under the Open Access Transmission Tariff; (b) receives transmission service under section 17.2 of the Open Access Transmission Tariff; or (c) has executed any other transmission agreement with the TBL.

62. Transmission Demand

Transmission Demand is the maximum amount of capacity, energy, and/or required Ancillary Services that the TBL agrees to transmit for the Transmission Customer over the TBL's Transmission System between the Point(s) of Receipt or Network

Resources and the Point(s) of Delivery under Parts II or IV of the Open Access Transmission Tariff. The Transmission Demand shall be expressed in terms of: (a) a demand in whole megawatts on a sixty-minute (60) interval (commencing on the clock hour) basis except in cases where Dynamic Schedules are involved; (b) a demand equal to the largest ten-minute (10) moving average of the load or generation expected to occur during the contract period for one-way Dynamic Schedules used to transfer generation or load from one Control Area to another Control Area; or (c) a demand equal to the instantaneous peak demand, for each direction, of the supplemental Control Area service request expected to occur during the contract period for two-way Dynamic Transfers, used to provide supplemental Control Area services. The supplemental Control Area service response shall always be the lesser of the Control Area service request or the Transmission Demand associated with the supplemental Control Area service.

63. Transmission Provider

The Bonneville Power Administration's Transmission Business Line (TBL) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Open Access Transmission Tariff and other agreements. This excludes the Merchant Function.

64. Utility Delivery

The Utility Delivery segment is that segment of the FCRTS that provides service to utility customers at voltages below 34.5 kV.

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Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Fluorescent Lamp Ballast Energy Conservation Standards; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN 1904–AA75

Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE, Department, or we) to administer an energy conservation program for these products. The National Appliance Energy Conservation Amendments of 1988 require DOE to consider amending the energy conservation standards for fluorescent lamp ballasts. The Department conducted several analyses regarding the energy savings, benefits and burdens of amended energy conservation standards for fluorescent lamp ballasts and has shared the results of these analyses with all stakeholders. Based on these analyses, several of the major stakeholders, including manufacturers and energy efficiency advocates, submitted to the Department a joint proposal for the highest standard level which they believe to be technically feasible and economically justified. Based on our review of this proposal and our analyses, we believe the standards they proposed are technically feasible and economically justified. Therefore, today we propose to amend the energy conservation standard for fluorescent lamp ballasts for commercial and industrial applications as recommended in the joint proposal and announce a public hearing.

DATES: Comments must be received on or before May 29, 2000. The Department requests 10 copies of the written comments and, if possible, a computer disk. Oral views, data, and arguments may be presented at the public hearing to be held in Washington, D.C., beginning at 9:00 a.m. on April 18, 2000.

Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., April 3, 2000. Copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., April 6, 2000. The DOE panel will read the statements in advance of the hearing and would appreciate the oral presentations to be limited to a summary of the statement. The length of each oral presentation is limited to 15 minutes.

ADDRESSES: The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC. Written comments, oral statements, and requests to speak at the hearing are to be submitted to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts, Docket No. EE–RM–97–500, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121.

Copies of the public comments received, the Technical Support Document (TSD) and the transcript of the public hearing may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585. (202) 586–9127. Copies of the analysis can also be found on the Codes and Standards Internet site at: http://www.eren.doe.gov/buildings/codes__standards/applbrf/ballast.html.

For more information concerning public participation in this rulemaking proceeding see Section VII, ''Public Comment Procedures,'' of this Notice.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127, or Eugene Margolis, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law

95–619, by the National Appliance Energy Conservation Act, Public Law 100–12, by the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486 [1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as ''covered products'') include fluorescent lamp ballasts.

Under the Act, the program consists essentially of three parts: Testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, amends or establishes new test procedures for each of the covered products. Section 323. The test procedures measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. They must not be unduly burdensome to conduct. Section 323 (b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). Test procedures appear at 10 CFR part 430, subpart B.

The Federal Trade Commission (FTC) prescribes rules governing the labeling of covered products after DOE publishes test procedures. Section 324(a). The FTC labels indicate the annual operating cost for the particular model and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, the FTC must require a different useful measure of energy consumption. Section 324(c). At the present time, there are Federal Trade Commission rules requiring labels for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, refrigerators, refrigerator-freezers and freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts.

The National Appliance Energy Conservation Amendments of 1988 prescribed Federal energy conservation standards for ballasts. Section 325(g). The Act specifies that the standards are to be reviewed by the Department no later than January 1, 1992. Section 325(g)(7)(A).

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(o)(2)(A).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(I) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) The need for national energy conservation; and

(VII) Other factors the Secretary considers relevant.

In addition, section 325(o)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *'' The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)–(c). Exemptions to this general rule include: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988 (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (Section 327(b)(3) and (f)(1)–(4)); (3) State regulations banning constant burning pilot lights in pool heaters (Section 327(b)(4)); and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (Section 327(b)(6) and 327(c)).

b. Background

The National Energy Conservation Policy Act,[2] which amended the Energy Policy and Conservation Act, required DOE to establish mandatory energy efficiency standards for each of the 13 covered products. These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

The National Energy Conservation Policy Act provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended the Energy Policy and Conservation Act in part by: Redefining ''covered products'' (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

[2] The consumer products covered by the National Energy Conservation Policy Act included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

if an amended standard is required. It also established the rebuttable presumption test of economic justification.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if any amended standard for fluorescent lamp ballasts is required.

The Energy Policy Act of 1992, which became law on October 24, 1992, addressed various commercial appliances and equipment.

As directed by the Act, DOE published an advance notice of proposed rulemaking for fluorescent lamp ballasts, as well as a variety of other consumer products. (55 FR 39624, September 28, 1990). The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking.

Pursuant to section 325 of the Act, DOE proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts, as well as a variety of other consumer products. 59 FR 10464 (March 4, 1994). On January 31, 1995, the Department published a Rulemaking Determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. 60 FR 5880 (January 31, 1995).

A moratorium was placed on publication of proposed or final rules for appliance efficiency standards as part of the FY 1996 appropriations legislation. Pub. L. 104–134. That moratorium expired on September 30, 1996.

On July 15, 1996, the Department published a Process Improvement Rule establishing procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products). 61 FR 36974.

The Department conducted numerous meetings, workshops and discussions regarding energy efficiency standards for fluorescent lamp ballasts resulting in the publication of a Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts, July, 1997; a Summary of Inputs for the Technical Support Document: Energy Efficiency Standards for Fluorescent Lamp Ballasts, April 20, 1998; and a Ballast Manufacturer Impact Analysis Analytical Approach, April 10, 1998. 62 FR 38222 (July 17, 1997) and 63 FR 16706 (April 6, 1998). A workshop was conducted on these analyses and documents on April 28, 1998. 63 FR 16706 (April 6, 1998). Based on comments and the growing popularity of electronic ballasts with T8 lamps, the Department solicited further comments specifically on the issue of whether market shifts (*e.g.,* from T12 to T8 lamps) should be considered in determining the impact of an energy conservation standard on commercial and industrial consumers, manufacturers and the nation. 63 FR 58330 (October 30, 1998). Further comments on the above analyses, and modifications resulting from those comments, culminated in publishing a revised analysis on the Codes and Standards Internet site (http://www.eren.doe.gov/buildings/codes__standards/applbrf/ballast.html) in April of 1999. We also conducted a workshop reviewing this analysis on June 1, 1999. 64 FR 24634 (May 7, 1999). On the basis of comments received on these documents, DOE reviewed its analysis and prepared a TSD.

On October 12 and 13, 1999, the National Electrical Manufacturers Association convened a meeting where its members negotiated with representatives of the American Council for an Energy Efficient Economy, the Natural Resources Defense Council, the Alliance to Save Energy and the Oregon Energy Office to produce a joint comment proposal for amended fluorescent lamp ballast standards. (Hereafter referred to as the Joint Comment.) We have evaluated the impacts of the joint comment proposal and those results are presented in Appendix E of the TSD.

II. General Discussion

a. Test Procedures

The Act provides that no standard for a product be established if there is no test procedure for the product. The Amendments of 1988 set forth test procedures and energy conservation standards for fluorescent lamp ballasts. Based upon the Amendments of 1988, the Department established Federal test procedures for fluorescent lamp ballasts. 56 FR 18682 (April 24, 1991). As of the effective date of the energy conservation standards (ballasts manufactured on or after January 1, 1990; sold by the manufacturer on or after April 1, 1990; or incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991), all ballasts, be they energy efficient magnetic, cathode cutout or electronic, for use in connection with F40T12, F96T12 or F96T12HO lamps, are required to meet a ballast efficacy factor as measured by the Federal test procedures. No one has petitioned DOE indicating the Department's test procedures were inadequate for testing fluorescent lamp ballasts using the above technologies. Since these are the same technologies considered in today's proposed rule, the Department considers the current Federal test procedures applicable and appropriate for today's proposed rule. Furthermore, stakeholders commenting in the Joint Comments stated that they consider the current Federal test procedures applicable and appropriate for the new recommended ballast standards. (Joint Comment, No. 91 at 6).

b. Technological Feasibility

1. General

There are lamp ballasts in the market at all of the efficiency levels analyzed in today's notice. The Department, therefore, believes all of the efficiency levels discussed in today's notice are technologically feasible.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in considering any new or amended standards, to consider those that ''shall be designed to achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (Section 325 (o)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (max tech) design option was identified.

Ballast efficiency is expressed as a ballast efficacy factor, BEF. It is equal to BF/W, where BF is the ballast factor expressed as a percentage (*e.g.,* 90, not 0.90) and W is the input power to the ballast in ANSI (American National Standards Institute) C82.2–1984 in Watts. The most efficient technology presently available is a high frequency electronic ballast; this is considered the maximum technologically feasible (MTF) design for this analysis. The operation at high frequency (20 Kilohertz (kHz) or more) increases the lamp efficacy and also allows for lower ballast losses.

For each product class and technology that we analyzed, there is a range of efficiencies in the marketplace. In consideration of this range, we used a different approach to selecting BEF level for the purposes of today's analysis than

for the setting of the trial standard levels. The analysis represents the probable average savings from a movement from the base case to the MTF option (electronic ballast), which itself has a range of BEFs. In contrast, the proposed trial standards set BEF levels that allow the large majority of electronic ballasts to meet the standard. The following paragraph explains the two approaches in more detail.

For the analysis of electronic ballasts, we chose the median (50 percentile) BEF as the value to use from the electronic ballast product data supplied by the National Electrical Manufacturers Association (NEMA). These data are found in Appendix A of the TSD. For each product class, about half of the ballasts on the market have efficiencies greater and half lower than the level chosen for the analysis. Therefore, the unit energy consumption calculated for a ballast at the median efficiency will result in an energy use close to the average for that product class. The Department believes this median approach properly reflects the energy savings impact from using electronic ballasts rather than magnetic ballasts.

For the purpose of setting efficiency standards, the Department chose not to differentiate within a technology (such as electronic high frequency ballasts) and decided to choose BEF levels that the vast majority of models would be able to meet. Therefore, for electronic ballasts in each product class, we chose the 10 percentile BEF level of efficiency. This means that 90 percent of the existing electronic ballast models can meet the standard being considered. In order to clearly show the differences in these BEFs, we report in the table below both the proposed standard level BEF (10th percentile) and the corresponding analysis level BEF (50th percentile) for each product class analyzed.

ELECTRONIC FLUORESCENT LAMP BALLAST EFFICACY FACTORS [3]

Application for operation of	Analysis BEF (50th percentile)	Standards BEF (10th percentile)
One F40 T12/40-watt lamp	2.34	2.29
Two F40 T12/40-watt lamps	1.19	1.17
Three F40 T12/40-watt lamps	0.78	0.76
Two F96 T12/40-watt lamps	0.65	0.63
Two F96 T12HO/40-watt lamps	0.43	0.39

Another consideration in choosing MTF levels is that experience shows that there is some variation in the BEFs of ''identically'' manufactured electronic ballasts of any product class. As indicated in Table A.3, Appendix A of the TSD, there is sometimes only a small spread between the 10 and 50 percentile BEFs. By choosing the standard level at the 10th percentile rather than the 50 percentile level, the Department is allowing manufacturing tolerance to the ballast manufacturers.

c. Energy Savings

1. Determination of Savings

The Department forecasted energy savings through the use of a national energy savings (NES) spreadsheet, which forecasted energy savings over the period of analysis for candidate standards relative to the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards.

The NES spreadsheet model is described in section III.b of this notice, *infra,* and also in Appendix B of the TSD. One of the very important inputs to the model is the forecast of magnetic ballast shipments in the absence of amended mandatory standards. Two shipments scenarios (shipments of magnetic ballasts decline until 2015 and shipments decline until 2027) were examined to attempt to cover the range of possibilities for market shares of electronic and magnetic ballasts (see Chapter 5 of the TSD). Additionally, in evaluating the joint comment proposal, the Department used a third shipment scenario (flat magnetic ballast shipment forecast) as the upper bound as described in Appendix E of the TSD.

The NES spreadsheet model first calculates the energy savings in site energy or kilowatt-hours (kWh). Site energy is the energy directly consumed at building sites by the lamp/ballast systems of interest. The energy savings to the nation is expressed in quads, that is, quadrillions of British thermal units (Btus). This is the source energy needed to generate and transmit the electricity consumed. A time series of conversion factors is used to convert site energy (kWh) to source energy (Btu). Chapter 5 of the TSD contains a table of these conversion factors, which are derived from DOE/EIA's Annual Energy Outlook 1999.

2. Significance of Savings

Under section 325(o)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant'' energy savings. While the term ''significant'' has never been defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), concluded that Congressional intent in using the word ''significant'' was to mean ''non-trivial.''

d. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(o)(2)(B)(iii) states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified.[4] This

[3] It should be noted the analyses were performed assuming energy saver lamps and the values in the table below are for full-wattage T12 lamps. Table 3.5 in the TSD contains both watts and BEF values for various ballast types operating T12 energy saver lamps.

[4] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures with assumed usage shown in Table 3.5 of the TSD. Commercial and industrial consumers that use the ballasts less hours will experience a longer payback

Continued

presumption of economic justification can be rebutted upon a proper showing.

e. Economic Justification

As noted earlier, Section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The July 1996 Process Improvement Rule established procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer products). 61 FR 36974 (July 15, 1996). Key objectives of the rule have direct bearing on the implementation of manufacturer impact analyses. First, the Department will utilize an annual cash flow approach in determining the quantitative impacts on manufacturers. This includes a short-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect, and a long-term assessment. Impacts analyzed include industry net present value, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Secondly, the Department will analyze and report the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Thirdly, the Department will consider the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Finally, the Department will take into account cumulative impacts of different DOE regulations on manufacturers.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, *i.e.,* life-cycle cost, of each standard level are presented in Chapter 4 of the Technical Support Document (TSD). Under section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification. Additionally, the Department has decided to consider, under factor seven, ''other factors the Secretary considers relevant,'' the life-cycle cost impacts on those subgroups of commercial and industrial consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems.

2. Life-Cycle Costs

One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in the life-cycle costs between the baseline and the more efficient technologies for the lamp/ballast combinations analyzed. The life-cycle cost is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

For each lamp/ballast combination, we calculated the life-cycle costs for three technologies: energy efficient magnetic, cathode cutout and electronic ballasts. We used real discount rates of 4, 8 and 15 percent for the calculations. The assumption is that the consumer purchases the ballast in 2003. Price forecasts are taken from the 1999 *Annual Energy Outlook* of the Energy Information Administration (DOE/EIA–0383). For the probability-based life-cycle cost analysis, we used a distribution of marginal electricity prices for a data base of commercial buildings (see Chapter 4 and Appendix B of the TSD). The life-cycle cost calculations include ballast and lamp costs (purchase prices and installation costs for both and replacement costs for lamps only) and annual electricity costs of the lamp/ballast system operation over the lifetime of the ballast. Chapter 4 of the TSD contains the details of the life-cycle cost calculations including those considered under factor seven below, *infra.*

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings. The savings are provided in Section V of this notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products and design options and by providing exemptions, the Department tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking.

An issue of utility that was considered was the possibility of interference with certain equipment, such as medical monitoring equipment, caused by the high frequency of electronic ballasts. To prevent any interference that cannot be solved by electronic ballast designers, the Department is not establishing a standard for T8 ballasts, thereby allowing magnetic T8 ballasts for such applications.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department has provided the Attorney General with copies of this notice and the Technical Support Document for review.

6. Need of the Nation To Conserve Energy

We report the environmental effects from each standard level for each product under this factor in Section V of this notice.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. Under this factor, the Secretary has decided to consider the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems. This analysis is part of the Department's continuing effort to study the economic impact of standards on consumers. While the Department does not believe it can set standard levels based on consumer purchasing behavior given the findings of the court in *Natural Resources Defense Council* v. *Herrington,* 768 F. 2d 1355, 1406–07 (D.C. Cir. 1985), where the court stated that ''the entire point of a mandatory program was to change consumer behavior'' and ''the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct,'' the Department will consider and evaluate the impact of likely consumer actions.

The Secretary has also decided to consider the Joint Comment. This

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while those that use them more will have a shorter payback.

proposal segments the ballast market by defining replacement ballasts and proposes extended implementation dates for all segments of the ballast market to comply with the new standards. The proposal also includes certain exemptions. All of these proposals are oriented toward mitigating financial impacts on manufacturers and ensuring a minimal level of disruption to the ballast replacement marketplace.

III. Methodology

The Process Rule outlines the procedural improvements identified by the interested parties. 61 FR 36974. The process improvement effort also included a review of the: (1) Economic models; (2) analytical tools; (3) methodologies; (4) non-regulatory approaches; and (5) prioritization of future rules.

The Department developed two new spreadsheet tools to meet the objectives of the Process Rule. The first spreadsheet calculates Life-Cycle-Cost (LCC) and Payback. The second calculates national energy savings (NES). We tailored versions of these two spreadsheets for the ballast analyses. The Department also completely revised the methodology used in assessing manufacturer impacts including the adoption of the Government Regulatory Impact Model (GRIM).

Additionally, DOE has developed a new approach using the National Energy Modeling System (NEMS) to estimate impacts of ballast energy efficiency standards on electric utilities and the environment. The Department used a version of Energy Information Administration's (EIA) NEMS for the utility and environmental analyses. NEMS simulates the energy economy of the U.S. and has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). NEMS produces a widely-known baseline forecast for the U.S. through 2020 that is available in the public domain. The version of NEMS used for appliance standards analysis is called NEMS–BRS [5], and is based on the AEO99 version with minor modifications. NEMS offers a sophisticated picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

[5] EIA approves use of the name NEMS to describe only an AEO version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that deviate from AEO assumptions, the name NEMS–BRS refers to the model as used here.

a. Life-Cycle-Cost Spreadsheet

This section describes the LCC spreadsheet model used for analyzing the economic impacts of possible standards on individual commercial and industrial consumers. Details of the spreadsheet model can be found in Appendix A. We conduct the LCC analysis with a spreadsheet model developed in Microsoft Excel for Windows 95. When combined with Crystal Ball (a commercially available software program), the LCC model can use a Monte Carlo simulation to perform the analysis by incorporating uncertainty and variability considerations. The spreadsheet is organized so that ranges (distributions) can be entered for each input variable needed to perform the calculations. The LCC output can be either a point value when we use the average value of the inputs or a distribution when we use distributions for some or all of the inputs. In the analyses described in this notice, we used distributions for the most important input variables.

The life-cycle cost calculations include ballast and lamp costs (purchase price and installation cost for both and replacement cost for lamps only) and annual electricity costs of the lamp/ballast system operation over the lifetime of the ballast. The inputs to the life-cycle cost analysis include: The year standards take effect, the discount rate, the electricity price projections, ballast prices, annual lighting hours, ballast life, ballast input power, and initial and lamp replacement costs. Chapter 4 of the TSD contains the details of the life-cycle cost calculations.

In certain cases (when a T8 lamp/ballast system is considered as replacing a T12 lamp/ballast system), an additional input (mean lamp lumens) was required. We used this input to normalize the unequal light outputs for the two lamp types.

b. National Energy Savings Spreadsheet

In order to make the analysis more accessible and transparent to all stakeholders, we developed a spreadsheet model that uses Excel in Windows 95 to calculate the national energy savings (NES) and the national economic costs and savings from new standards. We can change input quantities within the spreadsheet. For example, one can easily change the ballast prices. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. We conduct sensitivities by running different scenarios.

DOE uses the NES spreadsheet to perform calculations of national energy savings based on user inputs similar to those for the LCC spreadsheet. The national energy savings, energy cost savings, equipment costs and net present value of benefits for several product classes are forecast from the chosen start year through 2030. The forecasts provide annual and cumulative values for all four output parameters.

The Department calculates the national energy savings by subtracting energy use under a standards scenario from energy use in a base case (no standards scenario). Energy use is reduced when an energy efficient magnetic (EEM) ballast is replaced by either a cathode cutout (CC) or an electronic ballast. For CC standards, the user can specify what percent of EEM ballasts are converted to electronic and what percent to CC. For an electronic standard, the user can specify what percent of EEM ballasts are converted to T12 or T8 electronic. Unit energy savings for each product class are the same as calculated in the LCC spreadsheet. Additional information about the NES spreadsheet can be found in Chapter 5 and Appendix B of the TSD.

User inputs include: (1) A choice from among several electricity price projections; (2) effective date of the ballast standard; (3) discount rate and discount year; (4) a shipments forecast; and (5) ballast assumptions. Ballast assumptions include inputs such as annual lighting hours and ballast prices. Additionally, we use a time series of conversion factors to change from site to source energy.

One of the more important components of any estimate of future impact is shipments. Forecasts of shipments for the base case and standards case were used as inputs to the NES spreadsheet. The shipments portion of the spreadsheet forecasts EEM ballast shipments from 1997 to 2030. One base case scenario assumes decreasing shipments of EEM ballasts until the year 2015. Another base case scenario assumes decreasing shipments until the year 2027. The decreasing shipments scenarios are determined by one user input: The year by which EEM ballast shipments decrease to 10 percent of the 1997 value. The decrease in EEM shipments is linear. Once that 10 percent value is reached, shipments remain at that value through 2030. Additional details on the various shipments forecasts are provided in Chapter 5 of the TSD.

c. Manufacturer Impact Analysis and Government Regulatory Impact Model (GRIM)

The manufacturer analysis estimates the financial impact of standards on manufacturers and calculates impacts on employment and manufacturing capacity.

Prior to initiating the detailed manufacturing impact analysis for the ballast rulemaking, the Department prepared a document titled ''Ballast Manufacturer Impact Analysis Analytical Approach.'' This document was presented at a public workshop held on April 28, 1998. We developed the approach from the general framework for Manufacturing Impact Analyses presented by the Department in March 1997 and modified for its application to the ballast rule. The document outlined procedural steps and identified issues for consideration.

As proposed in the Approach document, the manufacturer impact analyses (MIA) was conducted in four phases. Phase 1, Industry Profile and Issue Definition, consisted of two activities, namely, preparation of an industry characterization and the conduct of an issue identification workshop. The second phase, ''Strawman'' Industry Cash Flow, had as its focus the larger industry. In this phase, the GRIM was used to prepare a ''strawman'' industry cash flow analysis. Here the Department used publicly available information developed in Phase 1 to adapt the GRIM model structure to facilitate the analysis of new ballast standards. In the Phase 3, Sub-Group Impact Analysis, individual manufacturers used the strawman cash flow as a template from which individual company level cashflows were developed from GRIM. Phase 3 also entailed the documentation of additional impacts on employment and manufacturing capacity through an interview process. Finally in Phase 4, Industry Cash Flow, individual cash flows were aggregated into three groups, one including all manufacturers, a second including full line manufacturers of magnetic and electronic ballasts, and a third including manufacturers producing only electronic ballasts.

1. Phase 1, Industry Profile and Issue Definition

Phase 1 of the Manufacturer Impact Analysis consisted of two activities, namely, preparation of an Industry Characterization, and the conduct of an issue analysis workshop. Prior to initiating the detailed impact studies, the Department received input on the present and past structure and market characteristics of the ballast industry. This activity involved both quantitative and qualitative efforts to assess the industry and products to be analyzed. Issues addressed included manufacturer market shares and characteristics; trends in number of firms; the financial situation of manufacturers; and trends in ballast characteristics and markets.

We presented publicly available quantitative data published by U.S. Bureau of Census with regards to the ballast industry at the April 28, 1998, workshop. These reports include such statistics as the number of companies, manufacturing establishments, employment, payroll, value added, cost of materials consumed, capital expenditures, product shipments, and concentration ratios.

To further assist in performing the Industry Profile and to define key issues, the Department conducted a series of interviews with ballast manufacturers in late 1996 and early 1997. DOE distributed summaries of these interviews at the ''Public Workshop on the Revised Life Cycle Cost and Engineering Analysis of Fluorescent Lamp Ballasts,'' held on March 18, 1997.

The interviews and review of public literature suggested that the following guidelines be followed to assess the impacts of a new ballast standard. First, the Manufacturer Impact Analysis should be performed on a company-by-company basis and the industry impact constructed from an aggregation of impacts on individual companies. Second, the analysis should recognize the increasingly global nature of the ballast industry. Gains or losses in U.S. sales will have consequences for manufacturers regardless of where their production facilities are located. Where possible, the analysis should be structured to assess impacts at U.S. National, North American, and Global levels. Finally, the Manufacturer Impact Analysis should include consideration of direct industry suppliers and luminaire and lamp manufacturers. The Department recognized that manufacturers do not operate in isolation and that changes in production levels or economic health of a manufacturer can have significant impacts on its suppliers and other trade allies.

2. Phase 2, ''Strawman'' Industry Cash Flow

Phase 2 of the manufacturer analyses has as its focus the ''larger'' industry. As such, this phase resembles the Department's past practice of modeling a ''prototypical'' firm with average industry values. The analytical tool used for calculating the financial impacts of standards on manufacturers is the GRIM. In phase 2, we used GRIM to perform a ''strawman'' industry cash flow analysis. Section III.c below, describes briefly the GRIM's operating principles.

Given the relatively small number of firms in the industry, the Department proposed to create an Industry Cash Flow Analysis using a ''bottom-up'' approach. Essentially, each manufacturer was asked to provide its own cash flow analysis to be aggregated with all other manufacturer submittals.

In order to facilitate individual manufacturer analysis, the Department prepared ''strawman'' scenarios for a ''prototypical'' manufacturer from publicly available financial information. Manufacturers then performed their individual cash flows by modifying relevant parameters in the strawman to meet their own situation (price, cost, financial, shipments, *etc.*).

For the strawman, the Department prepared a list of financial values to be used in the GRIM industry analysis. We estimated these by studying publicly available financial statements of fluorescent lamp ballast manufacturers. A detailed definition of financial inputs and their values for a ''prototypical'' ballast manufacturer is contained in Attachment C of the document, entitled ''Financial Inputs to GRIM for the Ballast Rulemaking Analysis.'' We derived strawman values for prices from the Bureau of Census' Current Industrial Reports (CIRs). The dollar value of ballast shipments from factories is divided by the quantity of ballasts shipped to arrive at the per unit manufacturer price. In order to estimate manufacturing costs-labor, materials, depreciation/tooling, *etc.*—from the average manufacturer prices obtained from CIRs, we developed a typical ballast industry cost structure from publicly available information from the Census of Manufacturers (CMs) and from transformer industry statistics (SIC# 3612), and which we obtained from Robert Morris Associates (RMA) reports. Finally in preparing the draft industry cash flow analysis, the Department used the same ballast shipment scenarios developed for the NES spreadsheet.

3. Phase 3, Sub-Group Impact Analysis

The Department conducted detailed interviews with ballast manufacturers representing over 95 percent of domestic ballast sales to gain insight into the potential impacts of standards. During these interviews, the Department solicited the information necessary to

evaluate cashflows and to assess employment and capacity impacts.

The interview process had a key role in the manufacturer impact analyses, since it provided an opportunity for manufacturers to express privately their views on important issues and provide confidential information needed to assess financial, employment and other business impacts. To support the development of company cashflows, the interview guide solicited information on the possible impacts of new standards on manufacturing costs, product prices, and sales. The evaluation of the possible impacts on direct employment, and assets also drew heavily on the information gathered during the interviews. The interview guide solicited both qualitative and quantitative information. We requested supporting information whenever applicable.

DOE asked interview participants to identify all confidential information provided in writing or orally. Approximately two weeks following the interview, we provided an interview summary to give manufacturers the opportunity to confirm the accuracy and protect the confidentiality of all collected information.

4. Phase 4, Industry Cash Flow

As previously described, we used the GRIM spreadsheet and an interview guide to perform the ballast Manufacturer Impact Analysis on a company-by-company basis. This process has the benefit of enabling the impacts of standards to be evaluated at multiple levels of aggregation. The total industry impact was constructed from an aggregation of impacts on individual companies. The Department aggregated the individual cash flows into three groups, one including all manufacturers, a second including full line manufactures of magnetic and electronic ballasts only, and a third group including manufacturers producing only electronic ballasts. This aggregation scheme was selected as the most representative of the range of impacts on individual manufactures compared to the industry aggregate values.

5. GRIM Spreadsheet

A change in standards affects a manufacturer's cashflow in three distinct ways. Increased levels of standards will: (1) Require additional investment; (2) raise production costs; and (3) affect revenue through higher prices and, possibly, lower quantities sold. To quantify these changes, the Department performs an industry and manufacturer cashflow analyses using the GRIM.

The GRIM analysis uses a number of inputs—annual ballast shipments; ballast prices; manufacturer costs such as materials and labor, selling and general administration costs, taxes, and capital expenditures—to arrive at a series of annual cash flows beginning from before implementation of standards and continuing explicitly for several years after implementation. The measure of industry net present values are calculated by discounting the annual cash flows from the period before implementation of standards to some future point in time. Additional information about the GRIM spreadsheet can be found in Chapter 6 of the TSD.

d. NEMS Environmental Analysis

The environmental analysis provides estimates of changes in emissions of nitrogen oxides (NO_X) and carbon from carbon dioxide (CO_2). The Department used NEMS–BRS for the fluorescent ballast environmental analyses (as well as the utility analyses). NEMS–BRS is run similar to the AEO99 NEMS except that commercial lighting energy usage is reduced by the amount of energy (electricity) saved due to proposed ballast standards. The input of energy savings are obtained from the NES spreadsheet. For the environmental analysis, the output is the forecasted physical emissions. The net benefits of the standard is the difference between emissions estimated by NEMS–BRS and the AEO99 Reference Case.

The environmental analysis is relatively straightforward from NEMS–BRS. Carbon emissions are tracked in NEMS–BRS using a detailed carbon module that provides robust results because of its broad coverage of all sectors and inclusion of interactive effects. The only form of carbon tracked by NEMS–BRS is CO_2. However, in this report the carbon savings are reported as elemental carbon.

The two airborne pollutant emissions that have been reported in past analyses, SO_2 and NO_X, are reported by NEMS–BRS. NO_X results are based on forecasts of compliance with existing legislation. In the case of SO_2, the Clean Air Act Amendments of 1990 set an emissions cap on all power generation. The attainment of this target, however, is flexible among generators and is enforced by applying market forces, through the use of emissions allowances and tradable permits. As a result, accurate simulation of SO_2 trading tends to imply that physical emissions effects will be zero because emissions will always be at, or near, the ceiling. This fact has caused considerable confusion in the past. There is virtually no real possible SO_2 environmental benefit from electricity savings as long as there is enforcement of the emission ceilings. Please see Appendix D of the TSD for a discussion of this issue.

Alternative price forecasts corresponding to the high and low economic growth side cases found in AEO99 have also been generated for use by NES and will be explored in a similar fashion with NEMS–BRS runs.

IV. Discussion of Comments

As noted above, the DOE proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts on March 4, 1994. On January 31, 1995, the Department published a rulemaking determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. Since that time, the Department conducted numerous meetings, workshops and discussions regarding energy efficiency standards for fluorescent lamp ballasts, resulting in a Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts, July, 1997; Summary of Inputs for the Technical Support Document: Energy Efficiency Standards for Fluorescent Lamp Ballasts, April 20, 1998; and Ballast Manufacturer Impact Analysis Analytical Approach, April 10, 1998. 62 FR 38222 (July 17, 1997) and 63 FR 16706 (April 6, 1998). A workshop was conducted on these analyses and documents on April 28, 1998. 63 FR 16706 (April 6, 1998). Based on comments and the growing popularity of electronic ballasts with T8 lamps, the Department solicited further comments specifically on the issue of whether market shifts (*e.g.,* from T12 to T8 lamps) should be considered in determining the impact of an energy conservation standard on commercial and industrial consumers, manufacturers and the nation. 63 FR 58330 (October 30, 1998). Further comments on the above analyses, and modifications resulting from those comments, culminated in publishing an analysis on the Codes and Standards Internet site (http://www.eren.doe.gov/buildings/codes_standards/applbrf/ballast.html) in April of 1999. We also conducted a workshop on that analysis on June 1, 1999. 64 FR 24634 (May 7, 1999). These analyses presented the impacts of standards on consumers, the nation and manufacturers. The Department considers all comments regarding this rulemaking made prior to the three documents and posted revised analyses listed above, to have been resolved or contained within comments pertaining to those documents. Therefore, in today's notice of proposed

rulemaking, the Department is only addressing comments made relative to those documents. Additionally, the National Electrical Manufacturers Association (NEMA), the American Council for an Energy Efficient Economy (ACEEE), the Natural Resources Defense Council (NRDC), the Alliance to Save Energy (Alliance) and the Oregon Energy Office (Oregon) submitted a joint comment for amended fluorescent lamp ballast standards. (Joint Comment, No. 91). While these stakeholders had previously commented on the above three documents and the web posting, the Department assumes, based on their joint comment, that it supercedes their previous comments. Therefore, their previous comments are not addressed in today's notice.

Life Cycle Cost Parameters

Electricity price: The Edison Electric Institute and Mr. Glenn Schleede raised questions about the electricity prices used in the 1997 Report, particularly about the possible effects of increased competition in the utility industry on prices. (EEI, No. 12 at 2–3 and Schleede, No. 15 at 4–8 and 13–20 and No. 21 at 2–4).

To reflect increased competition in the electricity industry due to restructured markets, the AEO99 reference case assumes a transition to competitive retail pricing in five regions—California, New York, New England, the Mid-Atlantic Area Council (consisting of Pennsylvania, Delaware, New Jersey, and Maryland), and the Mid-America Interconnected Network (consisting of Illinois and parts of Wisconsin and Missouri).[6] The specific restructuring plans differ from State to State and utility to utility, but most call for a transition period during which customer access will be phased in.

The transition period reflects the time needed for the establishment of competitive market institutions and the recovery of stranded costs as permitted by regulators. The region-wide 10 percent rate reduction required in California is represented. For the other regions it is assumed that competition will be phased in between 1999 and 2007, with fully competitive prices beginning in 2008. In all the competitively priced regions, the generation price (the price for the energy alone) is set by the marginal cost of generation. Transmission and distribution prices are assumed to remain regulated.

Several comments, including EEI and Mr. Schleede suggested marginal electricity rates should be used instead of average values. (EEI, No. 12 at 2, Schleede, No. 15 at 6 and No. 21 at 3, CDA, No. 25 at 2 and NEMA, No. 27 at 20–21). Mr. Schleede also suggested that instead of using one electricity price for all years of the analysis, a projection of future electricity prices should be used. (Schleede, No. 15 at 5).

In response to comments on marginal energy prices, we performed a separate analysis, whose goal was to generate marginal electricity prices for the commercial sector. Because of the large number of electric utilities in the U.S., we chose a small subset of electric utilities for this analysis. We analyzed the electric bills (with and without standards) of a large number of commercial buildings in each of these utility districts. In the TSD (see Chapter 4), we show how a distribution of marginal electricity prices was obtained from this analysis of rate schedules for 24 utilities for the year 1997. We projected these marginal prices for each future year of the analysis by using the rate of decrease in the EIA Annual Energy Outlook 1999, as shown in Table 4.2 in Chapter 4 of the TSD. Alternative electricity price scenarios shown in Table 4.2 are also available to users of the Life Cycle Cost and National Energy Savings spreadsheets.

Mr. Schleede indicated that the sensitivity analysis, which considered the full distribution of U.S. commercial electricity prices, was an improvement over the previous practice of just using a point estimate. (Schleede, No. 21 at 1).

Additional comments on marginal electricity prices were received after the posting of analysis results on the DOE web site in April of 1999.

Mr. Schleede stated DOE and its contractors have continued their ambivalence about removing fixed costs from the life cycle cost calculations. (Schleede, No. 76 at 1).

Mr. Schleede is incorrect. We have used marginal electricity prices for all life-cycle cost savings calculations and there are no fixed costs in the marginal electricity prices used as described in Appendix B of the TSD.

EEI does not agree with the calculations of ''epsilon'' values as shown in the April 1999 text report entitled Life Cycle Cost Results. EEI would like to see how DOE handled the issues of lighting load factors (*e.g.,* the amount of lighting actually used during the day, such as 90 percent of the fixtures) which affect kWh energy reductions, and coincidence and diversity factors which will affect the kW demand reductions (and their economic impact). (EEI, No.48 at 2).

The Department describes the method in Appendix B of the TSD, Marginal Energy Prices report: Demand Decrement Due to Standards—The Role of Lighting Coincidence and Diversity.

EEI commented that a line in the LCC results writeup reads ''the change in the bill divided by the change in energy usage yields the marginal electricity price.'' EEI stated that this is not analytically correct. For commercial (and industrial) customers, there is a marginal kWh price and a marginal kW price that should not be ''blended'' for a cost analysis. The change in the kWh energy portion cost of the bill divided by the change in energy usage yields the marginal kWh energy price, and the change in the kW demand cost of the bill divided by the change in the peak kW demand (monthly and/or on-peak) yields the marginal kW demand price. These two marginal costs are separate and calculated differently. (EEI, No. 48 at 4).

The bill is a combination of the kWh (energy) and kW (demand) components, and the Department calculated them separately in order to derive the marginal electricity prices. The use of a proportional demand decrement (calculated as explained in Appendix B of the TSD, Marginal Energy Prices) enabled DOE to calculate each of the contributions to bill savings associated with kWh savings and kW savings.

Published sources for average commercial prices (defined as revenues from energy and demand charges combined, divided by energy sales) are expressed on a per kWh basis, ''blending'' the energy and demand charges. For consistency with those sources of projected commercial energy prices, the Department sees no practical alternative to including the kW (demand) savings component, expressed on a per kWh basis, in the derivation of marginal commercial prices.

EEI stated it is not sure how DOE performed the calculation of epsilons for industrial customers, as only the procedure for commercial customers was outlined in the text report (DOE web posting of April, 1999). (EEI, No. 48 at 4).

The epsilon distribution calculated for the commercial sector was also used for calculating the industrial marginal electricity prices from the industrial average electricity prices.

EEI stated that DOE used the ''average'' electric price, rather than the marginal electricity price, on the spreadsheet under the ''Results'' tab. This has the result of showing more favorable results for life cycle cost savings, paybacks, and the globalized

[6] For more information on restructuring assumptions, please see pp. 14–15 of the AEO99.

percentage of winners and losers. (EEI, No. 48 at 4).

The results (life-cycle cost savings, payback and percent winners and losers) are calculated using marginal prices applied to electricity savings. The sheet titled ''Results'' in the LCC version 4 spreadsheet does use average values for the purpose of calculating a life-cycle cost for each technology. However, this sheet was only provided as a check to allow the user to estimate LCC and payback periods using average values and then compare them to the results obtained with distributions (in Crystal Ball) for the main inputs. We will relabel the ''Results'' sheet to ''LCC and Payback Periods Using Average Values for All Inputs'' to avoid confusion in any future analysis.

Mr. Schleede stated that electricity prices are falling faster than the EIA forecast in Annual Energy Outlook, 1998 and 1999 Reference cases. (Schleede, No. 76 at 1).

DOE used the EIA forecast over the period 2003–2030. The rate of decrease over the last few years is influenced by electricity deregulation and seems unlikely to translate into a 27 year trend.

Mr. Schleede stated that there is a wide variation in electricity prices and many people and organizations would be forced to incur higher life cycle costs if DOE proceeds with ballast standards. (Schleede, No. 76 at 1).

The Department uses a distribution of electricity prices as input to its LCC analysis and reports the percentage of end-users with higher and lower LCC from ballast standards.

Annual Lighting Hours: The values we used for annual lighting hours in the 1997 Report were based on average values from energy audits performed by Xenergy, Inc. on over 25,000 buildings between 1990 and 1994, as described in Section A.4 of the 1997 Report.

EEI asked that a +/− range be given for the average annual operating hours. (EEI, No. 12 at 3).

We are using ranges of annual lighting operation hours, as shown in Figures 4.4 through 4.9 of the TSD, in calculating consumer life cycle costs. These distributions range from less than 200 hours of use to over 8,000 hours.

Other LCC Inputs: EEI asked if U-tube lamps were included. (EEI, No. 12 at 3).

U-tube lamps are driven by the same ballasts as straight-tube lamps; therefore, we did not conduct separate LCC analyses for them (the wattages and lamp prices are only slightly different). Ballasts that drive U-tube lamps are included in the NEMA data to generate shipments data for the NES (see National Energy Savings below).

EEI suggested that F96T8 lamp ballasts be included in the analysis. (EEI, No. 12 at 3). Other comments, on the limited re-opening of the record, also suggested including 8-foot T8 ballasts. (Osram Sylvania Inc, No. 34 at 3 and Motorola Lighting Inc., No. 33 at 2 and ACEEE, No. 77 at 3).

Since F96T8 lamp/ballast systems have small market shares, the Department did not collect data and analyze them separately or include them in today's proposed rule.

International Consulting Services (ICS) asked that the faster lumen depreciation of T8s be taken into account. (ICS, No. 17 at 5).

The *Lighting Upgrade Manual* published by EPA's Green Lights Program (EPA–430–B–95–009), February 1997 edition, Lighting Maintenance section, page 3, has a graph of lamp lumen depreciations. The four-foot T8 lamps have a flatter lamp lumen depreciation curve than do the four-foot T12 lamps, showing that T8s have slower lumen depreciation than T12. The same is true for the eight-foot T12 and T8 lamps. However, we did not consider this effect in the LCC analysis, as it does not generally impact lamp lifetime or relamping times, and, therefore, does not affect the result of the analysis.

National Energy Impacts

In the 1997 Report, we used the COMMEND model to project ballast sales and National Energy Impacts. In response to comments that COMMEND was difficult to understand and use, we developed a spreadsheet calculation tool for use in the TSD analyses as was previously discussed under Methodology. We used the NES spreadsheet to estimate national energy savings and economic parameters.

We divided the comments received on national energy impacts into five categories: COMMEND-related comments, the NES model and approach, shipments and market shares, lighting/HVAC (heating, ventilating, and air conditioning) interactions, and non-regulatory programs.

COMMEND-Related Comments

Several issues on COMMEND (*e.g.,* ballast sales) were raised by comments. Since today's analysis uses the NES spreadsheet model instead of COMMEND, these issues are no longer relevant and are not addressed.

Non-Regulatory Programs

EEI suggested that the impacts of voluntary efficiency programs should be more adequately taken into account. It also observed that although the dollar amount spent on Demand Side Management (DSM) programs has declined in recent years, the numbers of ballasts installed because of DSM programs may still have remained the same or even increased, since the price differential between magnetic and electronic ballasts has gone down (EEI, No. 12 at 1).

Since the NES spreadsheet that we used to calculate energy savings requires projections of future ballast shipments as an input, we must make some assumptions concerning the annual shipments of energy efficient magnetic (EEM) ballasts under a scenario of no amended standards. Since it is not possible to know how these shipments will change in the future, the Department decided to analyze several possible future scenarios. The influence of non-regulatory programs on magnetic ballast shipments is implicitly accounted for in these shipment scenarios (described in Chapter 5 of the TSD and also later in this proposed rule). Scenarios in which magnetic ballast shipments continue to decline over time, reflect some level of continued impact of non-regulatory incentive programs. See section V below for a more detailed description of the assumptions of these scenarios.

Since the release of the 1997 Report, the Department has undertaken a more detailed analysis of non-regulatory program impacts on the ballast market by studying utility DSM program impacts, ASHRAE/IES building code impacts, EPA Green Lights/EPA–DOE Energy Star Buildings, and DOE FEMP programs. We conducted a study [7] to estimate the number of fluorescent ballasts affected by DSM rebates from 1992 to 1997. We combined detailed analysis of data on spending amounts and units receiving rebates from several major utilities, accounting for up to 30 percent of the national total, with EIA estimates of national energy efficiency spending to produce estimates of ballasts rebated. Results indicate that the number of rebates and the percentage of the ballast market affected by rebates have both declined since 1995, at the same time that the magnetic ballast market began to level off. Under EPACT, the states are upgrading their building codes to match the lighting provisions in ASHRAE/IES Standard 90.1–1989. When revised as Standard 90.1–1999, the code's lower lighting power density limits will be an incentive for increasing use of electronic

[7] Busch, Chris, Turiel, I., Atkinson, B.A., McMahon, J.E., Eto, J.H. 1999. ''DSM Rebates for Electronic Ballasts: National Estimates (1992–1997) and Assessment of Market Impact.'' Lawrence Berkeley National Laboratory.

ballasts. DOE is preparing a new code for Federal buildings that will also encourage the use of electronic ballasts. The EPA programs (first Green Lights and now the EPA–DOE Energy Star Buildings) provide voluntary incentives for lighting upgrades that include electronic ballasts. The DOE FEMP Procurement Challenge and Federal Relighting Initiative are having modest but important impacts increasing the market share for electronic ballasts purchased for Federal buildings. Other programs such as the Voluntary Luminaire Program created by the National Lighting Collaborative under EPACT, NEMA's Energy Cost Savings Council, DOE's Rebuild America, and DOE's Lighting Technology Roadmap also provide incentives to move the market toward more efficient fluorescent ballasts.

Utility and Environmental Analyses

The NEMS has been used to estimate impacts of ballast energy efficiency standards on electric utilities. The Department used a version of EIA's NEMS, called NEMS–BRS, for the utility and environmental analyses. NEMS simulates the energy economy of the U.S. and has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). NEMS produces a widely-known baseline forecast for the U.S. through 2020 that is available in the public domain. NEMS–BRS offers a picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

Fuels for Electricity Generation: EEI pointed out that projections for oil and gas generation after 1995 are available from GRI, EPRI, and EIA, and DOE could use them in its analysis (EEI, No. 12 at 3).

Most analyses use EIA data such as electric utility fuel prices as a starting point. The important result for estimating the effect of standards on utility costs is not the overall fuel mix, but the marginal effect on fuel consumption and power plant construction.

EEI stated that the values used for the heat rate (for conversion of electricity from site to source energy) are overstated. It indicated that the analysis is using the total U.S. generation capacity (not a marginal capacity type of analysis) and is using EIA methodology. EEI asserts the values are overstated for the following reason: EIA assigns the same heat rate of fossil-fuel power plants to renewable power plants. This assumption creates an artificial heat rate for hydroelectric, wind, solar, biomass, and other forms of renewable energy. For the approximately 10 percent (and growing) portion of renewable electricity generation, EIA assigns a value of over 10,000 Btu/kWh to generation that has 0 Btu/kWh or 3,412 Btu/kWh. EEI states this factor alone leads to an overstatement of primary energy savings. In addition, EEI asserts that with the advent of restructuring, there are many new technologies that could lower the overall heat rate at a much quicker rate than shown in the 1999 Annual Energy Outlook (AEO). EEI proposes that the lower end of the ranges for national energy savings should be significantly lower to account for this possibility. (EEI, No. 48 at 3).

Table 5.3 in the TSD shows the site-to-source heat rates used in our analysis for the period 2003–2030. They are average rates for the commercial sector obtained from AEO99. We have compared these values to marginal values we obtained from a NEMS analysis. The marginal heat rate is the change in fuel delivered to generating stations divided by the change in electricity sales. For the NEMS analysis, we only considered thermal generation. For most years in the analysis period, the marginal heat rate was lower than the average heat rate. Overall, if we had used a marginal heat rate rather than the average heat rate, source quads would be reduced by about 4 percent.

EEI is in agreement with the analysis showing a declining heat rate over the analysis period. However, it asserts the values shown in AEO 1999 should be considered to be the high end of the range of inputs for the analysis period. (EEI, No. 48 at 3).

Other scenarios will show a faster rate of decline in heat rates over the next 20–30 years. The Department executed its analysis using the AEO99 Reference Case. The average heat rate extracted from AEO99 and used in the analysis declines from 10,871 Btu/kWh in year 2001 to 9,196 Btu/kWh in year 2030. This is equivalent to increasing the energy conversion efficiency of thermal power generation from 31 percent to almost 37 percent. This is a major assumed improvement, especially given that many generating assets in place today will still be serving marginal duty cycles during most of the forecast period.

Conservation Load Factor: EEI also stated that it was not clear how the Conservation Load Factor (CLF) was calculated, and asked if it was calculated on a regional level first and then aggregated, or at the national level only. (EEI, No. 12 at 3).

The CLF is not used in the NEMS analysis so this question is no longer relevant.

SO_2 and NO_X emissions: EEI suggested that because SO_2 and NO^x emissions have declined over the past several years, marginal emissions due to energy savings will be lower than average emissions. (EEI, No. 12 at 3).

Total emissions of SO_2 are unlikely to be affected by any policy, such as efficiency standards, because emissions are capped by legislation. The actual reduction in NO_X emissions will be determined by which marginal thermal generation is reduced through lower electricity sales. Most new capacity is likely to be both efficient and clean, and therefore operate at low marginal cost high in the dispatch order (*i.e.,* utilities will dispatch the newer, cleaner sources before going to the older, more expensive sources). Generation from these new resources is therefore unlikely to be reduced by a reduction in electricity sales. On the contrary, it is likely that the displaced generation will be from older, dirtier plants low in the dispatch order.

Appliance Standards Environmental and Utility Model (ASEUM): EEI and Mr. Schleede concurred that the ASEUM model's methodology may be outdated in an era of deregulated utilities that are unlikely to remain vertically integrated. (EEI, No. 12 at 4 and Schleede, No. 15 at 7–8).

It is true that the electric utility industry is undergoing a radical restructuring, and the assumptions of cost recovery underlying ASEUM are becoming dated. We agree that we needed other methodologies to carry out the utility analysis, and we used the NEMS–NAECA for this purpose.

Ballast Market Shift (From T12 Magnetic to T8 Electronic)

The 1997 Report, and all previous analyses, analyzed the impact of an electronic ballast standard by essentially assuming that users of magnetic ballasts with T12 lamps would switch to electronic ballasts with T12 lamps if the former ballast type became obsolete. As described in the Notice of Limited Reopening of the Record and Opportunity for Public Comment, the Department solicited comments on consideration of consumers who might choose electronic ballast T8 systems over electronic ballast T12 systems and consumers who might choose electronic ballasts over cathode cutout ballasts. 63 FR 58330 (October 30, 1998). DOE asked for comments on certain aspects of both the electronic ballast and the cathode cutout ballast standard levels: Whether a market shift from magnetic T12

ballasts to electronic T8 ballasts is likely, the extent of such a shift, and whether the impacts of these shifts should be considered.

In the Joint Comment, the stakeholders stated that they assumed 95 percent of consumers of electronic ballasts would switch from T12 to T8 lamps. (Joint Comment, No. 91 at 8).

Northwest Energy Efficiency Alliance (NEEA) stated that in its region with a mature market for electronic ballasts, the standard practice in new construction/renovation is a fixture with an electronic T8 ballast; this results partially from building codes as well as from economics. Cathode cutout systems are rare, with customers selecting electronic ballasts instead because of energy-efficiency, light quality, and the ability to drive multiple lamps. (NEEA, No. 38 at 1–2).

The Tennessee Valley Authority (TVA) explained that its procedure is to replace failed magnetic T12 ballasts with electronic T12 ballasts because of availability, cost (when the lighting hours are too short for a good payback with a T8 system); and maintenance (if only part of the ballasts in a space need replacement, the T12 lamps are retained). For major system replacement, electronic T8 systems were considered the first option. (TVA, No. 36 at 1).

The statute requires the Department to establish different classes where appropriate, and today's proposed rule would prescribe separate ballast efficacy factors for each lamp-ballast combination. To determine economic impact on manufacturers and consumers, DOE looks to reasonably predict likely market impacts. That is, some consumers with T12 lamps and magnetic ballasts would switch to T8 lamps with electronic ballasts if the magnetic T12 ballast was eliminated. Furthermore, the Secretary has determined to examine the impact of this consumer sub-group under economic factor 7.

Mr. Glenn Schleede comments that DOE has continued its long-standing practice of giving little consideration to the interests of real consumers who end up bearing the burden of energy efficiency standards. (Schleede, No. 76 at 2).

The Department believes it has considered the interests of real consumers, and any burdens on them, by including the full range of electric prices, ballasts prices, operating life and ballast life that consumers will experience and calculating the full range of impacts on consumers. Furthermore, we studied the economic impact of the standard on consumers by considering and evaluating likely consumer actions. As a result, we are presenting impacts on consumers moving from T12 lamps with magnetic ballasts to T12 lamps with electronic ballasts and also consumers moving from T12 lamps with magnetic ballasts to T8 lamps with electronic ballasts. Both of these likely occurrences arise from the consumer not being able to buy a T12 magnetic ballast under the standard being proposed. However, while modeling and giving consideration to consumer actions, the Department does not believe it can set standard levels based on consumer purchasing behavior given the conclusions of the court in *Natural Resources Defense Council* v. *Herrington,* 768 F. 2d 1355, 1406–07 (D.C. Cir. 1985), where the court stated that ''the entire point of a mandatory program was to change consumer behavior'' and ''the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct.''

Manufacturer Impact Analysis

The general MIA methodology presented by the Department in March 1997, was developed with substantive input from ballast manufacturers on issues relevant to the ballast rulemaking. Ballast manufacturers provided very useful insights that resulted in the incorporation of new factors for consideration in the analysis of manufacturer impacts, namely impacts on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Cooperation from ballast manufacturers also helped DOE in proposing the interview guide approach as a critical MIA tool for identifying issues relevant to each individual manufacturer. The ballast rulemaking was the first for which DOE conducted one-on-one interviews with the manufacturers. This process helped DOE appreciate the usefulness of this methodology for assessing qualitative impacts.

The Department of Energy held a public workshop on April 28, 1998, to present information and invite comment on several topics relating to energy-efficiency standards for fluorescent lamp ballasts. One major topic for discussion was the Manufacturer Impact Analysis (MIA). In developing the Manufacturer Impact Analysis document for the April 28, 1998, workshop, DOE tried to address the concerns that ballast manufacturers raised with the Department in previous meetings or through personal interviews. In addition to tailoring the GRIM spreadsheet to the ballast rulemaking, DOE developed a revised questionnaire to capture all issues relevant specifically to the ballast industry and its suppliers.

Subsequent to the April 28 workshop, the Department met with industry representatives to discuss the rationale for using the cash flow analysis methodology to measure financial impacts. The Department also reviewed details of the spreadsheet calculations at this meeting. The discounted cash flow approach is a widely used technique for evaluating a company's value (Net Present Value (NPV)), and is frequently used in capital budgeting decisions for evaluating capital spending proposals. It is also used for evaluating financial impacts of plant closures and business restructuring. The Department agreed to revise GRIM to add features that explicitly provide the capability to include one-time charges such as plant closures and asset write-offs.

The Department believes that the modified GRIM accurately captured the financial impacts of a step change in technology. In contrast to other appliance rulemakings that make only incremental changes to standard levels, this rulemaking would result in standards based on a completely new technology. To comply with final standards, manufacturers would be required to make significantly higher capital investments (*e.g.,* new plants, equipment and production processes). The capital investment numbers input into GRIM reflect this step change in technology and produce negative impacts on the manufacturer's cash flows. Furthermore, the Subgroup Impact Analysis proposed in the MIA methodology and carried out in part through interviews with manufacturer representatives considered impacts on employment, manufacturing capacity and competitive effects due to an electronic ballast standard.

To ensure that the manufacturer impact analysis captured the potential impacts of a radically transformed ballast market, the Department and NEMA members developed a scenario analysis methodology to be included in the ballast MIA. In creating their projections for future revenues and profit margins, manufacturers were asked to consider two different competition scenarios. In the first scenario, it was assumed that manufacturers would maintain their current market share. In the second scenario, we asked manufacturers to consider the impact of a new entrant in the industry which would capture a 15 percent share. Under the new entrant scenario, we redistributed market shares

and manufacturers were able to define new prices and costs (gross margins). The competition scenario analysis is described in greater detail in the TSD. Additional scenarios were constructed assuming a status quo in profit margins, the ''existing dynamics'' scenario, and a new entrant in the magnetic ballast market, or ''magnetic new entrant'' scenario.

We conducted the GRIM analysis and other elements of the MIA separately for each manufacturer. To report a representative variation in impacts between manufacturer sub groups while maintaining the confidentiality of individual manufacturers, DOE constructed three different cashflows: One for manufacturers of both magnetic and electronic ballasts, a second for manufacturers producing electronic ballasts only, and a third that combines both sub groups of manufacturers. Likewise, we evaluated employment and manufacturing capacity effects from an electronic ballast standard on a company-by-company basis and reported them for both subgroups. To the extent consistent with the confidentiality concerns of individual manufacturers, we reported important variations between manufacturers within subgroups qualitatively. The analysis results include a discussion of the impacts of the cashflow results on the business prospects of manufacturers in each subgroup, with reference to specific manufacturers where permitted by these manufacturers.

For the participating manufacturers, the GRIM analysis did not distinguish plants located outside the United States from United States' plants. We calculated employment impacts for these same firms and reported separate results for domestic and Mexican plants.

We performed a detailed analysis of the impacts of an electronic ballast standard on ballast manufacturer suppliers. This analysis included a quantitative evaluation of manufacturer cashflows and jobs. In total, 30 firms were invited to participate in interviews. Seventeen of these suppliers served magnetic ballast production, eleven electronic ballast production, and six served both magnetic and electronic markets. Nineteen organizations that serve magnetic ballast applications participated in interviews. Eight organizations that serve electronic ballast applications participated in interviews. In total, nine plant tours were held, five of which were at suppliers of magnetic products and four of which were tours of electronic supplier plants. The analysis demonstrated that the organizations interviewed provided a representative group of supplier industries, which we used to evaluate the impacts on supplier industries as a whole.

Additionally we visited one lamp manufacturer's fluorescent lamp plant and interviewed plant and corporate representatives. The Department decided to gather and analyze information on manufacturer impacts from other lamp manufacturers as well, and an analysis of this information is presented in Section V.

NEMA commented that the manufacturer impacts reported for a standard that began in the year 2003 were too severe and that standards that produced such impacts could not be economically justified. (NEMA, No. 85). NEMA, as a part of the Joint Comment, commented that their proposed staggered implementation dates mitigate such adverse impacts. (Joint Comment, No. 91 at 7).

Standards Proposals

NEMA described new market data on ballasts, as well as percentage of lamps driven by magnetic and electronic ballasts. This shows that electronic ballast penetration of the total commercial and industrial lighting market has increased to 55 percent of total ballast shipments in 1998. Electronic ballast market penetration has increased from 44 percent to 62 percent in 1998, when measured by the more relevant criteria of the number of lamps operated. For ballasts used only in commercial and industrial new construction, renovations and retrofits in 1998, electronic ballast penetration has increased to 63 percent, measured by ballast shipments, and to 70 percent measured by the number of lamps operated. (NEMA, No. 50 at 26 and Attachment B and NEMA, No. 85 at 44). ACEEE agreed with NEMA that the percentage of lamps ballasted electronically is the most important figure; however, the growth rate during 1993–1995 of 9 percent was larger than the growth rate of 2.8 percent from 1995 to 1998, supporting the ''Decreasing Shipments to 2027'' base case. (ACEEE, No. 77 at 9–10). Oregon Office of Energy noted that the magnetic ballast shipments increased in 1997 and remained stable in 1998, casting doubt on the base case scenarios that show steady decline of magnetic ballasts (Oregon, No. 81 at 5 and 7). The CEC also stated that a national standard would complement California's Title 24 building code policies by ensuring that savings are realized in retrofit applications as well as new construction. (CEC, No. 82 at 1).

Additionally, the Department received comments from the Vermont Residential Energy Efficiency Program, Conservation and Renewable Energy Systems, Broward County Florida, Alto Manufacturing Company, Rocky Mountain Chapter of the Sierra Club, State of Vermont, California Energy Commission, Northeast Energy Efficiency Partnerships, Pacific Gas and Electric, Northwest Energy Efficiency Alliance, Sacramento Municipal Utility District, Boston Edison, Eastern Utilities, Green Mountain Power, New York Power Authority, Eugene Water and Electric Board and 35 private citizens urging the Department to establish standards requiring electronic ballasts citing the delay in promulgating this rulemaking, the phasing out of utility incentive programs for ballasts, the energy savings and environmental and economic benefits.

In commenting on the possibility of a market shift, Osram Sylvania (OSI) proposed that the Department separately consider each of the three major ballast market segments: OEM (fixtures for new construction/renovation), Retrofit (early replacement of systems) and Replacement (existing ballast replacement at failure). The first two markets are appropriate for electronic T8 systems, while the third has existing reduced-wattage lamps that are incompatible with electronic ballasts.

OSI commented that 34-Watt lamps are incompatible with electronic ballasts because of their conductive coating that facilitates starting with magnetic ballasts. It stated that technical solutions were possible but impractical: ''Smart'' ballasts that overcome the problem for the 34-Watt lamp would not be compatible with 40-Watt high CRI lamps that meet the EPACT lamp standards and would be expensive; design of 34-Watt lamps without the conductive coating would be expensive; controlling the resistance of the conductive coating to allow compatibility with both ballast types would be unreliable over the range of lamps and over their normal lives, since the coating varies widely for any manufacturer and between manufacturers. The expenditure of resources by lamp manufacturers to design a lamp to meet this need would promote an obsolete system when the market should be moving toward T8 systems. OSI also stated that the lamp industry has the capacity to handle a market transition from a mixture of T12 to T8 lamps toward T8 lamps over a 3-year period, but would require a multi-million dollar capital investment and additional time to handle a more widespread transition for all market sectors. (OSI, No. 34 at 2–5).

A rapid shift to electronic ballasts would require lamp companies to make special adjustments to the lamps, or would drive end-users to purchase full-wattage T12 lamps. (OSI, No. 34 at 2 and OSI, No. 84 at 1). OSI recommended that BEFs be developed for 4-foot and 8-foot systems that disallow magnetic and cathode cutout ballasts (with several exemptions listed below) and that a standard with these BEFs be applied to OEM and retrofit ballasts 3 years after the standards publication date. Application of the standard BEFs to the replacement market would be delayed for 5 years beyond the effective date (a total of 8 years from publication), allowing development of retrofit incentive programs for building owners and allowing lamp manufacturers greater transition time for T8 lamp manufacture. Proposed exemptions include residential luminaires for T8 or smaller diameter lamps, dimming ballasts, 8-foot High Output, low-temperature, outdoor, magnetic ballasts, non-lighting applications, and ballasts with unresolved or unanticipated interference issues per application to the Department by a manufacturer or trade association. (OSI, No. 34 at 1–3).

Five comments supported the proposal by OSI to varying degrees. (Motorola Lighting Inc (MLI), No. 33 at 1–2, Holophane, No. 39 at 1–2, Lightolier, No. 40 at 1, and ASE No. 41 at 3, and Peerless Lighting, No. 52 at 1–3).

Motorola supported the proposal by OSI and recommended the application of new BEFs to the OEM and retrofit market at the earliest possible date. (MLI, No. 33 at 1). Motorola agreed with delaying the application of BEFs to the replacement market, but recommended a delay of two years rather than five years from the effective date. Further, it urged that BEFs for T8 magnetic ballasts be developed, and that all of the BEF levels be achievable by major ballast manufacturers. (MLI, No. 33 at 2). Holophane supported the OSI proposal, particularly the approach recognizing systems rather than components. It proposed that exemptions include dimming ballasts, 8-foot High Output outdoor ballasts, and special ballasts addressing interference issues. The luminaire manufacturers will be able to incorporate electronic ballasts as long as the ballast manufacturers can meet the demand; the only impact on their market will be the adjustment of lighting levels from fixtures with the new systems. Holophane recommended a delay of application of BEFs for the replacement market for ''a reasonable period of time.'' (Holophane, No. 39 at 1). Lightolier noted that 80 percent of its fixtures use electronic ballasts for T8 or T5 lamps; of the remainder, intended for the distributor/contractor market, less than half use electronic ballasts. Lightolier recommended that the Department give serious consideration to the OSI proposal. (Lightolier, No. 40 at 1). Peerless agreed with the analysis of the two market segments, stated that disallowing magnetic ballasts would have short-term repercussion including the development of T12 electronic ballasts for a short-term market, and that a delay period would allow the lamp manufacturing industry to adjust to the increased T8 market. (Peerless, No. 53 at 1–3). ASE urged that the analysis consider the separate effects on the 3 different market channels, and supported OSI's proposal for a time-limited exemption for replacement ballasts if such an approach is administratively feasible. (ASE, No. 41 at 2–3).

The Department decided to analyze the five and two year delay standards proposal suggested above. The description and results of this analysis are shown in section V of this notice.

The Joint Comment presented the Department with a proposal for segmenting the market and extending the implementation dates to mitigate the burdens to acceptable levels while maintaining most of the benefits of standards. For example, the phase-in period for the standards proposed in the Joint Comment is approximately five years, until April 1, 2005. This allows the manufacturers and the marketplace additional time to make an orderly transition from energy efficient magnetic ballasts to the more efficient ballasts that would be required if today's proposal were adopted. In addition, the Joint Comment proposed an additional five-year phase in for standards for ballasts intended for replacement market. While it is generally impossible to distinguish a ballast for the replacement market from one used in new construction or renovation, the Joint Comment recommends that replacement ballasts be labeled for replacement use, have output leads which, when fully extended, are less than the length of the lamp it is intended to operate and they are shipped in packages of ten or less. DOE agrees replacement ballasts, as proposed by the Joint Comment would not likely be used other than to replace an existing ballast. In addition to the above, the Joint Comment also proposed limiting the exemptions relative to the extant standards. For example, the standards found in the National Appliance Energy Conservation Amendments of 1988 provided exemptions for cold temperature and dimming ballasts. The Joint Comment proposed limiting the exemption for cold temperature ballasts to those capable of being dimmed to 50 percent or less of its maximum output and the cold temperature ballast exemption would be limited to ballasts for use with two F96T12HO lamps at an ambient temperature of $-20°F$ and which is for use with outdoor signs. The recommended changes to the dimming and cold temperature exemptions will result in the standards being applied to products previously not subject to the standards. The standard for two F96T12HO lamps has not been modified, however, since it would apply to more products, the changes proposed by the Joint Comment will result in higher energy savings for this product class than if the standards were raised, but applied with the extant exemption. (Joint Comment, No. 91 at 5).

V. Analytical Results

a. Efficiency Levels Analyzed

The Department utilized two base case forecasts of shipments of magnetic ballasts without standards as follows:

Base Case: Decreasing Shipments to 2015 (5 percent reduction)

In this base case, we assumed magnetic ballast shipments after 1997 decrease at the rate at which most magnetic ballasts declined from 1993 through 1997, reaching a base level by 2015. This rate of decreasing magnetic ballasts shipments represents a reduction of approximately 5 percent per year relative to 1997 shipments. The base level represents 10 percent of the magnetic ballast shipments in 1997 for each ballast class, and is carried out to 2030. This base case assumes that non-regulatory programs as well as market forces result in the same rate of transition to electronic ballasts as observed from 1993 through 1997.

Base Case: Decreasing Shipments to 2027 (3 percent reduction)

In this base case, we assumed magnetic ballast shipments decrease at a slower rate, reaching the same base level by 2027. This rate of decreasing magnetic ballasts shipments roughly represents a reduction of 3 percent per year relative to 1997 shipments. The base level represents 10 percent of the magnetic ballast shipments in 1997 for each ballast class, and is carried out to 2030. This base case assumes that non-regulatory programs and market forces affect a slower rate of transition to electronic ballasts than observed in recent years.

The Department also analyzed the impact of two trial standard levels; one was for electronic ballasts and the other for cathode cutout ballasts.

Electronic Ballast Standards Scenarios

We also evaluated the following scenarios to capture the range of national impacts from likely consumer choices (scenarios 1 and 2) and to evaluate suggested implementation schemes presented in comments (scenarios 3 and 4) for electronic ballast standards:

Scenario 1. This scenario assumes that 100 percent of magnetic T12 ballasts are converted to electronic T12 ballasts. This scenario is intended to model the impacts of minimal compliance with the standard in regard to commercial and industrial consumer choice.

Scenario 2. This scenario assumes that all magnetic T12 ballasts are converted to electronic ballasts, with 5 percent becoming T12 ballasts and 95 percent becoming T8 ERS ballasts. This scenario is intended to model the trends in the current market where nearly all (95 percent) of electronic ballasts purchased from 1993—1997 have been T8 ballasts.

Scenario 3. This scenario assumes that the new/renovation luminaire market segment converts all magnetic T12 ballasts to electronic T8 ballasts starting on the effective date. We assume that this segment comprises 70 percent of the total magnetic T12 ballast market, based on the current luminaire market. The remaining 30 percent assumed replacement market has an additional delay of 5 years, after which these ballasts are converted to electronic ballasts, with 5 percent becoming T12 ballasts and 95 percent becoming T8 ballasts. This scenario allows a differing impact of the standards on these two market segments by providing an additional adjustment period for the replacement market for users in existing buildings and on lamp manufacturers to prepare for the new ballast type and market shift.

Scenario 4. This scenario has identical assumptions to scenario 3, except that the additional delay period for the replacement market is 2 years.

We compared each of the above four standard level forecasts with that of the two different base cases. We denoted forecasts under the ''Decreasing Shipments to 2015'' base case as scenarios 1A, 2A, 3A, and 4A. We called forecasts runs with the ''Decreasing Shipments to 2027'' base case scenarios 1B, 2B, 3B, and 4B.

Cathode Cutout Trial Standards

For cathode cutout standards, we also evaluated the following scenarios to capture the range of national impacts from likely consumer choices for a possible cathode cutout standard:

Scenario 5. This scenario assumes that 100 percent of magnetic T12 ballasts are converted to cathode cutout T12 ballasts. The exception is the F96T12 ballast class, for which there is no cathode cutout option. These ballasts are assumed to remain as magnetic ballasts under the standards. This scenario is intended to model the impacts of minimal compliance with the standard in regard to commercial and industrial consumer choice.

Scenario 6. This scenario assumes that the 30 percent replacement market T12 ballasts are converted to cathode cutout T12 ballasts, and the 70 percent new/renovation market T12 ballasts are converted to electronic ballasts, with 5 percent of the electronic ballasts becoming T12 ballasts and 95 percent becoming T8 ballasts.

We denoted forecasts run with the Decreasing Shipments to 2015 base case as 5A and 6A. We called forecasts run with the Decreasing Shipments to 2027 base case Scenario 5B and 6B.

Joint Comment

In addition, we evaluated two scenarios based on the standards recommended by the Joint Comment: Decreasing magnetic ballast shipments to 2015 and decreasing magnetic ballast shipments to 2027. In evaluating the joint comment proposal, the Department also used a third shipment scenario (flat magnetic ballast shipment forecast) as the upper bound as described in Appendix E of the TSD.

b. Significance of Energy Savings

To estimate the energy savings through the year 2030 due to revised standards, we compared the energy consumption of ballasts under the base case to the energy consumption of ballasts complying with the standard. As discussed above, there are eight electronic ballast standards scenarios and four cathode cutout standards scenarios.

The results presented in Tables V.1a and V.1b use the AEO Reference Case forecast. (The TSD shows the results for the AEO High and Low cases, with total benefits respectively higher and lower than those for the Reference Case.) The tables show the energy savings for each of the standards scenarios.

TABLE V.1A.—ENERGY SAVINGS FROM ELECTRONIC STANDARDS

Electronic standards for units sold from 2003 to 2030								
Scenario	Scen 1A T12 Decr2015	Scen 1B T12 Decr2027	Scen 2A T12/T8 Decr2015	Scen 2B T12/T8 Decr2027	Scen 3A Decr2015	Scen 3B Decr2027	Scen 4A Decr2015	Scen 4B Decr2027
Total Quads Saved	1.01	1.79	1.66	2.93	1.43	2.66	1.57	2.84
Total Quads Saved w/ HVAC	1.08	1.9	1.76	3.12	1.52	2.82	1.67	3.02

TABLE V.1B.—ENERGY SAVINGS FROM CATHODE CUTOUT STANDARDS

Cathode cutout standards for units sold from 2003 to 2030				
Scenario	Scen 5A 100% CC Decr2015	Scen 5B 100% CC Decr2027	Scen 6A 37% CC Decr2015	Scen 6B 37% CC Decr2027
Total Quads Saved	0.48	0.85	1.12	1.98
Total Quads Saved w/HVAC	0.51	0.91	1.19	2.11

The Department finds that each of the standards scenarios considered above would result in a significant conservation of energy. Energy savings from the electronic ballast standards scenarios range from 1.01 Quads to 2.93 Quads of source energy without considering HVAC savings. The energy savings are larger for the slower decreasing shipments forecast to 2027 compared to those with the faster decreasing shipments forecast to 2015. Energy savings for scenario 2 with T8 electronic ballasts are almost 65 percent greater than those for scenario 1 with T12 electronic ballasts. For scenario 3, the five-year phase-in period causes a savings reduction of around 10 to 15 percent from that of scenario 2. For scenario 4, the 2-year phase-in period results in a savings reduction of about 5 percent from scenario 2. For the cathode cutout standards scenarios, energy savings range from 0.48 Quads to 1.98 Quads without considering HVAC savings. The scenario 6 savings from partial conversion to electronic ballasts are about 2.3 times higher than those of scenario 5. The additional HVAC savings increase the total energy savings for all levels by 6.25 percent.

In Table V.2, we present the energy savings of the Joint Comment. The results use the AEO Reference Case forecast with the energy savings from 2005 to 2030. The energy savings of the Joint Comment range from 1.20 Quads to 2.32 Quads without considering HVAC savings.

TABLE V.2.—ENERGY SAVINGS, RESULTING FROM JOINT COMMENT

Energy savings, resulting from joint comment, for units sold from 2005 to 2030		
Scenario	Dec 2015	Dec 2027
Total Quads Saved	1.20	2.32
Total Quads Saved w/ HVAC	1.27	2.46

c. Payback Period

The Act requires the Department to examine payback periods to determine if the three year rebuttable presumption of economic justification applies. In Table V.3, we list the median payback periods for product classes and design options. While we did not analyze the effect of a two-year delay in the effective date of the comments as found in the Joint Comment, because the cost of energy varies little between the two years (2003 and 2005), we believe the paybacks shown below are representative of a 2005-effective standard as well.

TABLE V.3.—SUMMARY OF PAYBACK PERIOD

Product class	Design option	Sector	Median payback (yrs)
1F40	T12 CC	Commercial	24.8
	T12 ERS	Commercial	6.4
2F40	T12 CC	Commercial	10.7
	T12 ERS	Commercial	5.4
3F40	T12 CC	Commercial	9.9
Tandem-Wired	T12 ERS	Commercial	6.4
3F40	T12 CC	Commercial	11.5
Not Tandem-Wired	T12 ERS	Commercial	3.3
4F40	T12 CC	Commercial	9.3
	T12 ERS	Commercial	4.8
2F96	T12 EIS	Commercial	5.9
	T12 EIS	Industrial	8.8
2F96HO	T12 CC	Commercial	2.1
	T12 ERS	Commercial	2.4
	T12 CC	Industrial	5.4
	T12 ERS	Industrial	3.1

d. Economic Justification

1. Economic Impact on Manufacturers and Consumers

We performed a Manufacturer Impact Analysis (MIA) to determine the impact of standards on manufacturers. The complete analysis is Chapter 6 of the TSD. In general, manufacturers of ''affected'' magnetic ballasts and their suppliers would be negatively impacted. Also, most ballast manufacturers reported that they would add additional electronic ballast capacity to meet a new standard. None of the manufacturers stated that they would leave the industry or go out of business as a result of an electronic ballast standard. Commercial and industrial consumers will also be affected by increased ballast standards in that they will experience higher purchase prices for ballasts and lower operating costs for lighting systems. These impacts are best captured by changes in life cycle costs which are discussed in section V.d.2.

Ballast Manufacturer Analysis

In conducting the analysis, we conducted detailed interviews with seven ballast manufacturers that together supply more than 95 percent of the domestic magnetic and electronic ballast markets. The interviews provided valuable information used to evaluate the impacts of a new standard on manufacturers' cash flows, manufacturing capacities and employment levels. The MIA was performed on a company-by-company basis. We elected to group manufacturers exhibiting similar product mix characteristics, as this represents the most comprehensive way of reporting the variation of impacts on different manufacturers while ensuring the confidentiality of individual manufacturers' positions. Based on

information obtained from manufacturer interviews, we divided the manufacturers into two sub-groups:

TABLE V.4.—BALLAST MANUFACTURER

Sub-group 1 Manufacturers of both magnetic and electronic ballasts	Sub-group 2 Manufacturers that produce only electronic ballasts
Advance Transformer Company MagneTek, Inc. Robertson Worldwide SLi Lighting/PowerLighting Products	Howard Industries. Motorola Lighting, Inc. Osram Sylvania Products Inc.

Impacts on the entire industry were obtained by aggregating the impacts on the two sub-groups.

Impacts on Ballast Manufacturer Cash Flows

As summarized, four cash flows were calculated for each shipment forecast. Manufacturers worked with us to develop their most likely cash flow impacts for both the 2015 and 2027 Industry shipment scenarios. These cash flows are identified by the name ''Manufacturer Submittal.'' In developing cash flow estimates under the Manufacturer Submittal scenario it is assumed that manufacturers retain their 1997 shares of the electronic market in the new electronic market. The ''Electronic Ballast New Entrant'' scenario was devised in order to capture the likely cash flow impacts resulting from the redistribution of market shares among the existing manufacturers as a new entrant gains a 15 percent market share of the new electronic market. A ''Magnetic Ballast New Entrant'' Scenario was also developed to analyze the potential impact of a new entrant(s) in the magnetic ballast industry. This scenario captures possible cash flow impacts resulting from the redistribution of market shares among the existing manufacturers as a new entrant gains a 15 percent share of the magnetic ballast market. Finally, in order to evaluate how assumptions concerning future market dynamics contributed to the impacts reported in the Manufacturer Submittal scenario, we prepared a separate cash flow that assumes no change in magnetic and electronic ballast profit margins before and after standard: the ''Existing Dynamics'' scenario. The four scenarios are summarized below:

Manufacturer Submittal: Cash flows and net present value (NPV) were calculated using manufacturer prices, manufacturing costs, operating margins, capital investment estimates, and other financial parameters as provided by the individual manufacturers. This scenario reflects each manufacturer's expectation of its ''most likely'' future profitability under new standards with the constraint that it assumes that its electronic ballast market share remains at the 1997 level.

Electronic Ballast New Entrant: This scenario assumes that one or more new entrants will capture 15 percent of the new electronic ballast market. Manufacturer market shares in the 1997 electronic market are redistributed to accommodate the new market entrant(s).

Magnetic Ballast New Entrant: This scenario assumes that one or more new entrants will capture 15 percent of the magnetic ballast market beginning in the year 2000, both in the Base Case and the Standards Case. This assumption is supported by the fact that a few of the existing electronic ballast manufacturers have publicly announced plans to manufacture and/or source magnetic ballasts in the U.S., irrespective of a DOE standard. Existing manufacturer market shares in the 1997 magnetic ballast market are redistributed to accommodate the new market entrant(s). Furthermore, this scenario assumes that the new entrant(s) will result in increased competition, which will reduce the profitability of the magnetic ballast business from its current levels to those seen in the more competitive electronic ballast business post-standards.

Existing Dynamics: This scenario assumes that there will be no change in competitive dynamics when an electronic ballast standard comes into effect, and hence electronic ballast manufacturer market shares and profit margins in the case of a standard will remain similar to their values in the absence of a standard.

Tables V.5 and V.6 summarize the financial impacts for the four scenarios under the two base case forecasts of shipments. The impacts reported are the change in NPV and this change as a percentage of the industry value represented by the cash flow generated by all (magnetic and electronic) ballast shipments in the regulated product classes. Note that for the industry results, the Electronic Ballast New Entrant scenario is the same as the Manufacturer Submittal scenario because the new entrant(s) cash flow was modeled using shipment weighted average financial parameters of all existing electronic ballast manufacturers.

TABLE V.5.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2015 (5% DECLINE) SHIPMENT SCENARIO

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV (%)
Cash flow impacts on business represented by all regulated product classes—Magnetic and Electronic				
Sub-group 1 (magnetic and electronic producers)				
Manufacturer Submittal	288.9	198.9	–90.0	–31
Electronic Ballast, New Entrant	288.9	199.1	–89.8	–31
Magnetic Ballast, New Entrant	216.2	161.6	–54.6	–25
Existing Dynamics	288.9	219.0	–69.9	–24
Sub-group 2 (electronic only producers)				
Manufacturer Submittal	131.7	152.0	20.3	15
Electronic Ballast, New Entrant	131.7	145.8	14.1	11

TABLE V.5.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2015 (5% DECLINE) SHIPMENT SCENARIO—Continued

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV (%)
Magnetic Ballast, New Entrant	131.7	152.0	20.3	15
Existing Dynamics	131.7	141.0	9.3	7
Electronic Ballast New Entrant				
Electronic Ballast, New Entrant	0.0	6.0	6.0	–
Magnetic Ballast New Entrant				
Magnetic Ballast, New Entrant	4.5	2.0	–2.5	–55
Industry (Sub-group 1 + Sub-group 2)				
Manufacturer Submittal	420.6	350.9	–69.7	–17
Electronic Ballast, New Entrant	420.6	350.9	–69.7	–17
Magnetic Ballast, New Entrant	352.4	315.6	–36.8	–10
Existing Dynamics	420.6	359.9	–60.7	–14

TABLE V.6.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2027 (3% DECLINE) SHIPMENT SCENARIO

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV(%)
Cash flow impacts on business represented by all regulated product classes—Magnetic and Electronic				
Sub-group 1 (magnetic and electronic producers)				
Manufacturer Submittal	318.3	204.6	–113.7	–36
Electronic Ballast, New Entrant	318.3	204.9	–113.4	–36
Magnetic Ballast, New Entrant	220.9	161.7	–59.2	–27
Existing Dynamics	318.3	224.7	–93.6	–29
Sub-group 2 (electronic only producers)				
Manufacturer Submittal	123.0	150.5	27.5	22
Electronic Ballast, New Entrant	123.0	144.3	21.3	17
Magnetic Ballast, New Entrant	123.0	150.5	27.5	22
Existing Dynamics	123.0	139.5	16.5	13
Electronic Ballast New Entrant				
Electronic Ballast, New Entrant	0.0	6.0	6.0	–
Magnetic Ballast New Entrant				
Magnetic Ballast, New Entrant	6.2	2.2	–4.0	–65
Industry (Sub-group 1 + Sub-group 2)				
Manufacturer Submittal	441.3	355.1	–86.2	–20
Electronic Ballast, New Entrant	441.3	355.1	–86.2	–20
Magnetic Ballast, New Entrant	350.1	314.4	–35.7	–10
Existing Dynamics	441.3	364.2	–77.1	–17

Uncertainty Analysis of Cash Flows

The NPV values presented in the above tables incorporate significant restructuring costs primarily associated with plant closures in the U.S. and Mexico. The large majority of these costs are directly associated with the closure of the remaining large U.S.-based ballast plant. In consideration of the past trend towards consolidation of magnetic ballast production to Mexico, a sensitivity analysis was conducted on the cash flows assuming that the restructuring costs associated with the plant closures would occur in the base case (in absence of standards). It was found that these costs contribute approximately $14 million to the negative impacts under all scenarios.

A sensitivity analysis was also conducted to analyze the impact of certain business risks. Specifically, a scenario was developed whereby changes in market demand would cause magnetic ballast shipments to decline at twice the rate, *i.e.*, 10 percent per year between 1999 and 2002, remain constant through 2005 and then continue declining at 5 percent per year

beginning 2006. It was further assumed that these abrupt changes in shipments impact the magnetic ballast industry competitive dynamics by reducing profit margins in the 2000 through 2005 time frame, to levels observed in the electronic ballast market.

The cash flow impacts with the 2003 plant closure assumption and the business risks as outlined above are presented in the Table V.7.

TABLE V.7.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2015 (5% DECLINE) SHIPMENT SCENARIO WITH PLANT CLOSURES IN THE BASE CASE IN 2003

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV (%)
Cash flow impacts on business represented by all regulated product classes—Magnetic and Electronic Sub-group 1				
Manufacturer Submittal	288.9	198.9	–90.0	–31
Manufacturer Submittal with plant closure in 2003	275.2	198.9	–76.3	–28
Business risk: abrupt change in shipments	263.7	179.5	–84.2	–32
Sub-group 2				
Manufacturer Submittal	131.7	152.0	20.3	15
Manufacturer Submittal with plant closure in 2003	131.7	152.0	20.3	15
Business risk: abrupt change in shipments	131.7	152.0	20.3	15
Industry (Sub-group 1 + Sub-group 2)				
Manufacturer Submittal	420.6	350.9	–69.7	–17
Manufacturer Submittal with plant closure in 2003	406.9	350.9	–56.0	–14
Business risk: abrupt change in shipments	395.4	331.5	–63.9	–16

Impacts on Ballast Manufacturer Employment

Employment impacts are reported in two categories:

Direct employment impacts: These impacts consider jobs directly involved with the production of ''affected'' magnetic or electronic ballasts. In facilities producing ''affected'' and other types of ballasts, only direct and overhead jobs related to ''affected'' ballasts are considered in this category. In situations where ballast companies own component manufacturing operations, such as capacitor plants or magnet wire operations, job impacts on these plants are reported within this category. Impacts on other component suppliers are presented in a separate section titled ''Impact on Suppliers to the Fluorescent Lamp Ballast Industry.''

Associated employment impacts: These impacts consider jobs impacted by business decisions driven by the ''direct'' employment impacts. For example, if in a manufacturing plant with 100 employees, 50 are producing ''affected'' magnetic ballasts and the remaining 50 are producing ''unaffected'' magnetic ballasts, such as residential ballasts, then an electronic ballast standard would result in the loss of 50 direct jobs. Faced with this situation the company might decide to close operations in its plant due to the dramatically reduced capacity utilization. Such a decision would result in the loss of the remaining 50 jobs. These 50 jobs would then be reported as ''associated'' employment impacts.

Manufacturers in Sub-group 1 anticipate that absent standards, direct employment associated with manufacturing ''affected'' magnetic ballasts will decrease approximately in the same proportion as shipments. Faced with this decline, manufacturers in Sub-group 1 intend to maintain high plant capacity utilization by replacing the loss in direct jobs with new associated jobs. These new associated jobs may be the result of new product introductions, plant consolidations or decisions to make in-house, parts currently sourced from suppliers.

The uncertainty with regards to the timing of any plant closures in the base case—after the year 2003—results from the difficulty in anticipating how many associated jobs can be maintained in the long run. Gains in associated jobs will not necessarily maintain plant capacity utilization in the long run and a threshold may be reached that requires the plant to be closed. For example, one manufacturer suggested that for its supplier plant a drop of 30 percent in capacity could lead to closure.

Table V.8 summarizes the employment impacts of an electronic ballast standard under the two shipment scenarios. The table assumes a standards effective date of 2003.

TABLE V.8.—INDUSTRY-WIDE EMPLOYMENT IMPACTS OF AN ELECTRONIC BALLAST STANDARD (ORDERLY DECLINE IN U.S. MANUFACTURING)

Country of manufacture	Direct jobs lost in magnetic ballast manufacturing	Associated jobs at risk in magnetic ballast manufacturing	Direct jobs [4 5] gained in electronic ballast manufacturing	Net direct jobs lost
2015 (5% decline) shipment scenario				
USA	[1]666	[2]406	500	166
Mexico	1570	[3]190	700	870

TABLE V.8.—INDUSTRY-WIDE EMPLOYMENT IMPACTS OF AN ELECTRONIC BALLAST STANDARD (ORDERLY DECLINE IN U.S. MANUFACTURING)—Continued

Country of manufacture	Direct jobs lost in magnetic ballast manufacturing	Associated jobs at risk in magnetic ballast manufacturing	Direct jobs [4 5] gained in electronic ballast manufacturing	Net direct jobs lost
2027 (3% decline) shipment scenario				
USA	717	[2] 363	557	160
Mexico	1727	[3] 161	769	958

[1] Includes both factory and non-factory jobs supporting magnetic ballast production.
[2] These ''associated'' jobs are assumed relocated to Mexico.
[3] These ''associated'' jobs will be relocated to other plants in Mexico or elsewhere.
[4] Includes jobs from Sub-groups 1 and 2.
[5] Does not include potential associated jobs added in these plants.

Uncertainty in Ballast Manufacturer Employment Impacts

As previously discussed, there exists some uncertainty relative to the closure date of current magnetic ballast production facilities in the base case. The employment impacts presented in Table V.8 assume a base case with an orderly decline in the U.S. magnetic ballast employment until 2015 or 2027. The large majority of these employment impacts are directly associated with the closure of the remaining large U.S.-based magnetic ballast plant.

In consideration of the past trend towards consolidation of magnetic ballast production to Mexico, a sensitivity analysis was conducted on the employment impacts assuming that the employment impacts associated with the plant closures would occur in the base case (in absence of standards). These impacts are detailed in the Table V.9. The scenario assumes that the lost U.S. jobs would be picked up by increased manufacturing activity in the Mexican plants, thereby increasing the employment impact of a standard on Mexican jobs.

TABLE V.9.—INDUSTRY-WIDE EMPLOYMENT IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE SCENARIO WHERE (U.S. MAGNETIC BALLAST PLANTS CLOSE IN 2003 IN THE BASE CASE)

Country of manufacture	Direct jobs lost in magnetic ballast manufacturing	Associated jobs at risk in magnetic ballast manufacturing	Direct jobs [4 5] gained in electronic ballast manufacturing	Net direct jobs lost/ gained
2015 (5% decline) shipment scenario				
U.S.A	[1] 0	[2] 0	500	500 jobs gained
Mexico	2236	[3] 596	700	1536 jobs lost
2027 (3% decline) shipment scenario				
U.S.A	0	0	557	557 jobs gained
Mexico	2444	[3] 524	769	1675 jobs lost

[1] Includes both factory and non-factory jobs supporting magnetic ballast production.
[2] These ''associated'' jobs are assumed relocated to Mexico.
[3] These ''associated'' jobs will be relocated to other plants in Mexico or elsewhere.
[4] Includes jobs from Sub-groups 1 and 2.
[5] Does not include potential associated jobs added in these plants.

Impacts on Ballast Manufacturing Capacity

It is likely that an electronic ballast standard would negatively impact magnetic ballast production capacity in the U.S. and Mexico. As mentioned previously, there is evidence to suggest that magnetic ballast production facilities in the U.S. may be closed regardless of a standard, and a sensitivity analysis was conducted to examine the impacts of this scenario. While there is a degree of uncertainty over what will happen to domestic magnetic ballast production facilities in the absence of a standard, in all likelihood, the imposition of a new electronic ballast standard will result in the closure of one magnetic ballast production facility in the U.S., and in the partial closure of another in Mexico. Additionally two manufacturer-owned (captive) ballast supplier facilities would most likely be impacted: A capacitor plant in Mexico could close and a magnet wire plant, located in the U.S., could also close.

Although the scenario whereby magnetic ballast production facilities are closed in 2003 in the base case was examined, all manufacturers in Sub-group 1 suggested that in the absence of a standard they would continue to manufacture ''affected'' magnetic ballasts in their current manufacturing plants. They did not anticipate any plant closures or shifting of production

of ''affected'' magnetic ballasts from one plant to another before the year 2010.

Table V.10 summarizes the possible impact of a new electronic ballast standard on existing manufacturing plants in the U.S. and Mexico, assuming plants remain open in the base case as manufacturers predict.

TABLE V.10.—IMPACTS ON MANUFACTURING CAPACITY DUE TO AN ELECTRONIC BALLAST STANDARD

Plant	Location	Description	Action
Plant 1	U.S.A	Magnetic ballast	Closure.
Plant 2	U.S.A	Magnet Wire	Possible Closure.
Plant 3	Mexico	Magnetic ballast	Partial Closure.
Plant 4	Mexico	Capacitors	Closure.
Plant 5	U.S.A	Electronic ballast	Expansion.
Plant 6	U.S.A	Electronic ballast	Expansion.
Plant 7	Mexico	Electronic ballast	Expansion.
Plant 8	Mexico	Electronic ballast	Expansion.

An electronic ballast standard would lead to increased electronic ballast manufacturing capacity in the U.S. and Mexico. In order to meet increased sales resulting from a new electronic ballast standard, two of the four manufacturers in Sub-group 1 plan to develop additional electronic ballast manufacturing capacities in Mexico. The smaller manufacturers in Sub-group 1 plan no major plant closures or expansions and will accommodate the new product mix requirements within their existing facilities. In Sub-group 2, two manufacturers stated that they would add significant electronic ballast manufacturing capacity in the U.S. to meet the new standard.

Impact on Small Ballast Manufacturers

Two relatively small manufacturers currently produce both ''affected'' magnetic and electronic ballasts. One of these manufacturers would be a ''small business'' as defined in the Regulatory Flexibility Act (See discussion in the Procedural Issues and Regulatory Reviews section of this preamble). Both the small manufacturers had their respective electronic and magnetic ballast manufacturing operations in the same plants. It seems their smaller size and less automated operations provides them with the flexibility to adapt to a new electronic ballast standard without significant asset write-offs or plant closures. However, the negative impacts on the small manufacturers' cash flows from operations were similar in proportion to those reported by the two large manufacturers in Sub-group 1. As a result, in the 5% scenario, we estimate that small manufacturers will experience a 16 percent loss in their NPV compared to a 34 percent loss in NPV for the two large manufacturers.

As with other Sub-group 1 manufacturers, neither of these manufacturers stated that an electronic ballast standard would force them to leave the industry or go out of business.

Impact on Ballast Industry Suppliers

New energy-efficiency standards for fluorescent lamp ballasts will also affect ballast industry suppliers. To estimate this impact, we performed a detailed analysis of the impacts of an electronic ballast standard on suppliers to the ballast industry. We invited 31 supplier firms to participate in interviews. These firms were identified by manufacturers to represent the key components contained in the bills of materials for ''affected'' magnetic and electronic ballasts. Eleven of these suppliers served magnetic ballast production, eleven electronic ballast production, and nine supplier plants served both magnetic and electronic production. Sixteen of the 20 organizations serving magnetic ballast production participated in interviews and/or provided plant tours. Eleven of the 20 organizations serving electronic ballast production participated in interviews and/or provided plant tours.

Table V.11 shows an average (weighted by shipment levels) distribution of materials and components cost for ''affected'' magnetic ballasts. Interviews and literature sources provided information needed to estimate financial and employment impacts of a new energy efficiency standard for ballasts on suppliers responsible for approximately 91 percent of the cost of materials.

TABLE V.11.—COST OF MATERIALS FOR ''AFFECTED'' MAGNETIC BALLASTS

Material type	Contribution to total cost of materials (%)
Magnet and Lead Wire	40
Steel case and CRML	23
Capacitors	16
Thermal protectors, clamps, potting	12
Other	9

The industries analyzed and represented are:

- Cold rolled steel finished for ballast cases
- Cold rolled motor laminate (CRML) steel for use primarily in transformers
- Magnet wire
- Lead wire
- Thermal protectors
- Clamps to secure the stack of CRML stamped sections making up the ballast transformer to the proper size
- Potting and impregnation compounds
- Capacitors

With the exception of a very small fraction of metallized film capacitors produced outside the U.S. and materials produced in plants owned and operated by the ballast manufacturers themselves, all of these components are produced domestically in the United States. Except for the clamps, all these industries (not necessarily the same plants) also serve the production of electronic ballasts. The analyses for financial and employment impacts considered materials supplied to magnetic and electronic ballasts together for those industries which serve both markets.

Table V.12 exhibits a similar distribution of materials and components costs for an electronic ballast alternative to the ''affected'' magnetic ballast. The table shows a higher number of components for electronic ballasts. The cost of materials for electronic ballasts is approximately 30 percent higher than that for ''affected'' magnetic ballasts.

TABLE V.12.—BENCHMARK COSTS FOR ELECTRONIC BALLASTS

Item	Contribution to total cost of materials (%)
Film Capacitors	17
PC Board, Thermal Protectors, Potting	15

TABLE V.12.—BENCHMARK COSTS FOR ELECTRONIC BALLASTS—Continued

Item	Contribution to total cost of materials (%)
Steel case and CRML	12
Magnet and lead wire, connectors	12
Transistors	10
Ceramic and Electrolytic capacitors	7
Bobbins	6
Diodes	6
Ferrite Cores	5
Others	10

The analysis of supplier impacts focuses on domestic (production facilities within the United States) suppliers. A substantial portion of the components that go into producing electronic ballasts is produced in foreign plants. We estimated the fraction of each component produced domestically in 1997. To the extent that domestic suppliers can maintain this market share, they could recover some of the ''affected'' magnetic ballast revenue and associated employment level that they would lose if an electronic ballast energy efficiency standard were to go into effect. The industries analyzed were producers of printed circuit boards and bobbins. No first hand financial or employment information was collected from industry representatives for transistors, diodes, or ferrite cores. We combined these three industries with a half dozen other smaller contributors to the cost of materials and assumed pro-rated values for net income, depreciation, and capital expenditure levels to estimate cash flow for this group. This ''other'' group of suppliers represents approximately 27 percent of supplier revenue, meaning about 73 percent of electronic ballast supplier financial values is based on direct contact with industry representatives. The comparable figure for the magnetic ballast supplier side is 9 percent ''other'' and 91 percent based on interviews with suppliers.

The analysis considers a reference case wherein domestic suppliers maintain their 1997 market shares in the electronic ballast component market. Through discussions with supplier industries it became apparent that there existed some uncertainty as to the probability that ballast manufacturers would continue to source their components domestically in the event of an electronic standard. To bracket the uncertainty, separate cash flows were performed for the extreme case where all components for electronic ballasts were purchased from foreign sources. The financial impacts associated with the reference and ''worst'' cases are summarized in the following Tables.

TABLE V.13.—ESTIMATED NPV IN $MILLIONS FOR SUPPLIER INDUSTRIES, ASSUMING DOMESTIC SUPPLIER INDUSTRIES MAINTAIN THEIR 1997 MARKET SHARES (REFERENCE CASE)

Industry	5% Scenario, 1998–2015			3% Scenario, 1998–2027		
	Base case	Standard case	Change $mil	Base case	Standard case	Change $mil
Capacitor	1.28	1.59	0.31	1.34	1.74	0.41
Magnet, Lead Wire, Connectors	11.40	8.83	−2.57	12.39	9.27	−3.13
TP, Metal Clamps, Potting & Impregnating	8.55	7.05	−1.51	10.24	7.59	−2.65
Steel	16.59	12.45	−4.14	18.74	14.21	−4.53
Other Mag/Electronic Suppliers	6.11	4.87	−1.23	6.81	5.18	−1.63
PC Board, Bobbins	1.87	2.81	0.94	1.45	2.69	1.24
Other Electronic Suppliers	.79	1.44	0.65	1.04	1.88	0.84
Total	46.59	39.04	−7.55	52.01	42.56	−9.45

TABLE V.14.—ESTIMATED NPV IN $MILLIONS FOR SUPPLIER INDUSTRIES, ASSUMING FOREIGN SUPPLIERS CAPTURE ALL THE NEW ELECTRONIC BALLAST MARKET (WORST CASE).

Industry	5% Scenario, 1998–2015			3% Scenario, 1998–2027		
	Base case	Standard case	Change $mil	Base case	Standard case	Change $mil
Capacitor	1.28	.89	−.39	1.34	.92	−0.41
Magnet, Lead Wire, Connectors	11.40	8.06	−3.34	12.39	8.37	−4.03
TP, Metal Clamps, Potting & Impregnating	8.55	5.69	−2.86	10.24	5.92	−4.31
Steel	16.59	11.05	−5.54	18.74	11.54	−7.20
Other	6.11	4.13	−1.97	6.81	4.31	−2.50
PC Board, Bobbins	1.87	0.25	−1.62	1.45	0.15	−1.3
Other Electronic Suppliers	0.79	0.16	−0.64	1.04	0.09	−0.94
Total	46.59	30.23	−16.36	52.01	31.3	−20.69

The financial impact ranges from a reference case $7.55 million decline in NPV cash flow under the 5% scenario to a ''worst'' case $20.69 million decline under the 3% scenario.

Impacts on Supplier Employment

The reference-case employment impacts under the 3% and 5% scenarios are summarized in Table V.15 and indicate a range of 313–340 jobs lost and potential for 129–144 to be gained back. If all the new electronic ballast market were to go to foreign firms, no jobs would be gained back, and thus in the worst case about 313–340 domestic jobs would be lost.

TABLE V.15.—ESTIMATED EMPLOYMENT IMPACTS FOR SUPPLIER INDUSTRIES ASSUMING DOMESTIC SUPPLIERS MAINTAIN THEIR 1997 MARKET SHARES.

Industry	5% Scenario, 1998–2015			3% Scenario, 1998–2027		
	Jobs lost	Potential jobs gained	Net jobs lost [gained]	Jobs lost	Potential jobs gained	Net jobs lost [gained]
Capacitor	27	34	[7]	29	37	[8]
Magnet & Lead	69	10	59	76	11	65
TP, Metal Clamp,	52	14	38	57	15	42
Steel	58	13	45	63	14	49
Metallized Film	44	1	43	48	1	47
Other Magnetic/Electronic	40	8	32	44	9	35
PC Board, Bobbins	0	23	[23]	0	27	[27]
Other Electronic	0	26	[26]	0	30	[30]
Associated Plant Closure	23	.....	23	23	.....	23
Total	313	129	184	340	144	196

Impacts on Luminaire Manufacturers

The Department interviewed eight luminaire manufactures with a combined market share approaching 85 percent of the market segments affected by a new ballast standard. The Department specifically investigated how a new energy efficiency standard for ballasts might change luminaire manufacturer profitability and cash flow. Of the eight manufacturers interviewed, two reported they will suffer no impacts and two others believe their impacts would be minimal. The four other manufacturers believe they will suffer varying levels of decreased company value.

From the information obtained in the interviews, estimates of reductions in NPV were prepared for each of the four manufacturers reporting negative impacts. These projections incorporated the financial figures and rationale provided by the manufacturers. Three different rationales were presented in support of diminished profitability and value.

One or more manufacturers are experiencing greater profitability with electronic ballasts. The NPV reduction assumes that a standard which eliminates magnetics as the commodity product would render electronic ballasts the commodity product and competition would eliminate the premium for electronic ballasts.

One or more manufacturers are experiencing greater profitability with magnetic ballasts. The NPV reduction is a direct consequence of replacing sales of higher margin products by lower margin sales.

The third view presented concerns the high price sensitivity of low-end luminaires, particularly one and two lamp strip lights. It was assumed for that analysis that not all incremental costs for electronic ballasts could be passed on to consumers with a corresponding reduction in profit margin.

For both shipment scenarios, the aggregated reduction in NPV for the four firms totals approximately 13.5 million dollars assuming the current difference in margins for luminaires incorporating magnetic or electronic ballasts would continue absent standards. This appears to be a very speculative assumption given the trend towards convergence of magnetic and electronic luminaire margins reported by most luminaire manufacturers. If in fact margins do converge by the implementation date of a new standard, the impacts attributed to price margin differences disappear and the total impacts are reduced to a value of approximately 4.5 million dollars.

In addition to the previous financial impacts, manufacturers reported significant other costs and business disruptions associated with potential new ballast standards. There were concerns expressed that a standard would divert resources from new product and technology introduction and result in lost opportunities. Large efforts would also be needed to revise product literature and perform photometric tests. Further, many business processes and information systems relative to materials management and other systems would need to be revised. The costs associated with these issues, not including lost opportunities were reported to be approximately one million dollars.

Impacts on Luminaire Manufacturer Employment

Of the eight luminaire manufacturers interviewed, six stated that employment impacts from an electronic ballast standard would be be minimal, if any, within their companies. Two manufacturers, however, believe a new standard would probably reduce employment levels in their U.S. facilities. This reduction is assumed to be caused by reductions in export sales and a loss of flourescent luminaire sales in favor of incandescent luminaires. Based on its analysis of these issues and in agreement with the majority view of interview participants, the Department believes the employment impacts of a ballast standard would be minimal.

Two manufacturers expressed a concern that since their export markets are primariliy magnetic, a drop in domestic ballast manufacturing volumes would cause upward pressure on magnetic luminaire prices and compel them to raise export prices for luminaires. Local luminaire manufacturers, they believe, could find less costly sources for magnetic ballasts resulting in decreased export sales for U.S. companies. Furthermore, these manufactures fear that given the importance of linear flourscent fixtures in most customer orders, winning or losing a project can depend heavily on price levels of the these luminaires. If flourecscent luminaire sales are lost to local competitors then, they believe, U.S. companies could also lose sales of HID luminaires, emergency lighting, exit signs and various other products. The Department believes these employment impacts would be very small for two reasons. First economic theory and real world experience suggests that in competitive markets, overcapacity leads to increased—not decreased—price competition. Second the export market is concentrated in the Canadian and Mexican markets where U.S. ballast manufacturers are major participants and could compete with local ballasts manufacturers.

Another stated potential cause of reduced U.S. luminaire manufacturing jobs is the possible movement away from flourescent luminaires in favor of incandescent luminaires in the more

first cost sensitive commercial market segments. However, there was considerable differences of opinion as to the significance of any such movement in lighting systems. The general view was that there is already a significant cost premium for fluorescent lighting and this premium is not likely to greatly increase given ballast pricing trends. Therefore the Department has not included any employment reductions for luminaire manufacturers because of this potential effect.

Impacts on Lamp Manufacturers

Three major manufacturers, GE Lighting, OSI, and Philips Lighting Company dominate the domestic market for linear fluorescent lamps. Together these three manufacturers serve approximately 90 percent of the U.S. market. As trade allies of the fluorescent ballast manufacturing industry, they may experience an impact from a new energy-efficiency standard applied to fluorescent lamp ballasts. Some ballast and lamp industry sources and others have speculated that a new energy-efficiency standard for ballasts would substantially accelerate the transition from T12 lamps to T8, thus having an impact on lamp manufacturers as well as ballast manufacturers.

As discussed previously, OSI commented that the lamp industry had the capacity to handle the transition from T12 lamps to T8 lamps in the OEM market resulting from an electronic ballast rule over a period of three years. OSI believes, however, it doubtful the lamp industry could handle, in addition, any significant transition to T8 lamps of the installed base of T12 lamps in less than 8 years following an electronic ballast rule. OSI commented that if magnetic ballasts were no longer available, large resources would be diverted to the development of energy saving T12 lamps compatible with electronic ballasts or electronic ballasts compatible with energy saving T12 lamps.

The Department invited representatives from each of the three major lamp manufacturers to estimate the impact that a new ballast standard might have on them. One manufacturer chose not to participate in the discussions, so the following results are based on talks with two major manufacturers.

There was agreement that a new standard would accelerate the shift in market share from T12 to T8 lamps. The manufacturers further agreed the current transition to T8 lamps is being handled well and that any acceleration in the transition must be served while retaining enough T12 capacity to serve the replacement market. The replacement market for T12 lamps is large, over 85 percent of the 1998 market of 340 million lamps were T12 lamps. The lamp manufacturing industry can gear up to serve the increase in OEM demand for T8 lamps with a 3–4 year lead-time. However, to serve any increased replacement market at the same time would require an acceleration in capacity expansion for T8 production and early retirement of T12 capacity which would have financial impacts.

The Department is uncertain as to how the replacement market might respond to today's proposed standard. Consumers might make spot replacements, as suggested by ACEEE earlier, or ballast manufacturers may develop electronic T12 ballasts compatible with T12 energy saver lamps or there could be an acceleration to T8 lamps in the replacement market. Given this uncertainty, we did not attempt to quantify the impact on lamp manufacturers of an electronic ballast standard applied to the replacement ballast market before the 8 year implementation date suggested by OSI.

2. Life-Cycle Cost

More efficient ballasts would affect commercial and industrial consumers in two ways: operating expense would probably decrease and purchase price would probably increase. We analyzed the net effect by calculating the LCC. Inputs required for calculating LCC include end-user prices for ballasts and lamps, electricity rates (cents/kiloWatthour), energy savings, annual lighting operating hours, labor rates, installation times, period of the analysis, ballast lifetimes, lamp lifetimes, and discount rates. A detailed discussion of the sources and methods used for arriving at an estimate of these parameters is in the TSD. Briefly, we obtained end-user prices for ballasts from a survey of ballast distributors from various parts of the country; we estimated marginal electricity rates as described later in this section; we based operating hours upon Xenergy building energy audit data; we derived installation costs from journeyman wages listed in the National Electrical Estimator 1995; the period of analysis is the ratio of ballast life to the annual operating hours; lamp life is the average of lamp life under spot and group replacement where spot replacement lamp life is the lamp rated life from manufacturer's catalog and group replacement is 75 percent of the rated life; and the discount rate is 8 percent.

We estimated the marginal electricity rates by first calculating the marginal rate faced by a sample of commercial customers in buildings throughout the U.S. This was compared with the average electricity rates for the same customers. The percent difference between the average and marginal rates (Epsilon) was calculated for each customer. We then used this Epsilon distribution to convert the average electricity price from a specific United States utility into marginal electricity price by using the formula:

Marginal Electricity Price = Average Electricity Price x (1 + Epsilon)

We performed a probability-based LCC analysis with a computer program called Crystal Ball. For each of four inputs (ballast price, electricity price, ballast lifetime, and annual lighting hours) to the LCC model, we defined a probability-based distribution of the input to account for the variability of the input. Instead of using a single ''average'' value to represent the input in its entirety, we used the whole distribution to calculate the LCC. The output of the LCC model is a mean LCC savings for each product class as well as a probability distribution or likelihood of LCC reduction or increase.

We present a summary of the results in Table V.16. The column titled ''Delta LCC'' gives the change in LCC when switching from the baseline option of EEM ballast to the listed design option. ''% Winners'' represents the probability of the design option resulting in reduced LCC. Table 4.4 of the TSD also shows the life cycle cost impacts when starting from an energy efficient magnetic T8 ballast.

TABLE V.16.—SUMMARY OF DELTA LCC* RESULTS

Product class	% Market	Design option	Sector	Delta LCC	
				Mean (1997$)	%Winners**
1F40	5	T12 CC	Commercial	−4	7

TABLE V.16.—SUMMARY OF DELTA LCC* RESULTS—Continued

Product class	% Market	Design option	Sector	Delta LCC	
				Mean (1997$)	%Winners**
		T12 ERS	Commercial	4	68
2F40	36	T12 CC	Commercial	−2	31
		T12 ERS	Commercial	6	80
3F40	1	T12 CC	Commercial	−2	33
Tandem-Wired		T12 ERS	Commercial	5	68
3F40 Not	10	T12 CC	Commercial	−4	23
Tandem-Wired		T12 ERS	Commercial	18	98
4F40	22	T12CC	Commercial	−2	36
		T12 ERS	Commercial	12	87
2F96	23	T12 EIS	Commercial	7	75
		T12 EIS	Industrial	−2	35
2F96HO	2	T12 CC	Commercial	11	90
		T12 ERS	Commercial	28	98
		T12 CC	Industrial	1	50
		T12 ERS	Industrial	15	94

*A positive Delta LCC implies a LCC savings whereas a negative number implies an increase in LCC
**% ballasts with reduced life cycle cost (winners), noted as ''certainty level'' by Crystal Ball.

3. Energy Savings, Net Present Value and Net National Employment

As indicated, we conclude that standards will result in significant savings of electricity by ballasts for each standards scenario. These energy savings have value to society, as measured by the net present value analysis. The net present value analysis is a measure of the net savings to society from standards and are summarized in the following tables.

TABLE V.17A.—NET PRESENT VALUE FROM ELECTRONIC STANDARDS

Electronic standards for units sold from 2003 to 2030 discounted at 7% to 1997 (in billion 1997 $)*

Scenario	Scen 1A T12 Decr2015	Scen 1B T12 Decr2027	Scen 2A T12/T8 Decr2015	Scen 2B T12/T8 Decr2027	Scen 3A Decr2015	Scen 3B Decr2027	Scen 4A Decr2015	Scen 4B Decr2027
Total Benefit	1.97	3.13	3.22	5.13	2.68	4.46	2.98	4.85
Total Equipment Cost	1.01	1.62	0.8	1.27	0.64	1.08	0.72	1.18
Net Present Value	0.96	1.51	2.43	3.86	2.03	3.38	2.26	3.68

*Total Benefit and Net Present Value do not include HVAC savings.

TABLE V.17B.—NET PRESENT VALUE FROM CATHODE CUTOUT STANDARDS

Cathode cutout standards for units sold from 2003 to 2030 discounted at 7% to 1997 (in billion 1997 $)

Scenario	Scen 5A 100% CC Decr2015	Scen 5B 100% CC Decr2027	Scen 6A 37% CC Decr2015	Scen 6B 37% CC Decr2027
Total Benefit	0.94	1.49	2.18	3.47
Total Equipment Cost	0.78	1.26	0.58	0.93
Net Present Value	0.16	0.23	1.60	2.54

Since the covered lamp ballasts are commercial products, these net savings apply to American business and industry. NPV is the difference between additional equipment costs and electricity cost savings. The NPV for the electronic ballast standards scenarios ranges from about 0.96 billion to 3.86 billion dollars (1997 dollars). NPV increases under the slower decreasing shipments forecast to 2027. NPVs for scenario 2 with T8 electronic ballasts are about 2.5 times those for scenario 1 with T12 electronic ballasts. For scenario 3, the five-year phase-in period causes an NPV reduction of around 15 percent over scenario 2. For scenario 4, the 2-year phase-in period results in an NPV reduction of about 5 percent over Scenario 2.

For the cathode cutout standards scenarios, NPV ranges from 0.16 to 2.54 billion dollars. For scenario 6, the NPV is 10 to 11 times greater than that of scenario 5. Note that we did not include HVAC energy cost savings in any of the NPV calculations.

The net present value analysis from the standards in the Joint Comments is summarized in Table V.18.

TABLE V.18.—NET PRESENT VALUE RESULTING FROM JOINT COMMENT

Joint comment standards for units sold from 2005 to 2030 discounted at 7% to 1997 (in billion 1997 $)

Scenario	Dec2015	Dec2027
Total Benefit	1.95	3.51
Total Equipment Cost	0.53	0.91
Net Present Value	1.42	2.60

The Department committed in its 1996 Process Improvement Rule to develop estimates of the employment

impacts of proposed standards in the economy in general. 61 FR 36983.

As discussed above, energy efficiency standards for ballasts are expected to reduce electricity bills for commercial and industrial consumers, although these savings are likely to be partially offset by increased costs for lighting equipment. The resulting net savings are expected to be redirected to other forms of economic activity. These shifts in spending and economic activity are expected to affect the demand for labor, but there is no generally accepted method for estimating these effects.

One method to assess the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. BLS data indicate that expenditures in the electric sector generally are associated with fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including the capital-intensity of the utility sector and wage differences. Based on the BLS data alone, we believe the increase in the demand for labor resulting from shifts in economic activity would offset any reduced demand in the domestic ballast industry as a result of a ballast standard.

In developing this proposed rule, the Department attempted a more precise analysis of the impacts on national labor demand using an input/output model of the U.S. economy. The model characterizes the interconnections among 35 economic sectors using the data from the Bureau of Labor Statistics. Since the electric utility sector is more capital-intensive and less labor-intensive than other sectors (see Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), Washington, D.C., U.S. Department of Commerce, 1992), a shift in spending away from energy bills into other sectors would be expected to increase overall employment. The results of the Department's analysis are shown in Appendix E of the TSD. This analysis also concluded that the shifts in sectoral expenditures likely to result from the proposed ballast standard would likely increase the net national demand for labor.

While both this input/output model and the direct use of BLS employment data suggest the proposed ballast standards are likely to increase the net demand for labor in the economy, the gains would most likely be very small relative to total national employment. For several reasons, however, even these modest benefits are in doubt:

- Unemployment is now at the lowest rate in 30 years. If unemployment remains very low during the period when the proposed standards are put into effect, it is unlikely that the standards could result in any net increase in national employment levels.
- Neither the BLS data nor the input-output model used by DOE include the quality or wage level of the jobs. One reason that the demand for labor increases in the model may be that the jobs expected to be created pay less than the jobs being lost. The benefits from any potential employment gains would be reduced if job quality and pay are reduced.
- The net benefits from potential employment changes are a result of the estimated net present value of benefits or losses likely to result from the proposed standards, it may not be appropriate to separately identify and consider any employment impacts beyond the calculation of net present value.

Taking into consideration these legitimate concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed ballast standards are likely to produce employment benefits that are sufficient to offset fully the expected adverse impacts on employment in the domestic ballast industry.

Because this is the first time DOE has performed such an analysis for an efficiency standards rulemakings, public comments are solicited on the validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis.

4. Lessening of Utility or Performance of Products

An issue of utility that was considered was the possibility of interference with certain equipment, such as medical monitoring equipment, caused by the high frequency of electronic ballasts. To prevent any interference that cannot be solved by electronic ballast designers, the Department is not establishing a standard for T8 ballasts, thereby allowing magnetic T8 ballasts for such applications.

5. Impact of Lessening of Competition

The determination of this factor must be made by the Attorney General.

6. Need of the Nation to Save Energy

Enhanced energy efficiency improves the Nation's energy security, strengthens the economy and reduces the environmental impacts of energy production. The energy savings from ballast standards result in reduced emissions of carbon and NO_X. Cumulative emissions savings over the 18-year period modeled are shown in Table V.19.

TABLE V.19.—CUMULATIVE EMISSIONS REDUCTIONS (2003–2020)

Emission	Range for Electronic Standards (standards 1–4)	Range for Cathode Cut-out Standards (standards 5 and 6)	Range Resulting from Joint Comments
Carbon (Mt)	12–30	6–20	11–19
NO_X (kt)	41–97	20–65	34–60

The annual carbon emission reductions range up to 2.3 Mt in 2020 and the NO_X emissions reductions up to 5.7 kt in 2015.[8,9] Total carbon and NO_X emissions for each of the 12 studied standards are reported in Tables D–1a and D–1b, Appendix D, of the TSD. In addition, equivalent results for the high and low economic growth cases for standards level 2b are reported in Table D–2 of the TSD. The outcome of the analysis for each case is shown as both

[8] million metric tons (Mt).

[9] thousand metric tons (kt).

emissions and deviations from the AEO99 Reference Case result. Emissions for the Joint Comment are presented in Appendix E of the TSD.

7. Other Factors

We present in Table V.20 a summary of the life-cycle cost results for those subgroups of commercial and industrial consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems. The column titled ''Delta LCC'' gives the change in LCC when switching from the baseline option of EEM ballast to the listed design option. ''% Winners'' represents the probability of the design option resulting in reduced LCC.

TABLE V.20.—SUMMARY OF DELTA LCC* RESULTS

Product Class	Design Option	Sector	Delta LCC	
			Mean (1997$)	%Winners**
1F40	T8 ERS	Commercial	17	98
2F40	T8 ERS	Commercial	18	98
3F40 Tandem-Wired	T8 ERS	Commercial	27	98
3F40 Not Tandem-Wired	T8 ERS	Commercial	56	100
4F40 w/o Dual Switching	T8 ERS	Commercial	54	100
4F40 Dual Switching	T8 ERS	Commercial	44	99

*A positive Delta LCC implies a LCC savings whereas a negative number implies an increase in LCC
** % ballasts with reduced life cycle cost (winners), noted as ''certainty level'' by Crystal Ball.

For commercial and industrial consumers that choose four foot T8 lamps with their electronic ballasts, who in the current market represent 95 percent of purchasers of electronic ballasts, 98 to 100 percent will have life cycle cost savings which average 17 to 54 dollars. We did not evaluate commercial and industrial consumers of eight foot lamps, but we expect them to have similarly robust positive results.

As stated, the Department analyzed the Joint Comment in terms of national energy savings, net present value, national employment impacts and emission reductions. These results are also shown in Appendix E of the TSD. For the common scenario between the Department's analysis and the Joint Comment proposal of a market transformation by 2027 and a shift to T8 lamps, the above benefits are approximately 24 percent less than the Department's analysis which started the standards in the year 2003. However, the burdens on the manufacturers are also reduced to lower levels. The manufacturers have commented that their proposed staggered implementation dates mitigate the adverse impacts.

e. Conclusion

Section 325(l) of the Act specifies that the Department must consider, for amended standards, those standards that ''achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified'' and which will ''result in significant conservation of energy.'' Accordingly, the Department first considered the benefits and burdens of the max tech level of efficiency, *i.e.,* electronic ballast standards. Furthermore, in considering this standard level, the Department considered the staggered implementation scheme recommended in the Joint Comments.

Significant Conservation of Energy

The Department concludes that an electronic ballast standard saves a significant amount of energy. The energy savings reported for an electronic ballast standard in the Department's analysis ranged between 1.20 to 2.32 Quads of energy, not including the HVAC effects. The Department considers energy savings within this range to be significant.

Technological Feasibility

The Department concludes that an electronic ballast standard is technologically feasible as these products are currently available and comprise roughly half of the market.

Summary of Economic Impacts

In determining economic justification, the Department considered the burdens and benefits of an electronic ballast standard. The burdens accrue to the manufacturers of magnetic ballasts, some of their suppliers and employees, and to some commercial and industrial consumers who, because of factors such as lower than average electric costs or hours of operation, will experience increased life cycle costs. On the other hand, most commercial and industrial consumers will benefit from lower life cycle costs due to energy savings. These lower costs to the nation's businesses and industries produce increased jobs in the economy at large and the energy savings result in reduced atmospheric emissions. The Department gave considerable weight to the recommendations of the Joint Comment which attempts to balance these burdens and benefits. The proposal reduces energy savings by approximately 24 percent compared to the Department's analysis for the common scenario of a market transformation by 2027 and a shift to T8 lamps. These reductions come mainly from delaying the effective dates of the standards from the year 2003 to 2005 and later for replacement ballasts. However, these same extensions also reduce the impacts of the standards on manufacturers from what the Department estimated to levels which the manufacturers state are mitigated. While the Department did not revise the MIA, we believe the manufacturers' statement in the Joint Comment that the impacts on them from the proposal are mitigated is sufficient to conclude that, given the benefits, today's proposed standards are economically justified.

Economic Impact on Manufacturers

Over the range of cash flow scenarios and shipment forecasts that the Department studied for standards starting for all classes in 2003, we estimated that manufacturers that produce both magnetic and electronic ballasts would loose between 54.6 and 113.7 millions of dollars of NPV as a result of electronic standards. Manufacturers that currently produce electronic ballasts only were estimated to gain 9.3 to 27.5 millions of dollars of NPV. Domestic suppliers to the ballast industry were expected to loose between 7.55 and 20.69 millions of dollars of NPV. Luminaire manufacturers were expected to loose between 5.5 and 14.5 millions of dollars

of NPV. Cumulatively, the Department estimates that businesses involved in the ballast industry would have net losses of between 47.4 and 121.4 millions of dollars of NPV as a result of electronic standards starting in the year 2003. This loss of value comes mainly from the lower profitability of the electronic ballast market compared to the magnetic ballast market. Additionally, restructuring costs associated with plant closures and expansions and changes in capacity utilization make up the rest of the loss in value.

Manufacturers report that a domestic magnetic ballast manufacturing plant, and possibly a domestic magnet wire plant, would close if an electronic ballast standard became effective in 2003. It was also reported that a capacitor plant and part of a magnetic ballast manufacturing plant, both located in Mexico, would also close. Additionally, it was reported that two domestic electronic ballast manufacturing plants, and two located in Mexico, would expand. The Department has included these assumptions in the above NPV values.

However, given the downward trend in magnetic ballast shipments, statements by manufacturers that the market is transitioning away from magnetic ballasts and the movement of domestic magnetic ballast manufacturing facilities to Mexico in recent years, it certainly seems possible that the plants associated with magnetic ballasts might be closed, or moved to Mexico, even in the absence of standards. Therefore, the Department also considered a scenario where the domestic magnetic ballast manufacturing facilities close in the base case. Under this assumption the losses to manufacturers that produce both magnetic and electronic ballasts, and to the total industry, would be reduced by 13.7 million dollars from the previous figures to a range of 33.7 to 107.7 millions of dollars of NPV.

Employment Impacts

Given the manufacturer reported plant closure and expansion assumptions, the Department estimated that between 666 and 717 direct domestic magnetic ballast manufacturing jobs, along with 313 to 340 domestic supplier jobs, would be lost. The Department also estimated that between 500 and 557 direct domestic electronic ballast manufacturing jobs, along with zero to 144 supplier jobs would be created. Thus, the Department estimated that the impact on direct domestic employment in the ballast industry would be a net loss of between 350 and 500 jobs.

However, given the movement of domestic magnetic ballast manufacturing facilities to Mexico in recent years, it certainly seems possible that many of these jobs would be moved to Mexico in the absence of an electronic ballast standard. Therefore, the Department also considered a scenario where the domestic magnetic ballast manufacturing facility closes in the base case. Under this scenario, no direct domestic magnetic ballast manufacturing jobs would be lost and the impact on direct domestic employment in the ballast industry would be a net gain of between 500 and 557 jobs.

In addition to the direct domestic jobs, the Department also estimated that there are between 363 and 406 associated domestic jobs in the ballast industry that, while not being eliminated, are at risk of being moved to Mexico as a result of business decisions. Additionally, the Department estimated that between 1,570 and 1,727 direct magnetic ballast manufacturing jobs in Mexico would be lost while 700 to 769 direct electronic ballast manufacturing jobs would be created in Mexico. Under the scenario where the domestic magnetic ballast manufacturing facility closes in the base case, no associated domestic jobs are at risk of being moved to Mexico as result of standards, while the direct magnetic ballast manufacturing jobs lost in Mexico grows to between 2,236 and 2,444 jobs.

Consumer Impacts

As a result of the Department's analysis, we believe most commercial and industrial consumers will save money. In total, we estimated the energy savings to have a net present value to American business and industry of 1.42 to 2.60 billion dollars, depending on the forecast of switching from magnetic ballasts to electronic ballasts in the absence of standards, and the rate of switching from T12 to T8 lamps in the face of standards.

Commercial consumers will experience lower life cycle costs which range from an average savings of 4 dollars for a 1F40T12 ballast to an average savings of 18 dollars for a 3F40T12 not tandem-wired ballast. Within these respective averages, 68 to 98 percent of the consumers will have lower life cycle costs while 32 to 2 percent will have higher life cycle costs. Those commercial consumers who also switch to T8 lamps will experience even lower life cycle costs which range from an average savings of 17 dollars for a 1F40T8 ballast to an average savings of 56 dollars for a 3F40T8 ballast. Within these respective averages 98 to 100 percent of the consumers will have lower life cycle costs. The Department believes almost every commercial consumer who switches to an electronic ballast for T8 lamps will save money.

Industrial consumers using F96T12 lamps, who represent 26 percent of F96T12 lamps, will experience higher life cycle costs with average costs of 2 dollars per ballast. Within that average, 35 percent will have lower life cycle costs while 65 percent will have higher life cycle costs. The above industrial consumer impacts are for T12 lamps and, while we did not evaluate industrial consumers of eight foot T8 lamps, we expect them to have a much larger proportion with lower life cycle costs as was the case for all consumers of four foot lamps who switch from T12 to T8 lamps.

National Impacts

As stated earlier, the energy savings reported for an electronic ballast standard in the Department's analysis ranged from 1.20 to 2.32 Quads of energy. These energy savings would result in carbon emission reductions of 11 to 19 million metric tons and NO_X emission reductions of 34 to 60 thousand metric tons.

Net Benefits of Proposed Standard

After carefully considering the analysis, comments and benefits versus burdens, the Department proposes to amend the energy conservation standards for fluorescent lamp ballasts as proposed by the Joint Comment. The Department concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, the Department finds that the benefits of energy savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions resulting from the standard outweigh the burdens of the loss of manufacturer net present value, possible plant closings and job loss and consumer life cycle cost increases for some users of fluorescent lamp ballasts covered by today's notice.

VI. Procedural Issues and Regulatory Review

a. Review Under the National Environmental Policy Act

In issuing the March 4, 1994 Proposed Rule for energy efficiency standards for eight products, one of which was fluorescent lamp ballasts, the Department prepared an Environmental

Assessment (EA) (DOE/EA–0819) that was published within the Technical Support Document for that Proposed Rule. (DOE/EE–0009, November 1993.) We found the environmental effects associated with various standard levels for fluorescent lamp ballasts, as well as the other seven products, to be not significant, and we published a Finding of No Significant Impact (FONSI). 59 FR 15868 (April 5, 1994).

In conducting the analysis for today's Proposed Rule, the Department evaluated design options as suggested in comments. As a result, the energy savings estimates and resulting environmental effects from revised energy efficiency standards for fluorescent lamp ballasts in today's proposal differ somewhat from those that we presented for fluorescent lamp ballasts in the 1994 Proposed Rule. Nevertheless, the environmental effects expected from today's Proposed Rule would fall within ranges of environmental impacts from the revised energy efficiency standards for fluorescent lamp ballasts that DOE found in the FONSI not to be significant.

b. Review Under Executive Order 12866, 'Regulatory Planning and Review'

Today's regulatory action has been determined to be an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

The draft submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, telephone (202) 586–3142.

The following summary of the Regulatory Analysis focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft ''Regulatory Impact Analysis,'' which is contained in the TSD, available as indicated at the beginning of this NOPR. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

DOE identified the following eight major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action

—Product Labeling
—Consumer Education

- Financial Incentives

—Tax Credits
—Rebates

- Voluntary Energy Efficiency Targets
- Mass Government Purchases
- Lighting Research and Development
- Building Codes
- The Proposed Approach

(Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule. These alternatives were analyzed with the NES model, as explained in the RIA section and Appendix B of the TSD. The results are reported for lighting energy savings only (HVAC interactive impacts would increase the savings by 6.25 percent). Many alternatives assume a conversion rate, which means the percentage of ballasts that would be magnetic for any year in the base case that are T8 electronic in the alternative case; the base case already assumes that some ballasts would be electronic without policy action. The performance standards case has a 100 percent conversion rate to electronic ballasts.

If no new regulatory action were taken, then no new standards would be implemented for these products. This is essentially the ''base case.'' For this analysis, we considered two base cases (the ''Decreasing shipments to 2015'' case and the ''Decreasing shipments to 2027'' case). In this section, we report two values for the base cases and policy alternatives, corresponding to each base case respectively. For the base cases, between the years 2003 and 2030, there would be expected energy use of 83.3–90.6 Quads (87.9–96.6 EJ) of primary energy, with no energy savings and a zero net present value (see Appendix B of the TSD for the derivation of these estimates).

Several alternatives to the base cases can be grouped under the heading of informational action. They include consumer product labeling and DOE public education and information programs. Both of these alternatives are already mandated by, and are being implemented under the Act. In addition, there are other programs that promote currently-efficient technologies. These include the National Electrical Manufacturers Association's Energy Cost Savings Council, the Environmental Protection Agency's Energy Star Buildings/Green Lights Program, and the Energy Policy Act's Voluntary Luminaire Program. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, we assumed that the market impacts of these programs resulted in a 3 percent annual conversion rate to electronic ballasts. This resulted in energy savings equal to 0.05–0.09 Quad (0.05–0.09 EJ), with net present value estimated to be $0.08–0.12 billion.

Another base case alternative would be to assume that enhanced labeling and consumer education promote advanced technologies, such as daylighting. To model this possibility, we assumed that some consumers influenced by the policy would select electronic dimming ballasts, while others would select regular electronic ballasts. For those using dimming ballasts, we assumed that the fluorescent lamp ballast kiloWatthour savings were 40 percent higher for F40 and F96 fluorescent lamp ballasts, that there was no daylighting potential for industrial sector F96HO, that incremental prices for dimming fluorescent lamp ballasts were seven dollars higher than for regular electronic ballasts, and that there was an annual 0.6 percent conversion rate to dimming fluorescent lamp ballasts. The annual conversion rate for the remaining consumers affected by the policy who selected regular electronic ballasts was 2.4 percent. This possibility resulted in energy savings of 0.05–0.10 Quad (0.06–0.10 EJ), with a net present value of $0.08–0.13 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. Both the tax credits to consumers and the consumer rebates were assumed to reduce the incremental ballast expense for electronic ballasts by 50 percent. We assumed that the tax credits caused a conversion rate to electronic ballasts of 7 percent. The tax credits to consumers showed a change from the base case, saving 0.12–0.21 Quad (0.12–0.22 EJ) with a net present value of $0.20–0.31 billion. Consumer rebates were assumed to result in a conversion rate of 12 percent. Consumer rebates showed slightly higher energy savings; they would save 0.20–0.36 Quad (0.21–0.38 EJ), with a net present value of $0.34–0.53 billion.

Another financial incentive that was considered was a tax credit to manufacturers for the additional costs of producing electronic ballasts. In this scenario, we assumed a tax credit of 20 percent of the increased costs to manufacturers for retooling in the years 2001–2003 (when these costs would be incurred). [10] These costs depreciated over a ballast lifetime resulted in a $0.04 reduction in the incremental purchase price. The tax credits to manufacturers had an insignificant effect, with no energy savings and a zero net present value.

Two scenarios of voluntary energy-efficiency targets were examined. In the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers 5 years later than mandatory standards. In the second scenario, the proposed standards were assumed to be adopted 10 years later. In these scenarios, voluntary improvements having a 5-year delay, compared to implementation of mandatory standards, would result in energy savings of 0.84–1.91 Quads (0.88–2.02 EJ), and a net present value of $0.96–2.04 billion; voluntary improvements having a 10-year delay would result in 0.34–1.05 Quads (0.36–1.1 EJ) being saved, and a net present value of $0.33–0.96 billion. These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by fluorescent lamp ballast manufacturers, an assumption for which there is no reasonable assurance.

Another policy option that we reviewed was that of massive purchases of electronic ballasts by Federal, State, and local governments. We modeled this policy by assuming that all ballasts purchased by these government entities were electronic ballasts, which, coupled with a modest impact on the remaining market, resulted in a 10 percent national conversion rate. This policy option resulted in energy savings of 0.17–0.30 Quad (0.18–0.32 EJ) and a net present value of $0.25–0.40 billion.

We also reviewed a policy of lighting research that could [there is no cost reduction in this policy] add more efficient alternatives to fluorescent electronic T–12 and T–8 ballasts. To analyze this option, we assumed that the conversion rate to controls, such as dimming fluorescent lamp ballasts, was 1.6 percent, that there was a time delay of 5 years for new technology options to reach the market, that the incremental kiloWatthour savings was 40 percent, and the increase in the incremental electronic ballast cost was seven dollars. This resulted in energy savings of 0.01–0.04 Quad (0.01–0.05 EJ), with a net present value that we estimated to be $0.01–0.04 billion.

Still another policy option that we reviewed was one of aggressive promotion of state adoption and enforcement of commercial building codes, including those for major lighting system renovations. To analyze this option, we assumed a one percent to three percent electronic ballast conversion, for each base case, respectively. This resulted in energy savings of 0.05–0.15 Quad (0.05–0.16 EJ), and a net present value of $0.06–0.18 billion.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this NOPR. Such performance standards would result in energy savings of 1.20–4.90 Quads (1.27–5.17 EJ) (without HVAC savings) and the net present value would be an expected $1.42–5.41 billion. (These estimates represent the lower and upper bounds of the results of all scenarios analyzed). As indicated in the paragraphs above, none of the alternatives that were examined for these products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

c. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

The Standard Industrial Classification (SIC) Code for fluorescent lamp ballast manufacturers is 36124. To be categorized as a ''small'' fluorescent lamp ballast manufacturer, a firm must employ no more than 750 employees.

In the fluorescent lamp ballast industry, there is one ''small'' manufacturer who produces both ''affected'' magnetic and electronic ballasts. The ''small'' manufacturer has its electronic and magnetic ballast manufacturing operations in the same plant. Its smaller size and less automated operations would seem to provide it with the flexibility to adapt to a new electronic ballast standard without significant asset write-offs or plant closures.

The negative impacts on the ''small'' manufacturer's cash flows from operations, however, would likely be similar in proportion to those of the larger manufacturers.

Since only one of the seven manufacturers of fluorescent lamp ballasts is ''small,'' the Department concludes that its proposed energy-efficiency standards rulemaking would not affect a ''substantial'' number of ''small'' manufacturers. In addition, the firm's flexible manufacturing operations, along with the expected proportional financial impacts, strongly suggests that the proposed energy-efficiency standards would not produce ''significant'' economic impacts on that one manufacturer.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's Proposed Rule will not ''have a significant economic impact on a substantial number of small entities,'' and it is not necessary to prepare a regulatory flexibility analysis.

d. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

e. Review Under Executive Order 12988, ''Civil Justice Reform''

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

[10] Manufacturer Impact Analysis, conversion capital expenditures (see the TSD, chapter 6).

issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

f. ''Takings'' Assessment Review

It has been determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

g. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's proposed rule were preempted by the Federal standards established in the NAECA Amendments of 1988. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA.

h. Review Under the Unfunded Mandates Reform Act

With respect to a proposed regulatory action that may result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c).

The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the Notice of Proposed Rulemaking and ''Regulatory Impact Analysis'' section of the TSD for this Proposed Rule responds to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this Proposed Rule would establish energy conservation standards for fluorescent lamp ballasts that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this Proposed Rule.

i. Review Under the Treasury and General Government Appropriations Act of 1999

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

j. Review Under the Plain Language Directives

Section 1(b)(12) of Executive Order 12866 requires that each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use, by January 1, 1999, plain language in all proposed and final rulemaking documents published in the **Federal Register**, unless the rule was proposed before that date.

Today's proposed rule uses the following general techniques to abide by Section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998 (63 FR 31883):

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

We invite your comments on how to make this proposed rule easier to understand.

VII. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual commercial and industrial consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 75 days following publication of this notice for persons to comment on this proposal. We will make available for review in the DOE Freedom of Information Reading Room all public comments received and the transcript of the public hearing.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. We provided instructions for submitting written comments at the beginning of this notice and below.

You should label comments both on the envelope and on the documents, ''Fluorescent Lamp Ballast Rulemaking (Docket No. EE–RM–97–500),'' and submit them for DOE receipt by the date specified at the beginning of this notice. Please submit one signed copy and a computer diskette (WordPerfect 8) or ten (10) copies (no telefacsimiles) to:

U.S. Department of Energy, Attn: Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945, e-mail: Brenda.Edwards-Jones@ee.doe.gov.

The Department will also accept electronically-mailed comments, but you must supplement such comments with a signed hard copy.

All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the DOE Freedom of Information Reading Room, as provided at the beginning of this notice.

If you submit information or data that you believe is confidential, and should not be publicly disclosed, you should submit one complete copy of your document and ten (10) copies or one electronic copy from which the information believed to be confidential has been deleted. We will make our own determination regarding the confidentiality of the information or data according to our regulations at 10 CFR 1004.11.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, ''Fluorescent Lamp Ballast Rulemaking (Docket No. EE–RM–97–500),'' and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered or telephoned between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the approximate time they will be speaking.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 15 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on January 18, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.32 of subpart C is amended by revising paragraph (m) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(m) *Fluorescent lamp ballasts.*

(1) Except as provided in paragraphs (m)(2), (m)(3), and (m)(4) of this section, each fluorescent lamp ballast—

(i) (A) Manufactured on or after January 1, 1990;

(B) Sold by the manufacturer on or after April 1, 1990; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(ii) Designed —

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with an F40T12, F96T12, or F96T12HO lamps shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	1.805
	277	40	1.805
Two F40 T12 lamps	120	80	1.060
	277	80	1.050
Two F96T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

(2) The standards described in paragraph (m)(1) of this section do not apply to:

(i) a ballast that is designed for dimming or for use in ambient temperatures of 0° F or less, or

(ii) A ballast that has a power factor of less than 0.90 and is designed for use only in residential building applications.

(3) Except as provided in paragraph (m)(4) of this section, each fluorescent lamp ballast—

(i) (A) Manufactured on or after April 1, 2005;

(B) Sold by the manufacturer on or after July 1, 2005; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after April 1, 2006; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with an F40T12, F96T12, or F96T12HO lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast Input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	2.29
	277	40	2.29
Two F40 T12 lamps	120	80	1.17
	277	80	1.17
Two F96T12 lamps	120	150	0.63
	277	150	0.63
Two F96T12HO lamps	120	220	0.39
	277	220	0.39

(4) (i) The standards described in paragraph (m)(3) of this section do not apply to:

(A) A ballast that is designed for dimming to 50 percent or less of its maximum output;

(B) A ballast that is designed for use with two F96T12HO lamps at ambient temperatures of −20° F or less and for use in an outdoor sign;

(C) A ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential building applications; or

(D) A replacement ballast as defined in subparagraph (ii).

(ii) For purposes of this paragraph (m), a replacement ballast is defined as a ballast that:

(A) Is manufactured on or before June 30, 2010;

(B) Is designed for use to replace an existing ballast in a previously installed luminaire;

(C) Is marked ''FOR REPLACEMENT USE ONLY'';

(D) Is shipped by the manufacturer in packages containing not more than 10 ballasts;

(E) Has output leads that when fully extended are a total length that is less than the length of the lamp with which it is intended to be operated; and

(F) Meets or exceeds the ballast efficacy factor in the following table:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	1.805
	277	40	1.805
Two F40 T12 lamps	120	80	1.060
	277	80	1.050
Two F96T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

* * * * *

[FR Doc. 00–6106 Filed 3–14–00; 8:45 am]

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Federal Register

Wednesday,
March 15, 2000

Part VI

Department of Labor

Pension and Welfare Benefits Administration

Voluntary Fiduciary Correction Program; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

RIN 1210–AA76

Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Voluntary Fiduciary Correction Program.

SUMMARY: The Department of Labor adopts a Voluntary Fiduciary Correction Program (VFC Program) by the Department of Labor's Pension and Welfare Benefits Administration (PWBA). The VFC Program allows certain persons to avoid potential Employee Retirement Income Security Act (ERISA) civil actions initiated by the Department of Labor, and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The VFC Program is designed to benefit workers by encouraging the voluntary and timely correction of possible fiduciary breaches of Part 4 of Title I of ERISA. Although the VFC Program is being put into effect 30 days after publication in the **Federal Register**, the Department is seeking comments from the public on all aspects of the program.

DATES: Written comments must be received by the Department by May 15, 2000.

Effective Date: April 14, 2000.

ADDRESSES: Address questions regarding specific applications for relief under the VFC Program to the appropriate PWBA Regional Office listed in Appendix C.

Address comments on the VFC Program in writing to: VFC Program, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N5702, 200 Constitution Ave., NW, Washington, DC 20210. Written comments may also be sent by Internet to: vfc-program@pwba.dol.gov.

Address comments that concern information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration.

FOR FURTHER INFORMATION CONTACT:

For Specific Applications Under the VFC Program: Contact the appropriate PWBA Regional Office listed in Appendix C.

For General Questions Regarding the VFC Program: Contact the appropriate PWBA Regional Office listed in Appendix C or Jeffrey A. Monhart, Investigator, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–8820.

For Comments on the VFC Program: Contact Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–8671. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Title I of ERISA, 29 USC section 1001 *et seq.*, establishes certain standards with which officials of employee benefit plans covered by ERISA must comply. PWBA helps the public to understand the requirements of Title I of ERISA. In addition, PWBA conducts investigations to deter and correct violations of ERISA.

Based on PWBA's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996) (Pension Payback Program), and continued interest in such programs, PWBA has decided to establish the VFC Program. The project will be administered out of each of PWBA's ten regional offices. The VFC Program is designed to assist Plan Officials (as defined in Section 3) by specifying the steps necessary to correct certain potential violations of Title I of ERISA.

Section 409 of ERISA provides that a fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by Part 4 of Title I of ERISA shall be personally liable to make good to a plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary. Where more than one fiduciary is liable for a breach, liability is joint and several. The Secretary of Labor has the authority, under sections 502(a)(2) and 502(a)(5), to bring civil actions to enforce the provisions of Title I of ERISA. Section 502(l) of ERISA requires the assessment of a civil penalty in an amount equal to 20 percent of the amount recovered under any settlement agreement with the Secretary or ordered by a court in an action initiated by the Secretary under section 502(a)(2) or 502(a)(5) with respect to any breach of fiduciary responsibility under (or other violation of) Part 4 by a fiduciary. Under ERISA section 502(l)(1)(B), this civil penalty may also be assessed against knowing participants in a breach.

PWBA believes that the possibility of investigation, commencement of a civil action, and imposition of a civil penalty under section 502(l) of ERISA may constrain persons who have engaged in a possible breach of fiduciary responsibility under Part 4 of Title I of ERISA from identifying themselves and working with PWBA to correct the breach fully and make the plan whole. To encourage the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches, PWBA has decided to implement the VFC Program. Under this Program, persons who are potentially liable for a breach will be relieved of the possibility of civil investigation of that breach and/or civil action by the Secretary with respect to that breach, and imposition of civil penalties under ERISA section 502(l), if they satisfy the conditions for correcting the breach, as described in the VFC Program.

If a person files an application under the VFC Program, but the corrective action falls short of a complete and acceptable correction, PWBA may reject the application and pursue enforcement, including assessment of a section 502(l) penalty. However, no section 502(l) penalty would be imposed on the basis of any amounts restored to the plan prior to filing the VFC Program application. The penalty would only apply to the additional recovery amount, if any, paid to the plan pursuant to a court order or a settlement agreement with the Department.

Description of Voluntary Fiduciary Correction Program

The VFC Program is set forth in seven sections and three appendices. The VFC Program has been structured to maximize the ability of Plan Officials to identify and correct possible breaches that are within the scope of the Program without the need to consult with PWBA. As noted in Section 1, Purpose and Overview of the Voluntary Fiduciary Correction Program, PWBA believes that the VFC Program will assist Plan Officials in understanding the requirements of Part 4 of Title I of ERISA and will facilitate the correction of transactions and the restoration of losses to employee benefit plans resulting from fiduciary breaches.

Section 2, Effect of the VFC Program, makes clear that the applicant must be careful to ensure that the eligibility requirements are met and the corrections specified for individual transactions are performed before an application is filed under the VFC Program. Generally, if an applicant is in

full compliance with all of the terms and procedures set forth in the VFC Program, PWBA will issue a ''no action letter'' in the format shown in Appendix A with respect to the breach described in the application. We note, however, that relief under the VFC Program is limited to the transactions identified in the application and the persons who corrected those transactions. In certain cases, such as where PWBA becomes aware of possible criminal behavior, any material misrepresentations or omissions in the VFC application, or other abuse of the VFC Program, relief will not be available under the VFC Program and the Department may initiate an investigation which may lead to enforcement action. PWBA expects that such cases will be unusual. Full correction under the VFC Program does not preclude any other governmental agency, including the Internal Revenue Service (IRS), from exercising any rights it may have with respect to the transactions that are the subject of the application. The Department seeks comments on possible areas of coordination between PWBA and the IRS that would facilitate voluntary correction of breaches of Title I of ERISA. The Department notes that based on its preliminary review of the VFC Program, the IRS has indicated that except in those instances where the fiduciary breach or its correction result in a tax abuse situation or a plan qualification failure, a correction under this program generally will be acceptable under the Internal Revenue Code.

The VFC Program is designed to address a wide variety of situations where plans have been harmed as a result of possible breaches of fiduciary duty. Section 3, Definitions, makes clear that a transaction may be corrected without a determination that there is an actual breach; there need only be a possible breach. In addition, persons who may correct a fiduciary breach include not only the breaching fiduciary, but also plan sponsors, parties in interest or other persons who are in a position to correct a breach. However, the definition of Under Investigation, along with the criteria set forth in Section 4, Program Eligibility, provides that persons or plans who are the subject of pending investigations for violations of Title I of ERISA, or who appear to have engaged in criminal violations, may not take advantage of the VFC Program. Further, PWBA reserves the right to reject an application when warranted by the facts and circumstances of a particular case.

PWBA believes that it must assess a penalty under section 502(l) of ERISA to the extent that it negotiates relief owed to the plan as a result of a transaction in exchange for a no action letter to the potentially liable persons. Accordingly, the VFC Program is structured so that applicants have the maximum information available to identify eligible transactions and make complete and fully acceptable corrections without discussion or negotiation with the Department.

Section 5, General Rules for Acceptable Correction, sets forth issues that are likely to be present with regard to any transaction described in Section 7. For example, Section 5 describes how fair market value determinations must be made, how correction amounts must be determined, and what documentation is required for all applications. Section 5 also makes clear that the cost of correction must be borne by the applicant and not the plan. In addition, Section 5 states when notice must be provided to participants and when former employees who have already been cashed out of a plan must also be included in any amount restored to a plan.

Section 6, Application Procedures, specifies the requirements for the application, including the required documentation and the penalty of perjury statement that must be signed by a plan fiduciary with knowledge of the transaction and the authorized representative, if any. Section 6 is supplemented by Appendix B, the VFC Program Checklist, that helps the applicant to determine whether he or she has met all of the application requirements, including all documentation, prior to submission to PWBA.

Section 7, Description of Eligible Transactions and Methods of Correction sets forth five types of transactions which may be corrected pursuant to the VFC Program. The first, ''delinquent participant contributions to pension plans,'' is included in the Program based on PWBA's experience with the Pension Payback Program. PWBA notes that, unlike the Pension Payback Program, the VFC Program does not exempt from excise taxes any violations of section 4975 of the Internal Revenue Code (the Code). PWBA included the other types of transactions based on its enforcement experience. For the current stage of the VFC Program, PWBA has taken a conservative approach and has limited the eligible transactions to those where the nature of the transaction and the required correction could be described accurately without reference to a specific situation, and thus could be corrected satisfactorily without consultation and negotiation with PWBA.

Request for Notice and Comments

Although the Department is not required to seek public comments on an enforcement policy, the Department solicits comments from the public on all aspects of this Program, including whether there are different ways in which the transactions included in the VFC Program could be corrected in accordance with the goals of the Program, as well as whether there are additional transactions involving fiduciary breaches that could be included in the VFC Program. At the same time, the Department has determined that the relief afforded by the VFC Program should be made available during and after the comment period. Delaying implementation of this Program until after the end of the comment period would serve no useful purpose and is unnecessary. Even without publication of this notice, the Department would have the authority to decline to investigate a potential breach of Title I of ERISA in a situation where it has received evidence of adequate correction. Delay in implementing the VFC Program would only deprive persons of the ability to use the clearly set forth procedural aspects of the Program during the comment period. The purpose of the VFC Program is to permit persons who may have violated certain provisions of Title I of ERISA to correct the violations and obtain assurance that the Department will take no further action with respect to the matter, including the assessment of a civil money penalty. Participation in the VFC Program is entirely voluntary and is favorable to those fiduciaries who meet the requirements. Implementation of the VFC Program does not foreclose resolution of fiduciary breaches by other means including entering into settlement agreements with the Department. Immediate implementation also favors participants of plans for which violations are corrected pursuant to the Program. Moreover, as explained above, the Department expects that the availability of the VFC Program will encourage fiduciaries, who otherwise might not do so, to correct violations and reimburse plan losses. As a result, the Department has determined that the VFC Program shall be implemented 30 days after publication in the **Federal Register**.

Although the Department is implementing the VFC Program effective 30 days after publication in the **Federal Register**, it believes that rapid implementation of a final version of the VFC Program would benefit the public.

Accordingly, the Department plans to implement a final version of the VFC Program within 180 days following the close of the 60 day period for comments on the VFC Program.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is ''significant'' and subject to OMB review under section 3(f)(4) of the Executive Order.

In the Department's view, the benefits of the VFC Program will substantially outweigh its costs, because participation is voluntary, the administrative cost of correcting a potential fiduciary breach through voluntary participation in the VFC Program will be lower than the cost of a correction resulting from investigation and litigation, and the value and security of the assets of plans participating in the VFC Program will be increased.

No costs will be imposed by the VFC Program unless Plan Officials choose to avail themselves of the opportunity to correct a potential fiduciary breach under the terms of the Program. Participation is expected to occur only when the projected benefit outweighs the anticipated cost for the Plan Official. The costs of electing to correct potential breaches of fiduciary responsibility under terms of the VFC Program are expected to arise from fair market value determinations; computations of losses or profits on the use of plan assets; the administrative costs of supplemental distributions, recomputation of account balances and distribution of notices to participants concerning recomputation; transaction costs for disposal of assets; and the description and documentation of the correction for purposes of the application to the Department.

The value of assets or losses restored to employee benefit plans as a result of Plan Officials' participation in the VFC Program is not viewed as a cost to Plan Officials, but rather as a transfer from a fiduciary or other party in interest to the participants and beneficiaries of the plan. Plan Officials may not transfer the costs of compliance with the terms of the VFC Program to participants and beneficiaries.

The principal benefit of the VFC Program will accrue to participants and beneficiaries through restoration of losses to the plan or reversal of impermissible transactions involving the assets of the plan, resulting in greater security of their plan assets. Benefits will also accrue to plan fiduciaries through both risk reduction and the savings of civil penalties that would otherwise be payable on the amount of assets recovered by plans following a civil investigation or litigation. Where the Department determines that it will take no civil enforcement action and recommend no legal action in response to a complete application under the VFC Program, the fiduciary will be relieved of potential demands on its resources that might be represented by a civil investigation and any subsequent litigation.

The VFC Program will also allow the Department to encourage compliance with Part 4 of Title I of ERISA while making even more effective use of its limited enforcement resources. The Department believes that the correction of violations through the VFC Program will be less costly than correction through active intervention, and that VFC Program applicants have a high likelihood of accomplishing an appropriate correction of a potential violation. To the extent that Plan Officials who wish to correct potential violations do so voluntarily and appropriately, the Department may direct its resources toward other areas where active intervention is more likely to be necessary.

More generally, publication of the specific examples of transactions which may violate ERISA and the activities required to correct those violations will serve to better inform plan fiduciaries and assist them in satisfying their fiduciary obligations in future transactions involving plan assets.

The Department estimates the cost of the VFC Program for the number of Plan Officials estimated to choose to make use of it will total $1,877,400. The total benefit to participants and beneficiaries is estimated at approximately $80 million, while the benefit to Plan Officials, to the extent it can be quantified, is estimated at $5.4 million. These figures do not include an estimate of the potential benefit to Plan Officials of the reduced risk of investigation and litigation, or the benefit to the Department, to participants and beneficiaries, and to the public in general of realizing efficiencies in the use of enforcement resources, because these elements of the Program's benefit are not readily quantifiable. Because the VFC Program is voluntary, the Department assumes that Plan Officials will in no event make use of the Program unless the projected benefit outweighs the estimated cost of participation.

A discussion of the elements of the costs and benefits of the VFC Program and estimates of their magnitude where they can be specifically quantified follows. The Department projects that Plan Officials of approximately 700 plans will apply for and use the VFC Program. This estimate is based on the Department's previous experience with the Pension Payback Program in which approximately 0.1 percent of plans which permitted employee contributions elected to participate during the six month period in which the Pension Payback Program was in effect.

The Department expects a similar rate of participation among the approximately 200,000 plans which currently permit employee contributions. However, it assumes this participation by Plan Officials of 200 plans will occur over an annual period in the absence of the six-month time limitation included in the Pension Payback Program.

Because the VFC Program permits correction of several other types of transactions in addition to the repayment of delinquent employee contributions, the Department has assumed that the annual rate of participation in the VFC Program by Plan Officials of plans other than those which permit employee contributions will be comparable to the 0.1 percent assumed for those which permit employee contributions, resulting in participation by Plan Officials of about 500 additional plans, and total participation of 700 plans. The Department views this estimate as an upper bound; actual participation may be somewhat smaller depending on the cost effectiveness of correcting the actual transactions involved, the complexity of the legal and factual

issues involved in a given transaction, and the degree of similarity between an actual transaction and a transaction and correction described by the terms of the VFC Program. The Department recognizes that Plan Officials may not view the VFC Program as offering a cost effective means of correcting all potential violations.

The Department also estimates that $79,870,000, or an average of $114,300 per plan, will be recovered by plans annually as a result of participation in the VFC Program. Based on its enforcement experience, the Department estimates that about 70 percent of this total, or $56 million, will consist of restored principal and earnings losses, and restored profits on the use of plan assets by fiduciaries or parties in interest. The total estimated recovery represents the midpoint between the average monetary recovery (excluding assets recovered through litigation) per plan that resulted from civil investigations completed by the Department in the year ended September 30, 1998, and the average per plan monetary recovery which arose from the Pension Payback Program, as applied to the 700 plans assumed to elect to participate in the VFC Program. The Department believes this estimate is reasonable in light of the range of transactions which may be corrected under the VFC Program. It is estimated that approximately 88,000 participants, or an average of 126 participants per plan, will be affected annually by corrections under the VFC Program.

Based on its recent experience with the collection of civil penalties under section 502(l), the Department estimates that Plan Officials will be relieved of approximately $5.4 million in civil penalties as a result of correction of transactions through the VFC Program. This estimate is based on the 700 plans assumed to participate, and the average section 502(l) penalty actually collected per plan subject to the penalty in the last two fiscal years. Actual collections take into account the offset of any excise tax payable as a result of a violation of section 4975 of the Code, which is also consistent with the terms of the VFC Program.

The costs to Plan Officials to participate in the VFC Program will arise from a range of possible required activities depending on the nature of the transaction to be corrected, including evaluation by Plan Officials and their professionals of the need and usefulness of participation in the VFC Program, obtaining market value determinations, executing asset transactions, adjusting account balances and benefit distributions, documenting the correction, and completing and mailing the application to participate in the Program. The Department anticipates that Plan Officials will in most cases seek the services of a professional (typically an attorney, accountant, or professional administrator) to conduct the applicable activities, although the resources of Plan Officials are expected to be needed as well to gather information, and prepare, sign, and photocopy the application. It is estimated that the entire correction will require approximately 40 hours to complete, including 8 hours of the Plan Official's time, and 32 hours of professional time.

At the assumed rate of participation, the total cost of these activities is estimated to amount to $1,877,400 (or an average of $2,700 per Plan Official), assuming an average cost of $55 per hour for work performed in house by Plan Officials and their employees, and a rate of $70 per hour for purchased services. This estimate also includes application materials and mailing costs.

Paperwork Reduction Act

The Department of Labor has submitted the information collection request (ICR) included in the Voluntary Fiduciary Correction Program to OMB using emergency review procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). OMB approval has been requested by April 14, 2000. The Department and OMB are particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through May 15, 2000, OMB requests that comments be received within 10 days of publication of this Voluntary Fiduciary Correction Program to ensure their consideration.

The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with PRA 95. This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, PWBA is soliciting comments concerning the ICR included in the Voluntary Fiduciary Correction Program.

Requests for copies of the ICR may be addressed to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745 (these are not toll-free numbers).

The VFC Program will permit Plan Officials to correct voluntarily certain potential violations of Part 4 of Title I of ERISA, and to avoid the possibility of civil action and the assessment of civil penalties, provided specific conditions are met. The ICR included in the VFC Program would require the Plan Official to describe the correction of the potential breach of fiduciary duty and provide supporting documentation with respect to the correction. The type of supporting documentation will vary with the nature of the transaction involved, but is described in the VFC Program in as specific a manner as deemed feasible. The Plan Official is also required to complete an application which includes identification of the employee benefit plan and the Plan Official or representative, relevant plan documents including a fidelity bond, a statement under penalty of perjury that must be signed by a plan fiduciary with knowledge of the transaction and the authorized representative, if any, and signature. Under certain circumstances a Plan Official may also be required to prepare and distribute notices informing participants and beneficiaries of changes in their account balances. The information submitted to the Department will permit the Department

to verify the correction of potential fiduciary breaches and restoration of losses, to evaluate the adequacy of actions taken by a Plan Official pursuant to the VFC Program, and to determine whether further action is necessary to protect the rights of participants and beneficiaries.

It is estimated that Plan Officials of 700 employee benefit plans will avail themselves of the opportunity to correct potential violations pursuant to the VFC Program annually. The Department estimates that approximately 8 hours of Plan Officials' time will be required to assemble documents and complete and sign the application to participate in the VFC Program. It is further assumed that evaluation, correction and documentation of transactions under the VFC Program will require approximately 32 hours, and that Plan Officials will generally elect to hire service providers to complete this work. Only 6 hours of this total is expected to be associated with the information collection requirements of the VFC Program (including descriptions and documentation, copying relevant supporting statements, preparing notices, etc.) The assumed hourly rate for purchased services related to fulfilling information collection requirements is estimated to be $70 per hour, for a total cost to the 700 Plan Officials of $295,400. This includes an allowance of $2 per application for materials and mailing costs.

Type of Review: New.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210-NEW.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 700.

Total Responses: 700.

Estimated Burden Hours: 5,600.

Estimated Annual Costs (Operating and Maintenance): $295,400.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

This document reflects an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply. However, PWBA has considered the potential costs and benefits of this action for small plans and small Plan Officials in the development of the VFC Program. The Department is interested in comments which would suggest alternatives to the provisions of the VFC Program which would accomplish the stated purpose of the Program while minimizing the impact on small entities.

PWBA generally considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. However, because the VFC Program specifically prohibits the cost of participation from being borne by the plan and participants, this program will impose no costs on the plans which realize the benefits of the correction of potential violations. Costs will be borne instead by the Plan Officials of an estimated 700 employee benefit plans each year. Plan Officials may include both individual fiduciaries, plan sponsors, or parties in interest, and businesses in their roles as fiduciaries, plan sponsors, or parties in interest.

Although the number of Plan Officials of small plans that will elect to avail themselves of the opportunity to correct potential breaches of fiduciary duty under the terms of the VFC Program is not known, the potential costs and benefits to each Plan Official is summarized below, on the basis of the assumption that each of the participating Plan Officials will itself be a small entity.

Participation in the VFC Program is entirely voluntary, and as such, it is assumed that Plan Officials will elect to participate only when the potential benefits to a Plan Official are expected to exceed the cost of participation. Benefits may include the reduction of exposure to the risk of investigation and subsequent litigation, the potential cost of which cannot be specifically quantified, and the savings of penalties under section 502(l) of ERISA which would otherwise be payable on amounts required to be restored to plans by fiduciaries pursuant to a settlement agreement with the Department or court order.

As described in detail above, to the extent that the per small Plan Official costs and benefits of participation in the VFC Program can be quantified, assuming all participating Plan Officials are small entities, administrative costs of participation are estimated to amount to an average of $2,700 per Plan Official, while savings of section 502(l) penalties are estimated at $7,754 per Plan Official. While the average value of assets estimated to be restored to plans as a result of participation in the VFC Program, or $114,300 per plan, may be viewed as an expense by Plan Officials, in the Department's view, this expense arises from a potential breach of fiduciary duty rather than from participation in the VFC Program. The fiduciary's potential liability for a breach of fiduciary duty and the cost of remedial relief are expected to be comparable, regardless of whether a violation is corrected under the terms of the VFC Program, or as a result of an investigation and any subsequent litigation.

On this basis, small Plan Officials electing to correct potential fiduciary breaches through participation in the VFC Program are expected to derive a net benefit, even without consideration of the potential savings associated with the reduction of risk and exposure to the use of its resources in connection with an investigation or litigation. Because penalties and additional resource demands are often relatively more burdensome for small entities than large, the Department views the VFC Program as offering a flexible and economically advantageous alternative to currently available methods of correcting potential breaches of fiduciary duty which recognizes the special circumstances of small entities. The Department invites comments on this analysis, and on alternatives which further reduce the potential burden of participation in the VFC Program for small Plan Officials.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this regulatory action does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Voluntary Fiduciary Correction Program

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Appendix A. Sample VFC Program No Action Letter
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Section 1. Purpose and Overview of the VFC Program

The purpose of the VFC Program is to protect the financial security of workers by encouraging identification and correction of transactions that violate Part 4 of Title I of ERISA. Part 4 of Title I of ERISA sets out the responsibilities of employee benefit plan fiduciaries. Section 409 of ERISA provides that a fiduciary who breaches any of these responsibilities shall be personally liable to make good to the plan any losses to the plan resulting from each breach and to restore to the plan any profits the fiduciary made through the use of the plan's assets. Section 405 of ERISA provides that a fiduciary may, under certain circumstances, be liable for a co-fiduciary's breach of his or her fiduciary responsibilities. In addition, under certain circumstances, there may be liability for knowing participation in a fiduciary breach. In order to assist all affected persons in understanding the requirements of ERISA and meeting their legal responsibilities, PWBA is providing guidance on what constitutes adequate correction under Title I of ERISA for the breaches described in this Program.

Section 2. Effect of the VFC Program

(a) *In general.* PWBA generally will issue to the applicant a no action letter [1] with respect to a breach identified in the application if the eligibility requirements of section 4 are satisfied and a Plan Official corrects a breach, as defined in section 3, in accordance with the requirements of sections 5, 6 and 7. Pursuant to the no action letter it issues, PWBA will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no action letter, or assess a civil penalty under section 502(l) of ERISA on the correction amount paid to the plan or its participants.

(b) *Verification.* PWBA reserves the right to conduct an investigation at any time to determine (1) the truthfulness and completeness of the factual statements set forth in the application and (2) that the corrective action was, in fact, taken.

(c) *Limits on the effect of the VFC Program.* (1) *In general.* Any no action letter issued under the VFC Program is limited to the breach and persons identified therein. Moreover, the method of calculating the correction amount described in this Program is only intended to correct the specific breach described in the application. Other methods of calculating losses may be more appropriate, depending on the facts and circumstances. This Program assumes that the transaction is otherwise an appropriate investment decision for the plan. If a transaction gave rise to violations not addressed in the Program, such as imprudence not addressed in the Program or a failure to diversify plan assets, the relief afforded by the Program would not extend to such additional violations.

(2) *No implied approval of other matters.* A no action letter does not imply Departmental approval of matters not included therein, including steps that the fiduciaries take to prevent recurrence of the breach described in the application and to ensure the plan's future compliance with Title I of ERISA.

(3) *Material misrepresentation.* Any no action letter issued under the VFC Program is conditioned on the truthfulness, completeness and accuracy of the statements made in the application and of any subsequent oral and written statements or submissions. Any material misrepresentations or omissions will void the no action letter, retroactive to the date that the letter was issued by PWBA, with respect to the transaction that was materially misrepresented.

(4) *Applicant fails to satisfy terms of the VFC Program.* If an application fails to satisfy the terms of the VFC Program, as determined by PWBA, PWBA reserves the right to investigate and take any other action with respect to the transaction and/or plan that is the subject of the application, including refusing to issue a no action letter.

(5) *Criminal investigations not precluded.* Compliance with the terms of the VFC Program will not preclude:

(i) PWBA or any other governmental agency from conducting a criminal investigation of the transaction identified in the application;

(ii) PWBA's assistance to such other agency; or

(iii) PWBA making the appropriate referrals of criminal violations as required by section 506(b) of ERISA.[2]

(6) *Other actions not precluded.* Compliance with the terms of the VFC Program will not preclude PWBA from taking any of the following actions:

(i) Seeking removal from positions of responsibility with respect to a plan or other non-monetary injunctive relief against any person responsible for the transaction at issue;

(ii) referring information regarding the transaction to the IRS as required by section 3003(c) of ERISA; [3] or

(iii) imposing civil penalties under section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500. Applicants should be aware that amended annual report filings may be required if possible breaches of ERISA have been identified, or if action is taken to correct possible breaches in accordance with the VFC Program.

(7) *Not binding on others.* The issuance of a no action letter does not affect the ability of any other government agency, or any other person, to enforce any rights or carry out any authority they may have, with respect to matters described in the no action letter.

[1] See Appendix A.

[2] Section 506(b) provides that the Secretary of Labor shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of Title I of ERISA and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of Title 18 of the United States Code.

[3] Section 3003(c) provides that, whenever the Secretary of Labor obtains information indicating that a party in interest or disqualified person is violating section 406 of ERISA, she shall transmit such information to the Secretary of the Treasury.

(8) *Example.* A plan fiduciary causes the plan to purchase real estate from the plan sponsor under circumstances to which no prohibited transaction exemption applies. In connection with this transaction, the purchase causes the plan assets to be no longer diversified, in violation of ERISA section 404(a)(1)(C). If the application reflects full compliance with the requirements of the Program, the Department's no action letter would apply to the violation of ERISA section 406(a)(1)(A), but would not apply to the violation of section 404(a)(1)(C).

(d) *Correction.* The correction criteria listed in the VFC Program represent PWBA enforcement policy and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person who purports to correct a violation. Applicants are advised that the term ''correction'' as used in the VFC Program is not necessarily the same as ''correction'' pursuant to section 4975 of the Code.[4] Correction may not be achieved under the Program by engaging in a new prohibited transaction.

(e) *PWBA's authority to investigate.* PWBA reserves the right to conduct an investigation and take any other enforcement action relating to the transaction identified in a VFC Program application in certain circumstances, such as prejudice to the Department that may be caused by the expiration of the statute of limitations period, material misrepresentations, or significant harm to the plan or its participants that is not cured by the correction provided under the VFC Program. PWBA may also conduct a civil investigation and take any other enforcement action relating to matters not covered by the VFC Program application, or relating to other plans sponsored by the same plan sponsor, while a VFC Program application involving the plan or the plan sponsor is pending.

(f) *Confidentiality.* PWBA will maintain the confidentiality of any documents submitted under the VFC Program, to the extent permitted by law. However, as noted in (c)(5) and (6) of this section, PWBA has an obligation to make referrals to the IRS and to refer to other agencies evidence of criminality and other information for law enforcement purposes.

[4] See section 4975(f)(5) of the Internal Revenue Code (IRC); section 141.4975–13 of the temporary Treasury Regulations and section 53.4941(e)–1(c) of the Treasury Regulations. The Internal Revenue Service has indicated that except in those instances where the fiduciary breach or its correction result in a tax abuse situation or a plan qualification failure, a correction under this program generally will be acceptable under the Internal Revenue Code.

Section 3. Definitions

(a) The terms used in this document have the same meaning as provided in section 3 of ERISA, 29 USC section 1002, unless separately defined herein.

(b) The following definitions apply for purposes of the VFC Program:

(1) *Breach.* The term ''Breach'' means any transaction which is or may be a breach of the fiduciary responsibilities contained in Part 4 of Title I of ERISA.

(2) *Plan Official.* The term ''Plan Official'' means a plan fiduciary, plan sponsor, party in interest with respect to a plan, or other person who is in a position to correct a Breach.

(3) *Under Investigation.* The term ''Under Investigation'' means a plan or person that is being investigated pursuant to ERISA section 504(a) or any criminal statute affecting a transaction which involves an employee benefit plan. A plan that is Under Investigation by PWBA includes any plan for which a Plan Official, or a representative, has received oral or written notification from PWBA of an investigation of the plan. A plan is not considered to be Under Investigation by PWBA merely because PWBA staff have contacted a Plan Official or representative in connection with a complaint, unless the complaint concerns the transaction described in the application.

Section 4. VFC Program Eligibility

Eligibility for the VFC Program is conditioned on the following:

(a) Neither the plan nor the applicant is Under Investigation.

(b) The application contains no evidence of potential criminal violations as determined by PWBA.

Section 5. General Rules for Acceptable Corrections

(a) *Fair Market Value Determinations.* Many corrections require that the current or fair market value of an asset be determined as of a particular date, usually either the date the plan originally acquired the asset or the date of the correction, or both. In order to be acceptable as part of a VFC Program correction, the valuation must meet the following conditions:

(1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price).

(2) If there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

(3) An appraiser is ''qualified'' if he or she has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.

(4) An appraiser is ''independent'' if he or she is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:

(i) The prior owner of the asset, if the asset was purchased by the plan;

(ii) The purchaser of the asset, if the asset was or is now being sold by the plan;

(iii) Any other owner of the asset, if the plan is not the sole owner;

(iv) A fiduciary of the plan;

(v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or

(vi) The VFC Program applicant.

(b) *Correction Amount.* (1) *In general.* Many of the transactions described in the VFC Program result in a loss to the plan or a profit to some party to the transaction. Determining the amount of the loss to the plan requires calculating how much money the plan would have now if a particular transaction had not occurred. In general, the VFC Program requires the fiduciary or other Plan Official to restore to the employee benefit plan the Principal Amount, plus the greater of (i) Lost Earnings from the Loss Date to the Recovery Date or (ii) Restoration of Profits resulting from the use of the Principal Amount for the same period.

(2) *Principal Amount.* ''Principal Amount'' is the amount that would have been available to the plan for investment or distribution on the date of the Breach, had the Breach not occurred. What constitutes the Principal Amount is identified for each transaction set forth in section 7 of the VFC Program. The generic term ''Principal Amount'' is the base on which Lost Earnings are calculated.

(3) *Loss Date.* ''Loss Date'' is the date that the plan lost the use of the Principal Amount.

(4) *Recovery Date.* ''Recovery Date'' is the date that the Principal Amount is restored to the plan.

(5) *Lost Earnings.* For purposes of the VFC Program, Lost Earnings to be restored to a plan is the greater of (i) the amount that otherwise would have been earned on the Principal Amount from

the Loss Date to the Recovery Date had the Principal Amount been invested during such period in accordance with applicable plan provisions and Title I of ERISA, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction), or (ii) the amount that would have been earned on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction). In addition, if the date on which the Lost Earnings is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Lost Earnings if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Lost Earnings at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. For a participant-directed defined contribution plan, the Lost Earnings to be restored to the plan is the amount that each participant would have earned on the Principal Amount from the Loss Date to the Recovery Date. However, for administrative convenience, the Lost Earnings amount for a participant-directed defined contribution plan may be calculated using the rate of return of the investment alternative that earned the highest rate of return among the designated broad range of investment alternatives available under the plan during the applicable period.

(6) *Restoration of Profits.* ''Restoration of Profits'' is the amount of profit made on the use of the Principal Amount, or the property purchased with the Principal Amount, by the fiduciary or party in interest who engaged in the Breach, or by a knowing participant in the Breach. If the Principal Amount was used for a specific purpose such that the actual profit can be determined, that actual profit must be calculated from the Loss Date to the Recovery Date and returned to the plan. If the Principal Amount was commingled with other funds so that the actual profit cannot be determined, the Restoration of Profits will be calculated as interest on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. In addition, if the date on which the Restoration of Profits is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Restoration of Profits if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Restoration of Profits at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code.

(7) The principles of this paragraph (b) are illustrated by the following examples:

Example 1. An employer who sponsors a plan with a qualified cash or deferred arrangement within the meaning of section 401(k)(2) of the Code (''401(k) plan'') normally deposits participant contributions in the plan's trust account within two business days of each pay day. For this employer, the second business day after pay day is the date on which the participant contributions become plan assets, because it is the earliest date on which this employer can reasonably segregate the participant contributions from the employer's general assets.[5] However, for the pay period ending January 31, a Monday, participant contributions totaling $10,000 were not deposited until March 2.

The Principal Amount is $10,000. The Loss Date is February 2, the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is March 2, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers five investment alternatives. During the month of February, one of the plan's mutual funds had a 12% annualized yield, including all reinvestment earnings. This was the highest return earned by any of the five investment alternatives in this period. The employer elects to use this rate of return for the loss calculations. Accordingly, the Lost Earnings amount is $100 ($10,000 times 12% annual yield times one-twelfth of a year).

The employer had the use of $10,000 of the 401(k) plan's assets between February 2 and March 2, while the participant contributions remained commingled with the employer's general assets. The employer's cost of funds (the actual profit from the use of the participant contributions) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the section 6621 rate was 9%, the Restoration of Profits amount is $75 ($10,000 times 9% per annum times one-twelfth of a year).

In this example, the Lost Earnings amount ($100) is greater than the Restoration of Profits amount ($75). Since the Principal Amount of $10,000 was paid to the plan on March 2, the total correction amount to be paid to the plan is the Lost Earnings of $100.

Assume further, in this example, that although the Principal Amount of $10,000 was paid to the plan on March 2, the Lost Earnings of $100 were not paid to the plan until a year later. Accordingly, an additional $12 ($100 times 12 percent—the plan's annual yield), must be paid to the Plan along with the $100 Lost Earnings amount.

[5] *See* 29 CFR 2510.3–102.

Example 2. On March 15, a plan's trustees authorized the purchase of 1,000 shares of stock. The plan paid $75 per share when the fair market value was $70 per share.[6] The Principal Amount is $5,000 (1,000 shares times the $5 per share overpayment). The Loss Date is March 15, the date of the overpayment. The Recovery Date will be the date on which the fiduciary or other person repays to the plan the correction amount.

Assume that the plan recoups the $5,000 overpayment a year after the original purchase. During this year, the plan's other investments earned 9%, including all reinvestment earnings. The Lost Earnings amount is $450 ($5,000 times 9% annual yield times one year). If the Restoration of Profit amount is less than $450, the total amount to be paid to the plan is $5,450 (the Principal Amount of $5,000 plus Lost Earnings of $450).

Example 3. Assume the same facts as in Example 2, except that the proceeds of the sale were used to make another investment which yielded a 15% annual rate of return, the Restoration of Profits amount is $750 ($5,000 times 15% per annum times one year). In this example, the Restoration of Profits amount ($750) is greater than the Lost Earnings amount ($450). The total amount to be paid to the plan is $5,750 (the Principal Amount of $5,000 plus Restoration of Profits of $750).

Example 4. On April 20, a plan paid $6,000 in legal fees for legal services that the plan sponsor, not the plan, was obligated to pay. The Principal Amount is $6,000. The Loss Date is April 20, the date the plan improperly paid the plan sponsor's legal expenses. The Recovery Date will be the date on which the plan sponsor reimburses the plan $6,000. Assume that the plan sponsor reimburses the plan on October 20, six months after the Loss Date. During this period, the plan's investments earned 10% per annum, including all reinvestment earnings. The Lost Earnings amount is $300 ($6,000 times 10% annual yield multiplied by one-half).

The plan sponsor had constructive use of $6,000 from April 20 until October 20. The plan sponsor's cost of funds (the actual profit from the use of the money) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the section 6621 rate was 8% during the whole period, the Restoration of Profits amount is $240 ($6,000 times 8% per annum multiplied by one-half).

In this example, the Lost Earnings amount ($300) is greater than the Restoration of Profits amount ($240). The total amount to be paid to the plan is $6,300 (the Principal Amount of $6,000 plus Lost Earnings of $300).

(c) *Costs of Correction.* (1) The fiduciary, plan sponsor or other Plan

[6] If a plan's fiduciaries authorized the purchase of a specific dollar amount of stock rather than the purchase of a specific number of shares, and the plan acquired fewer shares than it should have as a result of paying too much per share, the amount lost equals the number of additional shares that the plan should have acquired, plus any appreciation, dividends, or stock splits associated with those additional shares.

Official, not the plan, shall pay the costs of correction.

(2) The principle of paragraph (c)(1) is illustrated in the following example and in (d) below:

Example: The plan fiduciaries did not obtain a required independent appraisal in connection with a transaction described in Section 7. In connection with correcting the transaction, the plan fiduciaries now propose to have the appraisal performed as of the date of purchase. The plan document permits the plan to pay reasonable and necessary expenses; the fiduciaries have objectively determined that the cost of the proposed appraisal is reasonable and is not more expensive than the cost of an appraisal contemporaneous with the purchase. The plan may therefore pay for this appraisal. However, the plan may not pay any costs associated with recalculating participant account balances to take into account the new valuation. There would be no need for these additional calculations or any increased appraisal cost if the plan's assets had been valued properly at the time of the purchase. Therefore, the cost of recalculating the plan participants' account balances is not a reasonable plan expense, but is part of the Costs of Correction.

(d) *Distributions*. Some plans will have to make supplemental distributions to former employees, beneficiaries receiving benefits, or alternate payees, if the original distributions were too low because of the Breach. In these situations, the Plan Official or plan administrator must determine who received distributions from the plan during the time period affected by the Breach, recalculate the account balances, and determine the amount of the underpayment to each affected individual. The applicant must demonstrate in writing to PWBA that the plan has used best efforts to locate and pay any former employee, beneficiary, or alternate payee who has received a lump sum distribution but is due an additional distribution as a result of the correction of the transaction. The costs of such efforts would be part of the Costs of Correction.

(e) *Notice*. (1) *In general*. The applicant or the plan administrator must provide written notice of the correction to all plan participants. The notice shall state that the correction was made pursuant to the applicant's participation in the VFC Program, and that the individuals receiving notice may obtain a copy of the application, including all supporting documentation, from the plan administrator upon written request. The notification must also state that the application has been submitted to the VFC Program Coordinator at the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration and include the address and phone number of such Regional Office. Generally, notice must be provided no later than the date required for distribution of the Summary Annual Report. Notice may be accomplished by posting, regular mail, or electronic mail. The notice must be distributed or posted in a manner reasonably calculated to inform participants in the affected plan of the applicant's participation in the VFC Program.

(2) *Special Notice Requirements*. (i) *Supplemental distributions*. When the correction involves a supplemental distribution, a notice explaining the distribution must also be sent to each individual entitled to the supplemental distribution at the same time as the supplemental distribution.

(ii) *Adjustment of plan account balances*. When the correction involves an adjustment to the account balance of a participant, beneficiary receiving benefits, or alternate payee, a notice explaining the adjustment must be provided at the same time that the individual is furnished with the benefit statement that includes the adjustment. This provision does not require the creation of additional benefit statements. The notice is provided whenever the benefit statement is ordinarily provided.

Section 6. Application Procedures

(a) *In general*. Each application must adhere to the requirements set forth below. Failure to do so may render the application invalid.

(b) *Preparer*. The application must be prepared by a Plan Official or his or her authorized representative (*e.g.*, attorney, accountant, or other service provider). If a representative of the Plan Official is submitting the application, the application must include a statement signed by the Plan Official that the representative is authorized to represent the Plan Official.

(c) *Contact person*. Each application must include the name, address and telephone number of a contact person. The contact person must be familiar with the contents of the application, and have authority to respond to inquiries from PWBA.

(d) *Detailed narrative*. The applicant must provide to PWBA a detailed narrative describing the Breach and the corrective action. The narrative must include:

(i) a list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

(ii) the EIN number and address of the plan sponsor and administrator;

(iii) the date the plan's most recent Form 5500 was filed;

(iv) an explanation of the Breach, including the date it occurred;

(v) an explanation of how the Breach was corrected, by whom and when; and (vi) specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed and an explanation of why payment of Lost Earnings or Restoration of Profits was chosen to correct the Breach.

(e) *Supporting documentation*. The applicant must also include:

(i) the current fidelity bond for the plan;

(ii) a copy of the plan document, and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified;

(iii) documentation that supports the narrative description of the transaction and correction;

(iv) documentation establishing the Lost Earnings amount, including documentation of the return on the plan's other investments during the time period on which the Lost Earnings is calculated with respect to the transaction described in the VFC Program application;

(v) documentation establishing the amount of Restoration of Profits;

(vi) all documents described in Section 7 with respect to the transaction involved;

(vii) proof of payment of Principal Amount and Lost Earnings or Restoration of Profits; and

(viii) a copy of the sample notification to all affected participants.

(5) *Examples of supporting documentation.* (i) Examples of documentation supporting the description of the transaction and correction are leases, appraisals, notes and loan documents, service provider contracts, invoices, settlement documents, deeds, perfected security interests, and amended annual reports.

(ii) Examples of acceptable proof of payment include copies of canceled checks, executed wire transfers, a signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution), and bank statements for the plan's account.

(g) *Penalty of Perjury Statement.* Each application must also include a Penalty of Perjury statement. The statement shall be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and the authorized representative, if any. The statement must accompany the application and any subsequent additions to the

application. The statement shall read as follows:

I certify under penalty of perjury that I have reviewed this application and all supporting documents and that to the best of my belief the contents are true and complete and comply with all terms and conditions of the VFC Program. I further certify under penalty of perjury that at the date of this certification neither the Department nor any other Federal agency has informed me of an intention to investigate or examine the plan or otherwise made inquiry with respect to the transaction described in this application. I further certify under penalty of perjury that neither I nor any person acting under my supervision or control with respect to the operation of an ERISA-covered employee benefit plan:

(1) is the subject of any criminal investigation or prosecution involving any offense against the United States;[7]

(2) has been convicted of a criminal offense involving employee benefit plans at any time or any other offense involving financial misconduct which was punishable by imprisonment exceeding one year for which sentence was imposed during the preceding thirteen years or which resulted in actual imprisonment ending within the last thirteen years, nor has such person entered into a consent decree with the Department or been found by a court of competent jurisdiction to have violated any fiduciary responsibility provisions of ERISA during such period; or

(3) has sought to assist or conceal the transaction described in this application by means of bribery, graft payments to persons with fiduciary responsibility for this plan or with the knowing assistance of persons engaged in ongoing criminal activity.

(h) *Checklist.* The checklist in Appendix B must be completed, signed, and submitted with the application.

(i) *Where to apply.* The application shall be mailed to the appropriate Regional PWBA office listed in Appendix C.

(j) *Record keeping.* The applicant must maintain copies of the application and any subsequent correspondence with PWBA for the period required by section 107 of ERISA.

[7] For purposes of this paragraph, an ''offense'' includes criminal activity for which the Department of Justice may seek civil injunctive relief under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1964(b)). A ''subject'' is any individual or entity whose conduct is within the scope of any ongoing inquiry being conducted by a Federal investigator(s) who is authorized to investigate criminal offenses against the United States.

Section 7. Description of Eligible Transactions and Corrections Under the VFC Program

PWBA has identified certain Breaches and methods of correction that are suitable for the VFC Program. Any Plan Official may correct a Breach listed in this Section in accordance with the applicable correction method. The correction methods set forth are strictly construed and are the only acceptable correction methods under the VFC Program for the transactions described in this Section. PWBA will not accept applications concerning correction of breaches not described in this Section.

A. Contributions

1. Delinquent Participant Contributions to Pension Plans

(a) *Description of Transaction.* An employer receives directly from participants, or withholds from employees' paychecks, certain amounts for contribution to a pension plan. Instead of forwarding the contributions for investment in accordance with the provisions of the plan and within the time frames described in the Department's regulation at 29 CFR 2510.3–102, the employer retains the contributions for a longer period of time.

(b) *Correction of Transaction.* (1) *Unpaid contributions.* For participant contributions not yet paid to the plan, pay to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b). The Principal Amount is the amount of the unpaid participant contributions. The Loss Date for each participant contribution is the earliest date on which it could reasonably have been segregated from the employer's general assets. In no event shall the Loss Date be later than the applicable maximum time period described in the Department's regulation at 29 CFR 2510.3–102.

(2) *Late contributions.* If the participant contributions were remitted to the plan outside the time period required by the regulation, the only correction required is to pay to the plan the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b).

(3) *Examples.* The principles of this paragraph (b) are illustrated in the following examples:

Example 1. See Example 1 under Section 5(b).

Example 2. Employer X is a large national corporation which sponsors a section 401(k) plan. X is able to segregate participant contributions no later than 10 business days after the end of the month in which participant contributions were withheld from employees' paychecks. For the pay period ending June 15, participant contributions totaling $900,000 were not deposited until August 14.

The Principal Amount is $900,000. The Loss Date is July 14 (the tenth business day in July), the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is August 14, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers eight investment alternatives with daily asset valuation. From July 14 through August 14, most of the plan participants experienced a decline in their account balances due to a decline in the stock market; however, some participants had a net investment gain. The Code section 6621(a)(2) rate during this period was 8% and was greater than the profit to the employer from the use of the funds during the pertinent time period.

For the participants whose account balances declined, the employer pays the Principal Amount plus the Restoration of Profits amount, calculated at 8%. For the other participants, the employer pays the Principal Amount plus the higher of each participant's actual investment earnings between July 14 and August 14 or the Restoration of Profits amount calculated at 8%. Since the Principal Amount of $900,000 has already been paid to the plan, the correction amount to be paid to the plan is no less than the Restoration of Profits of $6,000 ($900,000 times 8% per annum times one-twelfth of a year).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) for participant contributions received from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) for participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) a statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion; and

(4) a sample notice to participants, including any former employee, beneficiary receiving benefits, or alternate payee who is entitled to a supplemental distribution.

B. Loans

1. Loan at Fair Market Interest Rate to a Party in Interest with Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest at an interest rate no less than that for loans with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. An independent commercial lender must also confirm in writing that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.

(c) *Documentation.* In addition to the documentation required by Section 6, submit a narrative describing the process used to determine the fair market interest rate at the time the loan was made, validated in writing by an independent commercial lender.

2. Loan at Below-Market Interest Rate to a Party in Interest with Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. (1) Pay to the plan the Principal Amount, plus the greater of (i) the Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b).

(2) For purposes of this transaction, the Principal Amount is equal to the excess of the interest payments that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over interest payments actually received under the loan terms during such period. For purposes of the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

(3) Pay any supplemental distributions that are due, as described in Section 5(d).

Example: The plan made to a party in interest a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The party in interest or Plan Official must repay the loan in full plus any applicable prepayment penalties. The party in interest or Plan Official also must pay the difference between what the plan would have received through the Recovery Date had the loan been made at 7% and what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus lost earnings on that amount as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(2) a copy of the independent commercial lender's fair market interest rate determination(s);

(3) a copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s); and

(4) a sample notice to participants, including any former employee, beneficiary receiving benefits, or alternate payee who is entitled to a supplemental distribution.

3. Loan at Below-Market Interest Rate to a Person Who is Not a Party in Interest with Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a person who is not a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings through the Recovery Date, as described in Section 5(b).

(2) Each loan payment has a Principal Amount equal to the excess of (a) interest payments that would have been received until the Recovery Date if the loan had been made at the fair market interest rate over (b) the interest actually received under the loan terms. The fair market interest rate must be determined by an independent commercial lender.

(3) From the inception of the loan to the Recovery Date, the amount to be paid to the plan is the Lost Earnings on the series of Principal Amounts, calculated in accordance with Section 5(b).

(4) From the Recovery Date to the maturity date of the loan, the amount to be paid to the plan is the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(5) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan made a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The borrower or the Plan Official must pay the excess of what the Plan would have received through the Recovery Date had the loan been made at 7% over what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as calculated in Section 5(b). The Plan Official must also pay on the Recovery Date the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(2) a copy of the independent commercial lender's fair market interest rate determination(s); and

(3) a copy of the supplemental distribution notice, if applicable.

4. Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest

(a) *Description of Transaction.* For purposes of the VFC Program, if a plan made a purportedly secured loan to a person who is not a party in interest with respect to the plan, but there was a delay in recording or otherwise perfecting the plan's interest in the loan collateral, the loan will be treated as an unsecured loan until the plan's security interest was perfected.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings as described in Section 5(b), through the date the loan is fully secured.

(2) The Principal Amount is equal to the difference between (a) interest payments actually received under the loan terms and (b) the interest payments

that would have been received if the loan had been made at the fair market interest rate for an unsecured loan. The fair market interest rate must be determined by an independent commercial lender.

(3) In addition, if the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, the fair market interest rate for the remaining term of the loan must be determined by an independent commercial lender. In that case, the correction amount includes an additional payment to the plan. The amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(4) The principles of this paragraph (b) are illustrated in the following examples:

Example 1: The plan made a mortgage loan, which was supposed to be secured by a Deed of Trust. The plan's Deed was not recorded for six months, but, when it was recorded, the Deed was in first position. The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust. The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed of Trust.

Example 2: Assume the same facts as in Example 1, except that, as a result of the delay in recording the Deed, the plan ended up in second position behind another lender. The risk to the plan is higher and the interest rate on the note is no longer commensurate with that risk. The loan is treated as a below-market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan;

(2) a copy of the independent commercial lender's fair market interest rate determination(s); and

(3) a copy of the supplemental distribution notice, if applicable.

C. Purchases, Sales and Exchanges

1. Purchase of an Asset (Including Real Property) by a Plan From a Party in Interest

(a) *Description of Transaction.* A plan purchased an asset with cash from a party in interest with respect to the plan, and under the circumstances, no prohibited transaction exemption applies.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the property back to the party in interest who originally sold the asset to the plan or to a person who is not a party in interest. Whether the asset is sold to a person who is not a party in interest with respect to the plan or is sold back to the original seller, the plan must receive the higher of (i) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) For this transaction, the Principal Amount is the plan's original purchase price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan purchased from the plan sponsor a parcel of real property. The plan does not lease the property to any person. Instead, the plan uses the property as an office. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property at the time of purchase. The appraiser values the property at $100,000, although the plan paid the plan sponsor $120,000 for the property. As of the Recovery Date the property is valued at $110,000. To correct the transaction, the plan sponsor repurchases the property for $120,000 with no reduction for the costs of sale and reimburses the plan for the initial costs of sale. The plan sponsor also must pay the plan the greater of the plan's Lost Earnings and the price the plan paid the plan sponsor or the sponsor's profits on this amount. This example assumes that the plan sponsor did not make a profit on the $120,000 proceeds from the original sale of the property to the plan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the seller;

(2) a narrative describing the relationship between the original seller of the asset and the plan; and

(3) the qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery date.

2. Sale of an Asset (Including Real Property) by a Plan to a Party in Interest

(a) *Description of Transaction.* A plan sold an asset for cash to a party in interest with respect to the plan, in a transaction that is not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* (1) The plan must receive the Principal Amount plus the greater of (i) Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b). As an alternative to repayment of the Principal Amount, if it is determined that the plan will realize a greater benefit by repurchasing the property, the plan may repurchase the asset from the party in interest [8] at the lower of the price for which it sold the property or the FMV of the property as of the Recovery Date plus restoration of the party in interest's net profits from owning the property, to the extent they exceed the plan's investment return from the proceeds of the sale. The determination as to which correction alternative the plan chooses must be made by an independent fiduciary.

(2) For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the sale price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold a parcel of unimproved real property to the plan sponsor. The sponsor did not make any profit on the use of the property. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property as of the date of sale. The appraiser valued the property at $130,000, although the plan sold the property to the plan sponsor for $120,000. However, the plan fiduciaries have reason to believe that the property will substantially increase in the near future based on the anticipated building of a shopping mall adjacent to the property in question and, as of the Recovery Date, the appraiser values the property at $140,000. An independent fiduciary determines that the property is a prudent investment for the plan, and will not result in any liquidity or diversification problems. The plan corrects by repurchasing the property at the original

[8] The repurchase of the same property from the party in interest to whom the asset was sold is a reversal of the original prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an exemption.

sale price, with the party in interest assuming the costs of the reversal of the sale transaction.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;

(2) a narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;

(3) the qualified, independent appraiser's report addressing the FMV of the property at the time of the sale from the plan and as of the Recovery Date; and

(4) the independent fiduciary's report that the property is a prudent investment for the plan.

3. Sale and Leaseback of Real Property to Employer

(a) *Description of Transaction.* The plan sponsor sold a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not otherwise exempt.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the parcel of real property back to the plan sponsor or to a person who is not a party in interest with respect to the plan.[9] The plan must receive the higher of (i) FMV of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.

(3) In addition to the correction amount in subparagraph (1), if the plan was not receiving rent at FMV, as determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the plan sponsor's use of the Principal Amount, as described in Section 5(b).

(4) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site. Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent. To correct the transaction, the plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sales price and also pays the Lost Earnings. Because the rent paid to the plan was below the market rate, the sponsor must also make up the difference between the rent paid under the terms of the lease and the amount that should have been paid, plus Lost Earnings on this amount, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;

(2) documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;

(3) a narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;

(4) a copy of the lease;

(5) documentation of the date and amount of each lease payment received by the plan; and

(6) the qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the Recovery Date, and the FMV of the lease payments.

4. Purchase of an Asset (Including Real Property) By a Plan From a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Other Than Fair Market Value

(a) *Description of Transaction.* A plan acquired an asset from a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan paid more than it should have for the asset.

(b) *Correction of Transaction.* The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase. The plan must receive the Principal Amount plus the Lost Earnings, as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan bought unimproved land without obtaining a qualified, independent appraisal. Upon discovering that the purchase price was $10,000 more than the appraised FMV, the Plan Official pays the plan the Principal Amount of $10,000, plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;

(2) A narrative describing the relationship of the seller to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.

5. Sale of an Asset (Including Real Property) By a Plan to a Person who is not a Party in Interest with Respect to the Plan at a Price Less Than Fair Market Value

(a) *Description of Transaction.* A plan sold an asset to a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan received less than it should have from the sale.

(b) *Correction of Transaction.* The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property. The plan must receive the Principal Amount plus Lost Earnings as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold unimproved land without taking steps to ensure that the plan received FMV. Upon discovering that the sale price was $10,000 less than the FMV, the Plan Official pays the plan the Principal Amount of $10,000 plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;

(2) A narrative describing the relationship of the buyer to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.

[9] If the plan purchased the property from the plan sponsor, the sale of the same property back to the plan sponsor is a reversal of the prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption, as long as the plan did not make improvements while it owned the property.

D. Benefits

1. Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based

(a) *Description of Transaction.* A defined contribution pension plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the current benefit payments will be too high. If the plan's assets are undervalued, the current benefit payments will be too low.

(b) *Correction of Transaction.* (1) Establish the correct value of the improperly valued asset for each plan year, starting with the first plan year in which the asset was improperly valued. Restore to the plan for distribution to the affected plan participants, or restore directly to the plan participants, the amount by which all affected participants were underpaid distributions to which they were entitled under the terms of the plan, plus the higher of Lost Earnings or the underpayment rate defined in section 6621(a)(2) of the Code on the underpaid distributions. File amended Annual Report Forms 5500, as detailed below.

(2) To correct the valuation defect, a Plan Official must determine the FMV of the improperly valued asset per Section 5(a), for each year in which the asset was valued improperly.

(3) Once the FMV has been determined, the participant account balances for each year must be adjusted accordingly.

(4) The annual report Forms 5500 must be amended and refiled for (i) the last three plan years or (ii) all plan years in which the value of the asset was reported improperly, whichever is less.

(5) The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly. For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount and Lost Earnings must be paid to the affected individuals. For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the Lost Earnings, as described in Section 5(b), must be restored to the plan or to the participants.

(6) The principles of this paragraph (b) are illustrated in the following examples:

Example 1. On December 31, 1995, a profit sharing plan purchased a 20-acre parcel of real property for $500,000, which represented a portion of the plan's assets. The plan has carried the property on its books at cost, rather than at FMV. One participant left the company on January 1, 1997, and received a distribution, which included her portion of the value of the property. The separated participant's account balance represented 2% of the plan's assets. As part of correction for the VFC Program, a qualified, independent appraiser has determined the FMV of the property for 1996, 1997, and 1998. The FMV as of December 31, 1996, was $400,000. Therefore, this participant was overpaid by $2,000 (($500,000–$400,000) times 2%). The Plan Officials corrected the transaction by paying to the plan $2,500, consisting of $2,000 Principal Amount and $500 Lost Earnings. The Lost Earnings were based on a return of 25%, which represents the total return on the plan's investments from the date of the distribution to the participant until the date of correction.

The plan administrator also filed an amended Form 5500 for plan years 1996 and 1997, to reflect the proper values. The plan administrator will include the correct asset valuation in the 1998 Form 5500 when that form is filed.

Example 2. Assume the same facts as in Example 1, except that the property had appreciated in value to $600,000 as of December 31, 1996. The separated participant would have been underpaid by $2,000. The correction consists of locating the participant and distributing $2,500 to her ($2,000 Principal Amount and $500 Lost Earnings), as well as filing the amended Forms 5500 C/R.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;

(2) A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;

(3) If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances;

(4) if supplemental distributions are made, proof of payment to the individuals entitled to receive the supplemental distributions; and

(5) a sample notice to participants.

E. Plan Expenses

1. Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan

(a) *Description of Transaction.* A plan paid excessive compensation, including commissions or fees, to a service provider (such as an attorney, accountant, actuary, financial advisor, or insurance agent); a plan paid two or more persons to provide the same services to the plan; or a plan paid a service provider for services that were not necessary for the operation of the plan.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the use of the Principal Amount, as described in Section 5(b).

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan to the service provider during the six years prior to the discontinuation of the payment of the excessive, duplicative, or unnecessary compensation and (b) the reasonable market value of the non-duplicative services.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. Excessive compensation. A plan hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio. In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds. In exchange for his services, the plan paid the investment advisor 3% of the value of the portfolio's assets. If the trustees had inquired they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained. To correct the transaction, the plan must be paid the Principal Amount of 2% of the value of the plan's assets, plus Lost Earnings, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a written estimate of the reasonable market value of the services;

(2) the estimator's qualifications; and

(3) the cost of the services at issue during the period that such services were provided to the plan.

2. Payment of Dual Compensation to a Plan Fiduciary

(a) *Description of Transaction.* A plan pays a fiduciary for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not mere reimbursements of expenses properly and actually incurred by the fiduciary.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits

resulting from the fiduciary's use of the Principal Amount for the same period.

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan during the six years prior to the discontinuation of the payments to the fiduciary and (b) the amount that represents reimbursements of expenses properly and actually incurred by the fiduciary.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. A union sponsored a health plan funded through contributions by employers. The union president receives $50,000 per year from the union in compensation for his services as union president. He is appointed as a trustee of the health plan while retaining his position as union president. In exchange for acting as plan trustee, the union president is paid a salary of $200 per week by the plan while still receiving the $50,000 salary from the union. Since $50,000 is full-time pay, the plan's weekly salary payments are improper. To correct the transaction, the plan must be paid the Principal Amount, which is the $200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) copies of the plan's accounting records which show the date and amount of compensation paid by the plan to the identified fiduciary; and

(2) if any of the amounts paid by the plan to the fiduciary represent reimbursements of expenses properly and actually incurred by the fiduciary, include copies of the plan records which indicate the date, amount, and character of these payments.

Signed at Washington, DC this 9th day of March, 2000.

Leslie Kramerich,

Acting Assistant Secretary for Pension and Welfare Benefits Administration, Department of Labor.

Appendix A—Sample VFC Program No Action Letter

Applicant (Plan Official)
Address
Dear Applicant (Plan Official):
Re: VFC Program Application No. xx-xxxxxx

The Department of Labor, Pension and Welfare Benefits Administration (PWBA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). PWBA has established a Voluntary Fiduciary Correction Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to PWBA that demonstrates that you have taken the corrective action indicated.

[Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from *date* to *date.* All participant contributions were deposited by *date* and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on *date.*]

Because you have taken the above-described corrective action, which is consistent with the requirements of the VFC Program, PWBA will take no civil enforcement action against you with respect to this breach. Specifically, PWBA will not recommend that the Solicitor of Labor initiate legal action against you, and PWBA will not impose the penalty in section 502(l) of ERISA on the amount you have repaid to the plan.

PWBA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude PWBA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person. [*If the transaction is a prohibited transaction, add the following language: Please also be advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.*]

In addition, you are cautioned that PWBA's decision to take no further action is binding on PWBA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary.

If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number.*

Appendix B—VFC Program Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate ''Yes'', ''No'' or ''N/A'' next to each item. A ''No'' answer or the failure to include a completed checklist will delay review of the application until all required items are received.

_____1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?
_____2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?
_____3. Have you provided the EIN # and address of the plan sponsor and plan administrator?
_____ 4. Have you provided the date that the most recent Form 5500 was filed by the plan?
_____5. Have you enclosed a signed and dated certification under penalty of perjury?
_____6. Have you enclosed a copy of the plan document, and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?
_____7. Have you enclosed a copy of the current fidelity bond for the plan?
_____8. Where applicable, have you enclosed a copy of an appraiser's report?
_____9. Have you enclosed other documents as specified by the individual transactions and corrections?
_____a. a detailed narrative of the Breach, including the date it occurred;
_____b. documentation that supports the narrative description of the transaction;
_____c. an explanation of how the Breach was corrected, by whom and when, with supporting documentation;
_____d. a list of all persons materially involved in the Breach and its correction (*e.g.,* fiduciaries, service providers, borrowers);
_____e. documentation establishing the return on the plan's other investments during the time period the plan engaged in the transaction described in the VFC Program application;
_____f. specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed; and
_____g. proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.
_____10. Have you made proper arrangements to provide notice to the plan participants?

_____11. Where applicable, have you enclosed a description of how the plan has used its best efforts to locate and pay former employees who have received lump sum distributions or rollovers but are due an additional distribution as a result of the correction of the transaction?

_____12. Has the plan implemented measures to ensure that the transactions specified in the application do not recur? (Do not include this with the application. The Department will not opine on the adequacy of these measures.)

Signature of Applicant and Date Signed
Name of Applicant (Typed):
Title/Relationship to the Plan (Typed):
Name of Plan, EIN and Plan Number (Typed):

Appendix C—List of PWBA Regional Offices

Atlanta Regional Office, 61 Forsyth Street, SW, Suite 7B54, Atlanta, GA 30303, telephone (404) 562–2156, fax (404) 562–2168; jurisdiction: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.

Boston Regional Office, J.F.K. Building, Room 575, Boston, MA 02203, telephone: (617) 565–9600, fax: (617) 565–9666; jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, central and western New York, Rhode Island, Vermont.

Chicago Regional Office, 200 West Adams Street, Suite 1600, Chicago, IL 60606, telephone (312) 353–0900, fax (312) 353–1023; jurisdiction: northern Illinois, northern Indiana, Wisconsin.

Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011–2664, telephone (606) 578–4680, fax (606) 578–4688; jurisdiction: southern Indiana, Kentucky, Michigan, Ohio.

Dallas Regional Office, 525 Griffin Street, Rm. 707, Dallas, TX 75202–5025, telephone (214) 767–6831, fax (214) 767–1055; jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Kansas City Regional Office, 1100 Main Street, Suite 1200, Kansas City, MO 64105–2112, telephone (816) 426–5131, fax (816) 426–5511; jurisdiction: Colorado, southern Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.

Los Angeles Regional Office, 790 E. Colorado Boulevard, Suite 514, Pasadena, CA 91101, telephone (626) 583–7862, fax (626) 583–7845; jurisdiction: 10 southern counties of California, Arizona, Hawaii, American Samoa, Guam, Wake Island.

New York Regional Office, 6 World Trade Center, Room 625, New York, NY 10048, telephone (212) 637–0600, fax (212) 637–0512; jurisdiction: southeastern New York, northern New Jersey.

Philadelphia Regional Office, 3535 Market St., Room 12400, Philadelphia, PA 19104, telephone (215) 596–1134, fax (215) 596–4475; jurisdiction: Delaware, Maryland, southern New Jersey, Pennsylvania, Virginia, Washington, D.C., West Virginia.

San Francisco Regional Office, 71 Stevenson St., Suite 915, San Francisco, CA 94105, telephone (415) 975–4600, fax (415) 975–4589; jurisdiction: Alaska, 48 northern counties of California, Idaho, Nevada, Oregon, Utah, Washington.

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March 15, 2000

Part VII

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215337–0047–02]

RIN 0610–ZA13

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Request for Grant Proposals (RFP) Upon Availability of Funds.

SUMMARY: A total of $360,550,000 is available to EDA for all its programs in FY 2000, of which approximately $500,000 will be available for National Technical Assistance, Training, Research, and Evaluation. EDA is soliciting proposals to describe and critically analyze the role of EDA in efforts to alleviate domestic economic distress through programs funded under the Public Works and Economic Development Act of 1965, as amended. This project will be funded if acceptable proposals are received. EDA issues this Notice to describe the conditions under which an eligible application for this National Technical Assistance, Training, Research, and Evaluation project under 13 CFR part 307, subpart C (64 FR 5347, 5428–5429; 64 FR 69868, 69878–69879) will be accepted and selected for funding.

DATES: Proposals for funding under this program will be accepted through April 14, 2000, at the address provided below. Proposals received after 5:00 p.m. EDT, on April 14, 2000, will not be considered for funding.

By April 21, 2000, EDA will advise the successful proponent to submit a full application. OMB has assigned application forms Control Number 0610–0094.

A completed application must be submitted to EDA by May 8, 2000, at the address below. EDA anticipates that this project will be funded about June 15, 2000.

ADDRESSES: Send proposals to John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482–4085.

SUPPLEMENTARY INFORMATION:

I. Areas of Special Emphasis

• Impact of Programs Funded under the Public Works and Economic Development Act of 1965.

EDA invites proposals to describe and critically analyze the role of EDA in efforts to alleviate domestic economic distress since 1965.

Background: In the Public Works and Economic Development Act of 1965 (PWEDA) (Pub.L. 89–136), Congress declared that maintaining the national economy at a high level was vital to the best interests of the United States, that some areas suffered substantial and persistent unemployment and underemployment, and that the Federal Government, in cooperation with the States, should help such areas take effective steps in planning and financing their public works and economic development. To carry out this mandate, Congress authorized the establishment of the Economic Development Administration (EDA). Since 1965, PWEDA has been reauthorized on several occasions, most recently under the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393). Overall funding levels have varied throughout the years.

As part of its ongoing mission to assist economically distressed areas, EDA periodically revisits the role of the Federal Government in economic development. The agency also undertakes periodic independent evaluations of its specific programs. However, in the 35 years since its inception, EDA has never documented in a single place the history of PWEDA and EDA activities as important federal policies. Given the large scale of public investment in this area, there is an important public interest in documenting these policies and determining the extent to which EDA has developed and implemented programs that respond to the actual economic development needs of the nation's distressed communities. In issuing this request for proposals, EDA hopes to document the agency's policies, examine how the policy focus of EDA has evolved over time in response to changing economic conditions, and identify emerging policy issues in economic development that the agency and economic development practitioners (including other governmental entities) must be responsive to now and in the future. The agency also hopes to examine, critically, changes in EDA's (and PWEDA's) role in overall federal economic development efforts.

Scope of Work: The successful applicant will, for the period since 1965:

(1) Describe the context of EDA's economic development efforts, possibly including (but not necessarily restricted to):

A. the level, location, and character of distress throughout the United States;

B. changing national and regional economic conditions;

C. the legislative history of PWEDA;

D. policies towards economic development and EDA of each administration, including the proposed presidential budget submissions for EDA; and

E. the level and type of Congressional support, including funding levels appropriated and special initiatives funded by Congress, such as the Local Public Works Program (1976–1977).

(2) describe the evolution of EDA activities and policies, including (but not necessarily limited to):

A. the type, level and impact of EDA's investments;

B. the agency's funding priorities, program design, forms of assistance, regulations and other economic development policies; and

C. the agency's administrative policies, including organizational structure, staffing levels, and methods of oversight and evaluation.

(3) analyze critically how the changes in the context of economic development and EDA policies described in Tasks 1 and 2 above have affected the agency's ability to fulfill its mission under PWEDA, and the future impact these changes may have on the agency and on economic development in general;

(4) prepare and submit 200 copies of a report and an electronic version of the report (in formats acceptable to EDA) that document the research and findings of Tasks 1, 2, and 3 above;

(5) conduct up to three briefings for individuals and organizations interested in the results of this project. Specific locations and dates of the briefings are at EDA's discretion.

EDA anticipates that the successful applicant will rely heavily on secondary data, including past EDA program evaluations and policy documents, other federal documents, and general economic development literature. To the extent feasible, current EDA staff will be available to assist in collection of necessary data that are not available elsewhere.

Cost: The total EDA share of the cost of this project many not exceed $125,000.

Timing: The project must be completed and the final project report submitted by December 31, 2000. Potential applicants should be aware that this completion date is for completion of the project and submission of the final written report documenting the research and findings.

Briefings (workshops) will take place no later than one year after submission of the final report.

II. How To Apply

A. Eligible Applicants

See EDA's interim final rule and final rule at 13 CFR 300.2 (64 FR 5347, 5352; 64 FR 69868). Eligible applicants are as follows: institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals; areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states.

B. Proposal Submission Procedures

Proposals submitted should include: (1) A description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length); (2) a proposed budget and accompanying explanation; (3) resumes/qualifications of key staff (not to exceed two pages per individual or organization), and (4) a proposed time line for completion of the project. EDA will not accept proposals submitted by FAX or E-mail. Proposals received after 5:00 p.m. EDT on April 14, 2000, will not be considered.

III. Selection Process and Evaluation Criteria

All proposals must meet EDA's statutory and regulatory requirements. Proposals will receive initial review by EDA to assure that they meet all requirements of this announcement and EDA's interim final rule and final rule at 13 CFR Chapter III (64 FR 5347, 5357; 64 FR 69868, 69874), including eligibility and relevance to the specified project as described herein. EDA's general selection process and criteria are set out in 13 CFR 304.1, 304.2, (64 FR 5347, 5357; 64 FR 68968, 68974–69875), and current § 307.10 (§ 307.8 in the interim rule) (64 FR 5347, 5429; 64 FR 69868, 69878). Proposals that meet these requirements will then be evaluated by a review panel composed of at least three members using the following criteria:

- The quality of a proposal's response to the scope of work proposed; and
- The ability of the prospective applicant to successfully carry out the proposed activities.
- If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094). 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 Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

IV. Additional Information and Requirements

A. Authority

The Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393) (PWEDA) authorizes EDA to make grants for training, research, and technical assistance, including grants for program evaluation and project impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (42 U.S.C. 3147, section 207). This RFP is dependent upon the availability of funds in FY 2000 for this program. Public Law 106–113 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.312 Research and Evaluation

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, Part 307 (64 FR 5347; 64 FR 69868).

EDA assistance is focused on areas experiencing significant economic distress, defined principally as per capita income of 80 percent or less of the national average, or an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average, or a special need, as determined by EDA.

D. Costs

Ordinarily, the applicant is expected to provide a 50 percent non-federal share of project costs. However, the Assistant Secretary may waive the required 50 percent matching share of the total project costs, provided the applicant can demonstrate: (1) The project is not feasible without, and the project merits such a waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50 percent non-federal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient (See 13 CFR 307.11; 64 FR 69878).

E. Briefings and Reports

This award includes a requirement that the applicant conduct a total of up to three briefings and/or training workshops for individuals and organizations interested in the results of this project. Potential applicants should be aware that the completion dates set forth above are for completion of the project and submission of the final written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's discretion. Usually, these consist of at least one briefing in Washington, DC, with the other briefings held in conjunction with EDA's regional conferences.

This award includes a requirement that the applicant submit an electronic version and 200 hard copies of the final report in formats acceptable to EDA.

F. Website

See 65 FR 3763–3769, Part III for additional information and requirements (available on the Internet at http://www.doc.gov/eda/html/notice.htm, under the heading ''Economic Development Assistance Programs—Availability of Funds Under the Public Works and Economic Development Act of 1965 and Trade Act of 1974; Notice'').

Dated: March 8, 2000.

Chester J. Straub, Jr.,

Acting Assistant Secretary for Economic Development.

[FR Doc. 00–6319 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–24–P

Federal Register

Wednesday,
March 15, 2000

Part VIII

Environmental Protection Agency

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances, Proposed AEGL Values; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00289; FRL–6492–4]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGL values on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides ''Proposed'' AEGL values and Executive Summaries for 10 chemicals for public review and comment. Comments are welcome on both the ''Proposed'' AEGL values in this notice and the Technical Support Documents placed in the public version of the official record in the TSCA Docket for these 10 chemicals.

DATES: Comments, identified by the docket control number OPPTS–00289, must be received by EPA on or before April 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00289 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–055; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7406), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on ''Proposed'' AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under ''FOR FURTHER INFORMATION CONTACT.''

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

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

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00289. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

3. *Fax-on-Demand*. Using a faxphone call (202) 401–0527 and select item 4800 for an index of items in this category. For a more specific item number, see the table in Unit III.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00289 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS-00289. Electronic comments may also be filed online at many Federal Depository Libraries

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be

submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Since its first meeting on June 19–21, 1996, the NAC/AEGL Committee has been evaluating scientific data and developing ''Proposed'' AEGLs for 76 of the first 85 priority chemicals initially scheduled for development of AEGL values. This first list of 85 chemicals was published in the **Federal Register** of May 21, 1997 (62 FR 27733–27734) (FRL–5718–9). EPA published the first ''Proposed'' AEGL values for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58839–58851) (FRL–5737–3) in order to provide an opportunity for public review and comment. That **Federal Register** notice also provides the AEGL Program's history and development process. Since then, the NAC/AEGL Committee continues to develop AEGL values for other chemicals from the initial priority list and continues to establish greater consistency in the procedures and methodologies used in their development. Additionally, the NAC/AEGL Committee has expanded the number of exposure periods to include AEGL values for 10 minute exposure periods to cover a wider range of potential exposures to hazarous chemicals. The NAC/AEGL Committee plans to publish ''Proposed'' AEGL values for 10 minute exposure periods for other chemicals on the priority list of 85 in groups of approximately 10 to 20 chemicals in future **Federal Register** notices.

The NAC/AEGL Committee will review and consider all public comments received on this notice, with revisions to the ''Proposed'' AEGL values, as appropriate. The resulting AEGL values will be established as ''Interim'' AEGL values and will be forwarded to the National Research Council, National Academy of Sciences (NRC/NAS), for review and comment. The ''Final'' AEGL values will be published under the auspices of the NRC/NAS following concurrence on the values and the scientific rationale used in their development.

III. 10 Chemicals for Public Notice and Comment

A. Fax-On-Demand Table

CAS No.	Chemical name	Fax-On-Demand item no.
71–55–6	1,1,1-Trichloroethane	4937
74–90–8	Hydrogen cyanide	4858
156–59–2	*Cis-1,2-Dichloroethylene*	4895
156–60–5	*Trans-1,2-Dichloroethylene*	4895
505–60–2	Agent HD (sulfur mustard)	4936
811–97–2	HFC–134a (1,1,1,2-tetrafluoroethane)	4899
1717–00–6	HCFC–141b (1,1-dichloro-1-fluoroethane)	4902
7664–39–3	Hydrogen fluoride	4909
7783–06–4	Hydrogen sulfide	4917
106602–80–6	Otto Fuel II (main component propylene glycol dinitrate; CAS No. 6423–43–4)	4935

B. Executive Summaries

1. *Cis-1,2-Dichloroethylene* and 2. *Trans-1,2-Dichloroethylene*—i. *Description.* 1,2-Dichloroethylene is a flammable, colorless liquid existing in both *cis*- and *trans*-forms and as a mixture of these two isomers. It has been used as an intermediate in the production of chlorinated solvents and as a low-temperature extraction solvent for decaffeinated coffee, dyes, perfumes, lacquers, and thermoplastics. The compound is a narcotic. Data on narcosis in humans, cats, rats, and mice, and systemic effects in cats, rats, and mice were available for development of AEGLs. The data were considered adequate for derivation of the three AEGL classifications.

The AEGL-1 was based on a human exposure concentration of 825 parts per million (ppm) *trans*-1,2-dichloroethene for 5 minutes (Lehmann and Schmidt-Kehl 1936). This concentration is a no-effect-level for eye irritation. Because the mechanism of irritation is not expected to differ greatly among individuals (including sensitive individuals), this value was divided by an uncertainty factor (UF) of 3 to protect sensitive individuals. This UF of 3 was applied for AEGL-1 values for both the *cis*- and *trans*-isomers. Since animal data suggest that the *cis*-isomer is approximately twice as toxic as the *trans*-isomer, a modifying factor of 2 was applied in the derivation of the *cis*-isomer values only. The same value was applied across the 10- and 30-minute and 1-, 4-, and 8-hour exposure time points since mild irritantancy is a threshold effect and generally does not vary greatly over time. Thus, prolonged exposure will not result in an enhanced effect.

The AEGL-2 for the 4- and 8-hour time points was based on narcosis observed in pregnant rats exposed to 6,000 ppm of the *trans*-isomer for 6 hours (Hurtt et al., 1993). Uncertainty factors of 3 each (total UF = 10) were applied for both inter- and intraspecies differences because the endpoint,

narcosis, is unlikely to vary greatly among individuals or species. This total UF of 10 was applied for AEGL-2 values for both the *cis*- and *trans*-isomers. The concentration-exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent, n, ranges from 0.8 to 3.5 (ten Berge et al., 1986). To obtain protective AEGL values in the absence of an empirically derived chemical-specific scaling exponent, a conservative approach to temporal scaling was performed using n = 3 when extrapolating to shorter time points and n = 1 when extrapolating to longer time points using the $C^n \times t = k$ equation. The AEGL-2 for the 10- and 30-minute and 1-hour time points was set as a ceiling based on a plateau for anesthetic effects in humans (Lehman and Schmidt-Kehl, 1936). Since data suggest that the *cis*-isomer is approximately twice as toxic as the *trans*-isomer, a modifying factor of 2 was applied in the derivation of the *cis*-isomer values only.

The AEGL-3 for the 4- and 8-hour time points was based on a 4-hour no-effect-level for death in rats of 12,300 ppm *trans*-1,2-dichloroethene (Kelly, 1999). Uncertainty factors of 3 each (total UF = 10) were applied for both inter- and intraspecies differences. Rat and mouse lethality data indicate little species variability with regard to death. This total UF of 10 was applied for AEGL-3 values for both the *cis*- and *trans*-isomers. The concentration-exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent, n, ranges from 0.8 to 3.5 (ten Berge et al., 1986). To obtain protective AEGL values in the absence of an empirically derived chemical-specific scaling exponent, a conservative approach to temporal scaling was performed using n = 3 when extrapolating to shorter time points and n = 1 when extrapolating to longer time points using the $C^n \times t = k$ equation. The AEGL-3 for the 10- and 30-minute and 1-hour time points was set as a ceiling based on a plateau for intracranial pressure, nausea, and severe dizziness in humans (Lehman and Schmidt-Kehl, 1936). Since data suggest that the *cis*-isomer is approximately twice as toxic as the *trans*-isomer, a modifying factor of 2 was applied in the derivation of the *cis*-isomer values only.

The calculated values are listed in the tables below.

SUMMARY OF PROPOSED AEGL VALUES FOR TRANS-1,2-DICHLOROETHENE [PPM (MG/M^3 (MILLIGRAM/METER^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	280 (1,109)	280 (1,109]	280 (1,109)	280 (1,109)	280 (1,109)	Ocular irritation in humans (Lehman and Schmidt-Kehl, 1936)
AEGL-2 (Disabling)	1,000 (3,960)	1,000 (3,960)	1,000 (3,960)	690 (2,724)	450 (1,782)	Narcosis in rats: 4- and 8-hour (Hurtt et al., 1993); Anesthetic effects in humans (Lehman and Schmidt-Kehl, 1936)
AEG L-3 (Lethality)	1,700 (6,732)	1,700 (6,732)	1,700 (6,732)	1,200 (4,752)	620 (2,455)	No-effect-level for death in rats: 4- and 8-hour (Kelly, 1999); Nausea, intracranial pressure, and dizziness in humans (Lehman and Schmidt-Kehl, 1936)

SUMMARY OF PROPOSED AEGL VALUES FOR CIS-1,2-DICHLOROETHENE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	140 (554)	140 (554)	140 (554)	140 (554)	140 (554)	Ocular irritation in humans (Lehman and Schmidt-Kehl, 1936)
AEGL-2 (Disabling)	500 (1,980)	500 (1,980)	500 (1,980)	340 (1,346)	230 (911)	Narcosis in rats: 4- and 8-hour (Hurtt et al., 1993); Anesthetic effects in humans (Lehman and Schmidt-Kehl, 1936)
AEGL-3 (Lethality)	850 (3,366)	850 (3,366)	850 (3,366)	620 (2,455)	310 (1,228)	No-effect-level for death in rats: 4- and 8-hour (Kelly, 1999); Nausea, intracranial pressure, and dizziness in humans (Lehman and Schmidt-Kehl, 1936)

ii. *References.*

Hurtt, M.E., Valentine, R., and Alvarez, L. 1993. Developmental toxicity of inhaled *trans*-1,2-dichloroethylene in the rat. *Fundamental and Applied Toxicology*. 20:225–230.

Kelly, D. P. 1999. *Trans*-1,2-dichloroethylene and *cis*-1,2-dichloroethylene: Inhalation median lethal concentration (LC_{50}) study in rats. E.I. du Pont de Nemours and Company, Haskell Laboratory for Toxicology and Industrial Medicine, Newark, DE. Laboratory Project ID: DuPont–2806.

Lehman, K.B. and Schmidt-Kehl, L. 1936. The thirteen most important chlorinated aliphatic hydrocarbons from the standpoint of industrial hygiene. *Archiv Fuer Hygiene und Bakteriologie*. 116:9–268.

ten Berge, W.F., Zwart, A., and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. 13:301–309.

3. *Agent HD (sulfur mustard)*—i. *Description.* Sulfur mustard (Agent HD) is an alkylating chemical vesicant developed as a warfare agent that affects any epithelial surface it contacts. The active component is *bis*(2-chloroethyl)sulfide (CAS No. 505–60–2). Although the chemical is a liquid at ordinary ambient temperatures, its volatility results in rapid generation of vapors with a garlic-like odor. Due to its low aqueous solubility, it is persistent in the environment. Odor thresholds of 1 mg-min/m^3 (milligram-minute/meter) and 0.6 mg/m^3 have been reported.

Exposure to sulfur mustard vapor may result in irritation and damage to the eyes, respiratory tract, and skin. The toxic effects of sulfur mustard are temperature and humidity dependent; for a given exposure, the effects may be greater with increasing temperature and humidity. An exposure-dependent latency period of hours to days is documented for the toxic effects of sulfur mustard and is relevant for all routes of exposure but may be less for

ocular and upper respiratory tract effects than for dermal and systemic responses. Both human and animal data indicate that the eyes are the most sensitive organ/tissue although deaths resulting from sulfur mustard exposure are likely the result of respiratory tract involvement. Because the toxic effects of sulfur mustard (at least for short-time periods) appear to be a linear function of exposure duration and exposure concentration, most of the available exposure-response data are expressed as cumulative exposures (Ct).

Minor ocular irritation (conjunctival injection in the absence of irritation) is reported to occur in humans following exposures to 12–30 mg-min/m^3 and more severe effects at 60–75 mg-min/m^3 (conjunctivitis, irritation, photophobia) and 100 mg-min/m^3 (severe ocular irritation). Exposure estimates for human lethality range from 900–1,500 mg-min/m^3.

Animal lethality following acute exposure to sulfur mustard occurs at cumulative exposures ranging from approximately 600–1,500 mg-min/m^3. Nonlethal effects were similar to those observed in humans and included effects on the eyes, respiratory tract, and skin. Long-term exposure of dogs, rats, and guinea pigs to concentrations of 0.03 mg/m^3 produced only minor signs of ocular and respiratory tract irritation. 1-hour exposure of mice to concentrations up to 16.9 mg/m^3 resulted in notable but not serious effects on respiratory parameters and acute exposures of rabbits (20 minutes to 12 hours) to concentrations ranging from 58–389 mg/m^3 (Ct ≥2,300 mg-min/m^3) resulted in severe respiratory tract damage.

Because exposure-response data were unavailable for all of the AEGL-specific exposure durations, temporal extrapolation was used in the development of AEGL values for the AEGL-specific time periods. The concentration-exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent n ranges from 0.8 to 3.5 (ten Berge, 1986). Analysis of available data regarding AEGL-1 type effects reported by Reed (1918), Reed et al. (1918), Guild et al. (1941), and Anderson (1942) indicate that, for exposure periods up to several hours, the concentration-exposure time relationship is a near-linear function (i.e., Haber's Law where n = 1 for $C^n \times t = k$) as shown by n values of 1.11 and 0.96 for various data sets analyzed that were consistent with AEGL-1 effects. Therefore, an empirically derived, chemical-specific estimate of n = 1 was used for derivation of most of the AEGL values rather than a default value based upon the ten Berge (1986) analysis. Due to uncertainty regarding linear extrapolation to a time duration notably shorter than that for which empirically derived lethality data were available, the 10-minute AEGL-3 values utilized exponential time scaling where n was 3.

The AEGL-1 values were based upon data from Anderson (1942) who found that an exposure concentration-time product of 12 mg-min/m^3 represented a threshold for ocular effects (conjunctival injection and minor discomfort with no functional decrement) in human volunteers acutely exposed to sulfur mustard. An UF adjustment was limited to a factor of 3 for protection of sensitive individuals. This adjustment was considered appropriate for acute exposures to chemicals whose mechanism of action primarily involves surface contact irritation of ocular and/or respiratory tract tissue rather than systemic activity that involves absorption and distribution of the parent chemical or a biotransformation product to a target tissue. Anderson (1942) noted that there was little variability in the ocular responses among the subjects in his study, thereby providing additional justification for the intraspecies UF of 3.

The AEGL-2 values for sulfur mustard were also developed using the data from Anderson (1942). Anderson reported that a Ct value of approximately 60 mg-min/m^3 represented the lowest concentration-time product for which ocular effects could be characterized as military casualties. The 60 mg-min/m^3 exposure was used as the basis for developing the AEGL-2 values because it represented an acute exposure causing an effect severe enough to impair escape and, although not irreversible, would certainly result in potential for additional injury. Anderson (1942) characterized the 60 mg-min/m^3 Ct as representing the lower margin of the concentration-effect zone that would result in ineffective military performance (necessary to complete a mission), and that may require treatment for up to 1 week. The ocular irritation and damage were also considered appropriate as a threshold estimate for AEGL-2 effects because the eyes are generally considered the most sensitive indicator of sulfur mustard exposure and would likely occur in the absence of vesication effects and severe pulmonary effects. The fact that the AEGL-2 is based upon human data precludes the use of an interspecies UF. A factor of 3 was applied for intraspecies variability (protection of sensitive populations). This factor was limited to three under the assumption that the primary mechanism of action of sulfur mustard involves a direct effect on the ocular surface and that this response will not vary greatly among individuals. Anderson also noted little variability in the ocular responses among the subjects in his study. A modifying factor of 3 was applied to accommodate potential onset of long-term ocular or respiratory effects. This was justified by the fact that there was no long-term follow-up reported by Anderson with which to confirm or deny the development of permanent ocular or respiratory tract damage. The total uncertainty/modifying factor adjustment was 10 [The total adjustment is 10 because the factors of 3 each represent a logarithmic mean (3.16) of 10, therefore 3.16 x 3.16 = 10].

For development of the AEGL-3, a 1-hour exposure of mice to 21.2 mg/m^3 was used as an estimated lethality threshold (Kumar and Vijayaraghavan, 1998). This value is also near the lower bound of the 95% confidence interval for the 1-hour mouse LC_{50} of 42.5 mg/m^3 reported by Vijayaraghavan (1997). An UF for intraspecies variability of 3 was used because the lethality resulting from acute inhalation exposure to sulfur mustard appears to be a function of pulmonary damage resulting from direct contact of the agent with epithelial surfaces and would not likely exhibit an order-of-magnitude variability among individuals. An UF of 3 was also applied to account for possible interspecies variability in the lethal response to sulfur mustard. The resulting total UF adjustment was 10. The modifying factor of 3 utilized for AEGL-2 development to account for uncertainties regarding the latency and persistence of the irritant effects of low-level exposure to sulfur mustard was not applied for AEGL-3 because lethality of the mice was assessed at 14 days post exposure in a study by Vijayaraghavan (1997). Application of any additional UFs or modifying factors was not warranted because the proposed AEGL-3 values are equivalent to exposures in humans that are known to produce only ocular and respiratory tract irritation.

The AEGL values for sulfur mustard are based upon noncancer endpoints. Sulfur mustard is genotoxic and has induced carcinogenic responses in humans following single high exposures and following multiple exposures that were sufficient to produce adverse effects. Carcinogenic responses, however, are not known to occur with asymptomatic exposures. Limitations on the currently available data do not allow for a definitive quantitative cancer risk

assessment, especially for an acute, once-in-a-lifetime, exposure.

The AEGL-1 and AEGL-2 values are based upon human exposure data and are considered to be defensible estimates for exposures representing thresholds for the respective AEGL effect levels. The ocular irritation upon which the AEGL-1 and AEGL-2 values are based is the most sensitive response to sulfur mustard vapor. The AEGL-3 values provide Ct products (approximately 60–130 mg-min/m^3) that are known to cause only moderate to severe ocular irritation and possible respiratory tract irritation in human subjects but not life- threatening health effects or death. Although, the overall database for acute inhalation exposure to sulfur mustard is not extensive, the AEGL values appear to be supported by the available data and in some cases, similar values obtained using somewhat differing approaches.

SUMMARY OF PROPOSED AEGL VALUES FOR SULFUR MUSTARD [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	0.06 (0.40)	0.02 (0.13)	0.01 (0.067)	0.003 (0.017)	0.001 (0.008)	Conjunctival injection and minor discomfort with no functional decrement in human volunteers (Anderson, 1942)
AEGL-2 (Disabling)	0.09 (0.60)	0.03 (0.20)	0.02 (0.10)	0.004 (0.025)	0.002 (0.013)	Well marked, generalized conjunctivitis, edema, photophobia, and eye irritation in human volunteers (Anderson, 1942)
AEGL-3 (Lethality)	0.91 (6.1)	0.63 (4.2)	0.32 (2.1)	0.08 (0.53)	0.04 (0.27)	Lethality estimate in mice (Kumar and Vijayaraghavan, 1998)

ii. *References*.

Anderson, J.S. 1942. The effect of mustard gas vapour on eyes under Indian hot weather conditions. CDRE Report No. 241. Chemical Defense Research Establishment (India).

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Kumar, O. and Vjayaraghavan, R. 1998. Effect of sulphur mustard inhalation exposure on some urinary variables in mice. *Journal of Applied Toxicology*. 18:257–259.

Reed, C.I. 1918. The minimum concentration of mustard gas effective for man. Preliminary Report. Report 318. War Department, Medical Division, Chemical Warfare Section, Pharmacological Research Section, American University Experiment Station. October 26, 1918.

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ten Berge, W.F. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. 13:301–309.

Vijayaraghavan, R. 1997. Modifications of breathing pattern induced by inhaled sulphur mustard in mice. *Archives of Toxicology*. 71:157–164.

4. *HCFC-141b (1,1-dichloro-1-fluoroethane) or hydrochlorofluorocarbon-141b*—i. *Description*. 1,1-Dichloro-1-fluoroethane has been developed as a replacement for fully halogenated chlorofluorocarbons as its residence time in the atmosphere is shorter and its ozone depleting potential is lower than that of presently used chlorofluorocarbons. HCFC-141b may be used in the production of rigid polyurethane and polyisocyanurate or phenolic insulation foams for residential and commercial buildings. It may also be used as a solvent in electronic and other precision cleaning applications.

HCFC-141b is of low inhalation toxicity. Its effects have been studied with human subjects and several animal species including the monkey, dog, rat, mouse, and rabbit. In addition, studies addressing repeated and chronic exposures, genotoxicity, carcinogenicity, neurotoxicity, and cardiac sensitization were also available. At high concentrations, halogenated hydrocarbons may produce cardiac arrhythmias; this sensitive endpoint was considered in development of AEGL values.

Adequate data were available for development of the three AEGL classifications. Inadequate data were available for determination of the relationship between concentration and exposure duration for a fixed effect. However, based on the rapidity with which blood concentrations in humans approached equilibrium, the similarity in lethality values in rats exposed for 4 or 6 hours, and the fact that the cardiac sensitization effect is based on a concentration threshold rather than exposure duration, all AEGL values were flat-lined across time. The fact that some experimental exposure durations in both human and animal studies were generally long, 4 to 6 hours, lends confidence to flat-lining the values for the shorter exposure durations.

The AEGL-1 value was based on the observation that exercising human subjects could tolerate exposure to concentrations of 500 or 1,000 ppm for 4 hours with no effects on lung functions, respiratory symptoms, irritation of the eyes, or cardiac symptoms (Utell et al., 1997). Results of exposures of two subjects for an additional 2 hours to the 500 ppm concentration and one of the subjects to the 1,000 ppm concentration for an additional 2 hours did not indicate a clear effect on neurobehavioral parameters. Because the 4- or 6-hour 1,000 ppm concentration is a no-observed-effect-level (NOEL), there were no indications of response differences among tested subjects, and animal studies indicate that adverse effects occur only at considerably higher concentrations, the value was not adjusted by an UF to protect sensitive individuals. Because blood concentrations of HCFC-141b rapidly approached equilibrium and did not greatly increase after 55 minutes of exposure, the value of 1,000 ppm was used for all time periods.

The AEGL-2 value was based on the lowest concentration that caused cardiac sensitization in dogs exposed to HCFC-141b for 10 minutes (Mullin, 1977). This value of 5,200 ppm is far below the lowest concentrations that caused death from cardiac fibrillation (10,000 ppm in this study and 20,000 ppm in a similar study [Hardy et al., 1989a]). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized (the epinephrine dose is greater than the physiological level in stressed animals by up to a factor of 10), a single

intraspecies UF of 3 was applied to protect sensitive individuals. Cardiac sensitization is concentration dependent; duration of exposure did not influence the concentration at which this effect occurred. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 1,700 ppm is proposed for all time periods.

The AEGL-3 values were based on the concentration of 9,000 ppm, the highest value that resulted in mild to marked cardiac responses but did not cause death in a cardiac sensitization study with the dog (Hardy et al., 1989a). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized, a single intraspecies UF of 3 was applied to protect sensitive individuals. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 3,000 ppm is proposed for all time periods.

Based on the extensive database involving both human and animal exposures and use of the most sensitive endpoint in the studies, confidence in the AEGL values is high. Values are summarized in the table below.

SUMMARY TABLE OF PROPOSED AEGL VALUES FOR HCFC-141b (1,1-DICHLORO-1-FLUOROETHANE) [PPM (MG/M3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	1,000 (4,850)	1,000 (4,850)	1,000 (4,850)	1,000 (4,850)	1,000 (4,850)	No effect-humans (Utell et al., 1997)
AEGL-2 (Disabling)	1,700 (8,245)	1,700 (8,245)	1,700 (8,245)	1,700 (8,245)	1,700 (8,245)	Threshold for cardiac arrhythmia—dog[1] (Mullin, 1977)
AEGL-3 (Lethality)	3,000 (14,550)	3,000 (14,550)	3,000 (14,550)	3,000 (14,550)	3,000 (14,550)	Threshold for severe cardiac response—dog[1] (Hardy et al., 1989a)

[1] Response to challenge dose of epinephrine (cardiac sensitization test).

ii. *References.*

Hardy, J.C., Sharman, I.J., and Chanter, D.O. 1989a. Assessment of cardiac sensitization potential in dogs and monkeys. Comparison of I–141b and F11. PWT 86/89437, Huntingdon Research Centre Ltd., Huntingdon, Cambridgeshire, England.

Mullin, L.S. 1977. Cardiac sensitisation. Haskell Laboratory Report 957–77, E.I. du Pont de Nemours and Co., Newark, DE.

Utell, M.J., Anders, M.W., and Morrow, P.E. 1997. Clinical inhalation studies with HCFC-141b. Final Report: December 4, 1997. MA–RR–97–2406, Departments of Medicine, Environmental Medicine, and Pharmacology and Physiology, University of Rochester Medical Center, Rochester, NY.

5. *HFC-134a (1,1,1,2-tetrafluoroethane) or hydrofluorocarbon-134a*—i. *Description.* 1,1,1,2-Tetrafluoroethane has been developed as a replacement for fully halogenated chlorofluorocarbons because its residence time in the atmosphere is shorter and its ozone depleting potential is insignificant. HFC-134a may be used in refrigeration and air conditioning systems, as a blowing agent for polyurethane foams, and as a propellant for medical aerosols. Yearly production is estimated at 175,000 tons.

HFC-134a has a very low acute inhalation toxicity. Its acute inhalation effects have been studied with human subjects and several animal species including the monkey, dog, rat, and mouse. In addition, studies addressing repeated and chronic exposures, genotoxicity, carcinogenicity, neurotoxicity, and cardiac sensitization were also available. At high concentrations, halogenated hydrocarbons may produce cardiac arrhythmias; this sensitive endpoint was considered in development of AEGL values.

Adequate data were available for development of the three AEGL classifications. Inadequate data were available for determination of the relationship between concentration and time for a fixed effect. Based on the observations that:

a. Blood concentrations in humans rapidly approach equilibrium with negligible metabolism and tissue uptake.

b. The endpoint of cardiac sensitization is a blood concentration-related threshold phenomenon, derived values for each AEGL classification were flat-lined across time.

The AEGL-1 concentration was based on a 1-hour no-effect concentration of 8,000 ppm in human subjects (Emmen and Hoogendijk, 1998). This concentration was without effects on lung functions, respiratory parameters, the eyes (irritation), or the heart (cardiac symptoms). Because this concentration is considerably below that causing any effect in animal studies, no intraspecies UF was applied. Based on the fact that blood concentrations in this study appeared to be approaching equilibrium following 55 minutes of exposure and effects are determined by blood concentrations, the value of 8,000 ppm was used across all time periods.

The AEGL-2 concentration was based on the no-effect concentration of 40,000 ppm for cardiac sensitization in dogs (Hardy et al., 1991). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized (the epinephrine dose is greater than the physiological level in stressed animals by up to a factor of 10), a single intraspecies UF of 3 was applied to protect sensitive individuals. Cardiac sensitization is concentration dependent; duration of exposure does not influence the concentration at which this effect occurs. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 13,000 ppm is proposed for all time periods.

The AEGL-3 concentration was based on the concentration of 80,000 which caused marked cardiac effects but no deaths in dogs (Hardy et al., 1991). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized (the epinephrine dose is greater than the physiological level in stressed animals by up to a factor of 10), a single intraspecies UF of 3 was applied to protect sensitive individuals. Cardiac sensitization is concentration dependent; duration of exposure does not influence the concentration at which this effect occurs. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 27,000 ppm is proposed for all time periods.

Based on the extensive database involving both human and animal

exposures and use of the most sensitive endpoint in the studies, confidence in the AEGL values is high. Values are summarized in the table below.

SUMMARY TABLE OF PROPOSED AEGL VALUES FOR HFC-134[a] (1,1,1,2-TETRAFLUOROETHANE) [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	8,000 (34,000)	8,000 (34,000)	8,000 (34,000)	8,000 (34,000)	8,000 (34,000)	No effects—humans (Emmen and Hoogendijk, 1998)
AEGL-2 (Disabling)	13,000 (55,250)	13,000 (55,250)	13,000 (55,250)	13,000 (55,250)	13,000 (55,250)	No effect, cardiac sensitization—dogs (Hardy et al., 1991)
AEGL-3 (Lethality)	27,000 (114,750)	27,000 (114,750)	27,000 (114,750)	27,000 (114,750)	27,000 (114,750)	Marked effect, cardiac sensitization—dogs (Hardy et al., 1991)

ii. *References*.

Emmen, H.H. and Hoogendijk, E.M.G. 1998. Report on an ascending dose safety study comparing HFA-134a with CFC-12 and air, administered by whole-body exposure to healthy volunteers. MA–250B–82–306, TNO Report V98.754, The Netherlands Organization Nutrition and Food Research Institute, Zeist, The Netherlands.

Hardy, C.J., Sharman, I.J., and Clark, G.C. 1991. Assessment of cardiac sensitisation potential in dogs: Comparison of HFA 134a and A12. Report No. CTL/C/2521. Huntingdon Research Centre, Huntingdon, Cambridgeshire, U.K.

6. *Hydrogen cyanide (HCN)*—i. *Description*. Hydrogen cyanide is a colorless, rapidly acting, highly poisonous gas or liquid having an odor of bitter almonds. Most HCN is used as an intermediate at the site of production. Major uses include the manufacture of nylons, plastics, and fumigants; it is also used in electroplating and mining. Exposures to HCN may occur in industrial situations as well as from cigarette smoke, combustion products, and naturally occurring cyanide compounds in foods.

HCN is a systemic poison; toxicity is due to inhibition of cytochrome oxidase which prevents cellular utilization of oxygen. Lack of oxygen supply to the brain results in loss of consciousness, respiratory arrest, and, ultimately, death. Stimulation of the chemoreceptors of the carotid and aortic bodies produces a brief period of hyperpnea; cardiac irregularities may also occur. These mechanisms of action are the same for all species.

Inhalation studies resulting in sublethal effects such as incapacitation and changes in respiratory and cardiac parameters were described for the monkey, rat, and mouse; lethality studies were available for the rat, mouse, and rabbit. Exposure durations ranged from a few seconds to 24 hours. Regression analyses of the exposure duration-concentration relationships for both incapacitation and lethality for the monkey determined that the relationship is $C^2 \times t = k$ and that the relationship for lethality (based on rat data) is $C^{2.6} \times t = k$. Although human exposures have occurred, no reliable data on exposure concentrations were available.

The AEGL-1 was not determined because serious effects may occur at concentrations below those causing irritation or notable discomfort. In addition, the onset of serious effects is very rapid.

The AEGL-2 was based on a concentration of 60 ppm for 30 minutes which resulted in a slight depressive effect on the central nervous system of monkeys as evidenced by changes in electroencephalograms; there was no physiological response (Purser, 1984; Purser et al., 1984). The mechanism of action of HCN is the same for all mammalian species, but the rapidity of the toxic effect may be related to relative respiration rates as well as pharmacokinetic considerations. The monkey is an appropriate model for extrapolation to humans as the respiratory systems of monkeys and humans are similar. Because the monkey is an appropriate model and the mechanism of action of HCN is the same for all species, an interspecies UF of 2 was applied. Humans may differ in their sensitivity to HCN but no data regarding specific differences were located in the available literature. Therefore, an intraspecies UF of 3 was applied. The 30-minute concentration of 60 ppm was divided by a combined interspecies and intraspecies UF of 6 and scaled across time for the AEGL specified exposure periods using the relationship $C^2 \times t = k$. The safety of the 10- and 30-minute values are supported by monitoring studies in which concentrations of 10–15 ppm produced central nervous system effects in some workers.

The rat provided the only data set for calculation of LC_{01} values for different time periods (E.I. du Pont de Nemours and Company, 1981). The LC_{01} values were considered the threshold for lethality and were used as the basis for deriving AEGL-3 values. The mouse, rat, and rabbit were equally sensitive to the lethal effects of HCN as determined by similar LC_{50} values for the same time periods. In an earlier study, times to death for several animal species showed that mice and rats may be slightly more sensitive to HCN than monkeys (and presumably humans). The differences in sensitivity were attributed, at least partially, to the more rapid respiratory rate of the rodent species. Because LC_{50} values for several species were within a factor of 1.5 of each other, an interspecies UF of 2 was applied. Humans may differ in their sensitivity to HCN but no data regarding specific differences were located in the available literature. Therefore, an intraspecies UF of 3 was applied to protect sensitive individuals. The 15- and 30-minute and 1-hour LC_{01} values, 138, 127, and 88 ppm, respectively, were divided by a total UF of 6. The 15-minute value was time scaled to 10 minutes to derive the 10-minute AEGL-3, the 30-minute LC_{01} was used for the 30-minute AEGL-3 value, and the 60-minute LC_{01} was used to calculate the 1-, 4-, and 8-hour AEGL-3 concentrations. For the AEGL-3 values, scaling across time utilized the lethal concentration-exposure duration relationship for the rat, $C^{2.6} \times t = k$.

The proposed values appear in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDROGEN CYANIDE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	NA[1]	NA	NA	NA	NA	Serious effects may occur below detectable concentrations or concentrations causing discomfort
AEGL-2 (Disabling)	17 (19)	10 (11)	7.1 (7.8)	3.5 (3.9)	2.5 (2.8)	Slight central nervous system depression—monkey (Purser, 1984)
AEGL-3 (Lethality)	27 (30)	21 (23)	15 (17)	8.6 (9.7)	6.6 (7.3)	Lethality (LC_{01})—rat (E.I. du Pont de Nemours, 1981)

[1] Not appropriate.

ii. *References.*

E.I. du Pont de Nemours and Company. 1981. Inhalation Toxicity of Common Combustion Gases. Haskell Laboratory Report No. 238–81. Haskell Laboratory, Newark, DE.

Purser, D.A. 1984. A bioassay model for testing the incapacitating effects of exposure to combustion product atmospheres using cynomolgus monkeys. *Journal of Fire Sciences.* 2:20–36.

Purser, D.A., Grimshaw, P., and Berrill, K.R. 1984. Intoxication by cyanide in fires: A study in monkeys using polyacrylonitrile. *Archives of Environmental Health.* 39:394–400.

7. *Hydrogen fluoride (HF)*—i. *Description.* Hydrogen fluoride is a colorless, highly irritating and corrosive gas. Reaction with water is rapid, producing heat and hydrofluoric acid. Hydrogen fluoride is used in the manufacture of artificial cryolite; in the production of aluminum, fluorocarbons, and uranium hexafluoride; as a catalyst in alkylation processes in petroleum refining; in the manufacture of fluoride salts; and in stainless steel pickling operations. It is also used to etch glass and as a cleaner in metal finishing processes.

Hydrogen fluoride is a severe irritant to the eyes, skin, and nasal passages; high concentrations may penetrate to the lungs resulting in edema and hemorrhage. Data on irritant effects in humans and lethal and sublethal effects in six species of mammals (monkey, dog, rat, mouse, guinea pig, and rabbit) were available for development of AEGLs. The data were considered adequate for derivation of the three AEGL classifications for five exposure periods. Regression analyses of the reported concentration-exposure durations for lethality for the animal species determined that the relationship between concentration and time is $C^2 \times t = k$.

The AEGL-1 values were based on the observation that human volunteers could tolerate exposure to a concentration of 2 ppm for 6 hours with only mild irritation of the eyes, skin, and upper respiratory tract (Largent, 1960, 1961). This concentration was adjusted by an UF of 3 to protect sensitive individuals and scaled to the 30-minute and 1-, 4-, and 8-hour exposure durations using $C^2 \times t = k$. The factor of 3 was selected because hydrogen fluoride reacts chemically with the tissues of the respiratory tract; the adverse effects are unlikely to differ among individuals. The resulting derived values, 2.3, 1.6, 0.82, and 0.58 ppm, were rounded to the nearest whole integers of 2.0, 2.0, 1.0, and 1.0, respectively, by the NAC/AEGL Committee. Because irritant properties would not change greatly between the 10-minute and 30-minute time frames, the 10-minute AEGL-1 was set at the same value of 2.0 ppm as the 30-minute AEGL-1.

The 10-minute AEGL-2 value was based on an absence of serious pulmonary or other adverse effects in rats during direct delivery of HF to the trachea for an exposure period of 10 minutes (Dalbey, 1996; Dalbey et al., 1998). This reported concentration-exposure value of 950 ppm for 10 minutes was adjusted by a combined UF of 10: 3 for interspecies variation since the rat was not the most sensitive species in other studies (but direct delivery to the trachea is a sensitive model) and an intraspecies UF of 3 since HF reacts chemically and indiscriminately with the tissues of the respiratory tract and adverse effects are unlikely to differ among individuals.

The 30-minute and the 1-, 4- and 8-hour AEGL-2 values were based on a study in which dogs exposed to 243 ppm for 1 hour showed signs of more than mild irritation, including blinking, sneezing, and coughing (Rosenholtz et al., 1963). The 1-hour value of 243 ppm was adjusted by a total UF of 10: 3 for intraspecies variation since the dog is a sensitive species for sensory irritation and 3 for intraspecies variation since HF reacts chemically and indiscriminately with the tissues of the respiratory tract and effects are unlikely to differ among individuals. The values were scaled across time using $C^2 \times t = k$ where the value of n = 2 was derived from concentration: Exposure duration relationships based on lethality.

The 10-minute AEGL-3 value was based on the reported 10-minute lethal threshold in orally cannulated rats of 1,764 ppm (Dalbey, 1996; Dalbey et al., 1998). This value was rounded down to 1,700 ppm and adjusted by UFs of 3 for interspecies differences (LC_{50} values differ by a factor of approximately 2–4 between the mouse and rat) and 3 for intraspecies differences since HF reacts chemically and indiscriminately with tissues of the respiratory tract and effects are unlikely to differ among individuals. The total adjustment for UFs for the 10-minute AEGL-3 value was 10.

The 30-minute and the 1-, 4-, and 8-hour AEGL-3 values were derived from a reported 1-hour exposure resulting in no deaths in mice (Wohlslagel et al., 1976). The data indicated that the value of 263 ppm was the threshold for lethality. A comparison of LC_{50} values among species in several studies determined that the mouse was the most sensitive species in lethality studies. The 1-hour value of 263 ppm was adjusted by an interspecies UF of 1 since the mouse was the most sensitive species and intraspecies UF of 3 since HF reacts chemically and indiscriminately with tissues of the respiratory tract and effects are unlikely to differ among individuals. A modifying factor of 2 was applied to account for the steepness of the lethal dose-response curve and the value was scaled to the other AEGL-specified exposure periods using a value of n = 2.

Based on the extensive database involving both human and animal exposures (six species of mammals) for various exposure durations, confidence in the AEGL values is high. Values are summarized in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDROGEN FLUORIDE (HF) [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	2 (1.6)	2 (1.6)	2 (1.6)	1 (0.8)	1 (0.8)	Irritation in humans (Largent, 1960; 1961)
AEGL-2 (Disabling)	95 (78)	34 (28)	24 (20)	12 (9.8)	8.6 (7.0)	NOAEL for lung effects in cannulated rats (Dalbey, 1996; Dalbey et al., 1998);[1] sensory irritation in dogs (Rosenholtz et al., 1963)[2]
AEGL-3 (Lethality)	170 (139)	62 (51)	44 (36)	22 (18)	15 (12)	Lethality threshold in cannulated rats (Dalbey, 1996; Dalbey et al., 1998);[3] Lethality threshold in mice (Wohlslagel et al., 1976)[4]

[1] 10-minute AEGL-2 value.
[2] 30-minute and 1-, 4-, and 8-hour AEGL-2 values.
[3] 10-minute AEGL-3 value.
[4] 30-minute and 1-, 4-, and 8-hour AEGL-3 values.

ii. *References.*

Dalbey, W. 1996. Evaluation of the toxicity of hydrogen fluoride at short exposure times. Petroleum Environmental Research Forum Project 92–09, performed at Stonybrook Laboratories Inc., Pennington, NJ.

Dalbey, W., Dunn, B., Bannister, R., Daughtrey, W., Kirwin, C., Reitman, F., Steiner, A., and Bruce, J. 1998. Acute effects of 10-minute exposure to hydrogen fluoride in rats and derivation of a short-term exposure limit for humans. *Regulatory Toxicology and Pharmacology*. 27:207–216.

Largent, E.J. 1960. The metabolism of fluorides in man. *American Medical Association Archives of Industrial Health*. 21:318–323.

Largent, E.J. 1961. Fluorosis: The Health Aspects of Fluorine Compounds. Ohio State University Press, Columbus, OH.

Rosenholtz, M.J., Carson, T.R., Weeks, M.H., Wilinski, F., Ford, D.F., and Oberst, F.W. 1963. A toxicopathologic study in animals after brief single exposures to hydrogen fluoride. *American Industrial Hygiene Association Journal*. 24:253–261.

Wohlslagel, J., DiPasquale, L.C., and Vernot, E.H. 1976. Toxicity of solid rocket motor exhaust: Effects of HCl, HF, and alumina on rodents. *Journal of Combustion Toxicology*. 3:61–69.

8. *Hydrogen sulfide (*H_2S)—i. *Description.* The AEGL-1 was based on persistent odors, eye and throat irritation, headache, and nausea in six workers exposed to a mean concentration of 0.09 ppm H_2S for approximately 5 hours in a monitoring van downwind from an oil refinery (TNRCC, 1998). An UF of 3 was applied to account for intraspecies variability since minor irritation is not likely to vary greatly between individuals. The value was flat-lined across the 10- and 30-minute and 1-, 4-, and 8-hour exposure time points. The flat-lining approach was considered appropriate since mild irritant effects generally do not vary greatly over time.

The AEGL-2 was based on focal areas of perivascular edema and an increase in protein and lactic acid dehydrogenase (LDH) in bronchioalveolar lavage fluid in rats exposed to 200 ppm hydrogen sulfide for 4 hours (Green et al., 1991; Khan et al., 1991). An UF of 3 was used to extrapolate from animals to humans since rat and mouse data suggest little interspecies variability. An UF of 3 was also applied to account for sensitive individuals since data suggest little strain variability of hydrogen sulfide toxicity among rats (total UF = 10). The 4-hour experimental value was then scaled to the 10- and 30-minutes and 1- and 8-hour time points, using $C^{4.36} \times t = k$. The exponent of 4.36 was derived from rat lethality data ranging from 10-minutes to 6-hour exposure duration.

The AEGL-3 was based on a 1-hour no-effect-level for death in rats (504 ppm) (MacEwen and Vernot, 1972). An UF of 3 was used to extrapolate from animals to humans since rat and mouse data suggest little interspecies variability. An UF of 3 was also applied to account for sensitive individuals since data suggest little strain variability of hydrogen sulfide toxicity among rats (total UF = 10). The value was then scaled to the 10- and 30-minutes and 1-, 4-, and 8-hour time points, using $C^{4.36} \times t = k$. The exponent of 4.36 was derived from rat lethality data ranging from 10 minutes to 6 hours exposure duration.

The calculated values are listed in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDROGEN SULFIDE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	0.03 (0.04)	0.03 (0.04)	0.03 (0.04)	0.03 (0.04)	0.03 (0.04)	Persistent odor, eye, and throat irritation, headache, nausea (TNRCC, 1998)
AEGL-2 (Disabling)	42 (59)	32 (45)	28 (39)	20 (28)	17 (24)	Perivascular edema, increased protein, and LDH in lavage fluid in rats (Green et al., 1991; Khan et al., 1991)
AEGL-3 (Lethality)	76 (106)	60 (85)	50 (71)	37 (52)	31 (44)	1 hour no-effect-level for death in rats (MacEwen and Vernot, 1972)

ii. *References.*

Green, F. H. Y., Schurch, S., and DeSanctis, G. T., et al. 1991. Effects of hydrogen sulfide exposure on surface properties of lung surfactant. *Journal of Applied Physiology*. 70:1943–1949.

Khan, A. A., Yong, S., and Prior, M. G., et al. 1991. Cytotoxic effects of hydrogen sulfide on pulmonary alveolar macrophages in rats. *Journal of Toxicology and Environmental Health*. 33:57–64.

MacEwen, J. D. and Vernot, E. H. 1972. Toxic Hazards Research Unit Annual Report. Aerospace Medical Research Laboratory, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio. Report No. ARML–TR–72–62. pp. 66–69.

TNRCC (Texas Natural Resources Conservation Commission). 1998. Memo from Tim Doty to JoAnn Wiersma. Corpus Christi Mobile Laboratory Trip, January 31–February 6, 1998; Real-Time Gas Chromatography and Composite Sampling, Sulfur Dioxide, Hydrogen Sulfide, and Impinger Sampling. April 20, 1998.

9. *Otto Fuel II (main component propylene glycol dinitrate; CAS No. 6423–43–4)*—i. *Description.* Otto Fuel II, a liquid propellant used exclusively by the U.S. Navy in torpedoes and other weapon systems, is a mixture of three synthetic compounds: 1,2-Propylene glycol dinitrate (PGDN), which is a nitrate ester explosive, dibutyl sebacate (a desensitizer), and 2-nitrodiphenylamine (a stabilizer). The primary component and the one responsible for the toxicity of Otto Fuel II is PGDN, a volatile liquid with a disagreeable odor. Because PGDN is the primary and most toxic component of Otto Fuel II and because only PGDN is relatively volatile compared with the other components, AEGLs have been derived in terms of PGDN with the notation that the values are appropriate for Otto Fuel II.

PGDN is a systemic toxicant with effects on the cardiovascular and central nervous systems. Its vasodilatory action results in headaches during human exposures. Symptoms of dizziness, loss of balance, nasal congestion, eye irritation, palpitations, and chest pains have also been reported. Methemoglobinemia has been reported at the high concentrations used in studies with animals.

Few data were available that met the definitions of AEGL endpoints. One inhalation study with 20 human subjects described effects of headaches and slight loss of balance at exposure concentrations of 0.1 to 1.5 ppm for exposure durations up to 8 hours (Stewart et al., 1974). Acute exposure of monkeys to concentrations of 70–100 ppm for 6 hours resulted in severe signs of toxicity including convulsions but no deaths (Jones et al., 1972). In the same study, exposure of rats to a higher concentration (#199 ppm for 4 hours) resulted in no toxic signs. Examination of the relationship between exposure duration and concentration for both mild and severe headaches in humans over periods of time of 1 to 8 hours determined that the relationship is $C^1 \times t = k$.

The AEGL-1 values were based on concentrations of 0.5 ppm and 0.1 ppm which were the thresholds for mild headaches at exposure durations of 1 and 6 hours, respectively (Stewart et al., 1974). This effect can be considered the threshold for mild discomfort (only one subject was affected at each exposure) which falls within the definition of an AEGL-1. The 0.5 ppm concentration was used to derive the 30-minutes and 1-hour AEGL-1 values and the 0.1 ppm concentration was used for the 4- and 8-hour values. Because the time and concentration values were based on the most sensitive subject, these concentrations were adjusted by an UF of 3 to account for additional differences in human sensitivity and scaled to the appropriate time periods using the $C^1 \times t = k$ relationship. An UF of 3 was considered sufficient as no susceptible populations were identified (the headache effect is the same as that experienced by heart patients medicated with nitroglycerin for angina and these concentrations are far below those inducing methemoglobinemia in infants); the vasodilatory effects of PGDN, responsible for the headaches, are not expected to vary greatly among individuals. The 10-minute AEGL-1 value was made equal to the 30-minute value.

The AEGL-2 values were based on a concentration of 0.5 ppm which caused severe headaches accompanied by dizziness in one subject and slight loss of equilibrium in two subjects in one of several sensitive equilibrium tests after 6 hours of exposure (Stewart et al., 1974). This concentration-exposure duration was considered the threshold for impaired inability to escape as defined by the AEGL-2. The 0.5 ppm concentration was adjusted by an intraspecies UF of 3 to protect sensitive individuals and scaled across time using the $C^1 \times t = k$ relationship as for the AEGL-1 in Unit III.B.9.

The AEGL-3 values were based on the exposure of squirrel monkeys to concentrations of 70–100 ppm for 6 hours which resulted in vomiting, pallor, cold extremities, semiconscousness, and clonic convulsions; these signs disappeared upon removal from the exposure chamber (Jones et al., 1972). The lower concentration, 70 ppm, was adjusted by a total UF of 10. An interspecies UF of 3 was chosen because both the monkey and human subjects showed changes in electrical activity of the brain at similar PGDN concentrations, the threshold for central nervous system depressants does not vary widely among mammalian species, and the monkey is an appropriate model for extrapolation to humans. An intraspecies UF of 3 was chosen because the threshold for central nervous system depression also does not vary greatly among individuals. Because the endpoint for the AEGL-3 values is different than the endpoint for the AEGLs-1 and -2 and no data on the relationship between concentration and exposure duration is available for the endpoint of central nervous system depression, the more conservative values of n = 3 and n = 1 were used to scale from 6 hours to the shorter- and longer-time periods, respectively.

The proposed values appear in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR OTTO FUEL II [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1[a] (Nondisabling)	0.33 (2.3)	0.33 (2.3)	0.17 (1.1)	0.05 (0.34)	0.03 (0.17)	Mild headaches in humans (Stewart et al., 1974)
AEGL-2 (Disabling)	6.0 (43)	2.0 (14)	1.0 (6.8)	0.25 (1.7)	0.13 (0.8)	Severe headaches and slight imbalance in humans (Stewart et al., 1974)
AEGL-3 (Lethality)	23 (165)	16 (114)	13 (93)	8.0 (57)	5.3 (38)	Convulsions in monkeys (Jones et al., 1972)

[a] The distinctive odor of PGDN will be noticeable to most individuals at the 0.33 and 0.17 ppm concentrations.

ii. *References.*

Jones, R.A., Strickland, J.A., and Siegel, J. 1972. Toxicity of propylene glycol 1,2-dinitrate in experimental animals. *Toxicology and Applied Pharmacology*. 22:128–137.

Stewart, R.D., Peterson, J.E., Newton, P.E., Hake, C.L., Hosko, M.J., Lebrun, A. J., and Lawton, G.M. 1974. Experimental human exposure to propylene glycol dinitrate. *Toxicology and Applied Pharmacology*. 30:377–395.

10. *1,1,1-Trichloroethane*—i. *Description.* 1,1,1-Trichloroethane is a colorless, nonflammable liquid used primarily as an industrial metal degreasing agent. It is also used as a solvent for adhesives, inks, and coatings

and as an aerosol propellant (Nolan et al., 1984). Solvent vapor is readily absorbed from the respiratory tract and distributed throughout the body, accumulating in tissues with high lipid content. In both humans and animals, the primary response to acute inhalation exposures involve effects on the central nervous system (CNS). This chemical is arrhythmogenic and there is some evidence that it produces transient hepatotoxicity (Mcleod et al., 1987; Stahl et al., 1969; Hodgson et al., 1989). It has little effect on other organs and does not seem to be a developmental toxin although reliable epidemiological data for humans are unavailable. 1,1,1-Trichloroethane does not seem to have carcinogenic activity based on the available animal studies. A considerable amount of human and animal data are available for derivation of AEGLs. Rat ataxia and lethality data were used for the regression analyses of the concentration-exposure durations. The relationship between time and concentration was $C^n \times t = k$, where n = 3.3 or 3.

The AEGL-1 was based on consistent complaints of eye irritation and slight dizziness experienced by humans in an atmosphere controlled setting with exposures of 450 ppm for two 4-hour sessions separated by a 1.5-hour interval (Salvini et al., 1971). Stewart et al., 1969, exposed human subjects to time-weighted average (TWA) concentration of 500 ppm for 7 hour repeatedly for 5 days, the only consistent complaint was mild sleepiness and failure of the Romberg test by two of the subjects which had trouble with this test initially. Torkelson et al. (1958) reported a NOAEL for the Romberg test in humans after exposure to a TWA of 506 ppm for 7.5 hour. For derivation of the AEGL-1, the observations of Salvini et al. (1971) were used as the starting point for the threshold of eye irritation and very subtle CNS effects in humans at a concentration of 450 ppm for 4 hour . An UF of 2 was chosen based on the observation that the severity of the eye irritation did not increase with time and the threshold for mild CNS effects does not vary by more than two-three fold which should be protective of sensitive individuals. The resulting figure of 230 ppm was used at all time points based on the information reported by Salvini et al. (1971) indicating that this exposure represented a threshold for these effects and the severity did not increase with duration of exposure.

The AEGL-2 was based on more serious CNS effects which might impede escape. Mullin and Krivanek (1982) calculated EC_{50} values for ataxia in rats at 30-minute and 1-, 2-, and 4-hour exposures to be 6,740; 6,000; 4,240; and 3,780 ppm. These values were used as the basis for AEGL-2 derivation using an UF of 10 and extrapolations were made to the 10-minute and 8-hour time points using the equation $C^n \times t = k$, where n = 3.3 based on the data presented by Mullin and Krivanek (1982). An UF of 10 was applied which includes a factor of 3 to account for sensitive individuals and a factor of 3 for interspecies extrapolation. These UFs were based on the two-three fold variation of minimum alveolar concentration for anesthesia (MAC) values among humans and the similarities in toxicity, metabolism, and excretion of 1,1,1-trichloroethane in rats compared to humans. The resulting concentrations are similar to the concentration exposure durations applied in experimental human studies which resulting in effects that could impede escape, i.e., CNS intoxication.

The AEGL-3 values were derived from a lethality concentration-effect curve in the rat for a 6-hour exposure duration (Bonnet et al., 1980). The LC_0 was conservatively estimated from this curve as a concentration of about 7,000 ppm for a 6-hour exposure duration. An extrapolation was made to the 30-minute and 1-, 4-, and 8-hour time points using the equation $C^n \times t = k$, where n = 3 based on the rat lethality data. An UF of 10 was applied. An intraspecies factor of 3 was used to account for sensitive individuals based on the two-three fold variation of MAC values observed among humans and an interspecies factor of 3 was used because of the similarities in toxicity, metabolism, and excretion of 1,1,1-trichloroethane in rats compared to humans. The resulting concentrations were multiplied by a modifying factor of 3 in order to achieve a reasonable concentration at which humans might experience life-threatening toxic effects. This factor is justified by the existence of a higher blood: Air partition coefficient for rats compared to humans. This principle determines the relative blood concentration for a vapor and because it is higher for rats, a higher blood concentration is achieved.

The proposed values appear in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR 1,1,1-TRICHLOROETHANE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	230 (1,252)	230 (1,252)	230 (1,252)	230 (1,252)	230 (1,252)	Eye irritation and slight dizziness in humans observed (Salvini et al., 1971)
AEGL-2 (Disabling)	930 (5,064)	670 (3,650)	600 (3,270)	380 (2,070)	310 (1,688)	EC_{50} for ataxia in rats (Mullin and Krivanek, 1982)
AEGL-3 (Lethality)	4,800[1] (26,135)	4,800 (26,135)	3,800 (20,690)	2,400 (13,067)	1,900 (10,345)	LC_0 extrapolated (Bonnet et al., 1980)

[1]The 30-minute value was used as the 10-minute value so as not to exceed the threshold for cardiac sensitization observed in dogs (Reinhardt et al., 1973).

ii. References.

Bonnet, P., Francin, J.M., Gradiski, D., Raoult, G., and Zissu, D. 1980. Determination of the median lethal concentration of principle chlorinated aliphatic hydrocarbons in the rat *Archives des Maladies Professionelles*. 41:317–321.

Mullin, L.S. and Krivanek, N.D. 1982. Comparison of unconditioned avoidance tests in rats exposed by inhalation to carbon monoxide, 1,1,1-trichloroethane, and toluene or ethanol. *Neurotoxicology*. 1:126–137.

Reinhardt, C.F., Mullin, L.S., and Maxfield, M.E. 1973. Epinephrine-induced cardiac arrhythmia potential of some common industrial solvents. *Journal of Occupational Medicine*. 15(12):953–955.

Salvini, M. S. and Binaschi, M. Riva. 1971. Evaluation of the psychophysiological functions in humans exposed to the threshold limit value of 1,1,1-trichloroethane. *British Journal of Industrial Medicine*. 28(3):286–292.

List of Subjects

Environmental protection, Hazardous substances.

Dated: March 8, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–6397 Filed 3–14–00; 8:45 am]

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Federal Register

Wednesday,
March 15, 2000

Part IX

Environmental Protection Agency

Pesticide Tolerance Reassessment and Reregistration; Proposed Public Participation Process; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00645; FRL–6496–2]

Pesticide Tolerance Reassessment and Reregistration; Proposed Public Participation Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces EPA's proposal for a public participation process for pesticide tolerance reassessment and reregistration. This proposal is in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency and stakeholder involvement in the development of pesticide risk assessments and risk management documents and decisions. EPA and USDA have been actively employing a pilot public participation process for tolerance reassessment and reregistration of organophosphate pesticides for over 1 year (since August 1998), which was developed in consultation with the Tolerance Reassessment Advisory Committee (TRAC). Consideration must now be given as to whether this public participation process or some modification of it should be adopted as the final process, and whether it should be used for tolerance reassessment and reregistration of all pesticides.

DATES: Comments, identified by docket control number OPP–00645, must be received by EPA on or before April 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00645 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvannia Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general; however, a wide range of stakeholders will be interested in submitting comments on the public participation process that EPA is proposing for tolerance reassessment and reregistration, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically. You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the pilot public participation process that is now being used for the organophosphate pesticides, you can also go directly to the Office of Pesticide Programs' (OPP) organophosphate pesticide web page at http://www.epa.gov/pesticides/op/.

B. In Person. The Agency has established an official record for this action under docket control number OPP–00645. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00645 in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvannia Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00645. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential

will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1.Explain your views as clearly as possible.

2.Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve this notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public comment a proposal for a public participation process for pesticide tolerance reassessment and reregistration. This proposed public participation process was developed with USDA.

Public comment received as a result of this notice will be considered by EPA and USDA and a final public participation process will be developed and released to the public in a notice published in the **Federal Register**. Implementation of the final public participation process will begin according to a schedule established and published in the final notice.

This notice discusses 3 public participation processes: Pilot, modified, and final. The pilot public participation process refers to the process that EPA and USDA are now using for organophosphate pesticide tolerance reassessment and reregistration. The modified public participation process refers to the process that EPA and USDA proposed to the Tolerance Reassessment Advisory Committee (TRAC) during their October 20–21, 1999, meeting. The final public participation process refers to the process that is being proposed in this notice. In addition, for the purposes of this notice the words ''public'' and ''stakeholders'' are used interchangeably.

V. Background

A. Food Quality Protection Act—Process Improvements for Tolerance Reassessment and Reregistration

The Food Quality Protection Act (FQPA) of 1996 amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). These amendments fundamentally changed the way EPA regulates pesticides. The many new FQPA requirements included a new safety standard (i.e., reasonable certainty of no harm) that must be applied to all pesticides used on foods. EPA recognized that FQPA implementation would require changes to the Agency's existing risk assessment processes and its approach to communication with the public (stakeholders). The process improvements would be responsive to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

B. Inception of TRAC

TRAC was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT). TRAC provided a forum for a diverse group of individuals representing a broad range of interests and backgrounds from across the country to consult with and make recommendations to the Administrator of EPA and the Secretary of USDA on an approach for pesticide tolerance reassessment and reregistration, including those for organophosphate pesticides, as required by FQPA. The Committee held seven public meetings: May 28–29; June 22–23; July 13–14; July 28–29; September 15–16, 1998; and April 27–28 and October 20–21, 1999. TRAC membership included approximately 45 members approved by the Deputy Administrator of EPA and the Deputy Secretary of USDA. Members were selected based on their relevant experience and diversity of perspectives on organophosphate pesticide and food safety issues, including those from the following sectors: Environmental and public interest groups; pesticide industry and trade associations; user, grower and commodity organizations; pediatric and public health organizations; Federal agencies; Tribal, State, and local governments; academia; and consumer groups. The Deputy Administrator of EPA and the Deputy Secretary of USDA served as TRAC Co-Chairs.

C. Development of the Pilot Public Participation Process

In the summer of 1998, EPA, USDA, and TRAC set out to design a process that would increase transparency of regulatory processes and consultation with affected stakeholders; expand public access to risk assessment and risk management processes; and find more effective ways for the public to participate at critical times in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. At the July 14, 1998, meeting of the TRAC, EPA, and USDA announced that one of the public participation process options considered by TRAC would be implemented as a pilot. By piloting a public participation process, EPA, USDA, and TRAC could test whether the process achieved the goals of increasing transparency and stakeholder consultation. A pilot effort would provide an opportunity to identify issues associated with public release of risk assessments and management documents, and to evaluate how best to obtain public input into the risk assessment and risk management development processes.

D. Need for a Final Public Participation Process

EPA and USDA have been actively employing the pilot public participation process for tolerance reassessment and reregistration of organophosphate pesticides for over 1 year (since August 1998). Consideration must now be given as to whether this process or some modification of it should be adopted as the final process, and whether it should be used beyond the tolerance reassessment and reregistration for organophosphate pesticides and be applied to all pesticides.

In addition, EPA and USDA will soon begin to consider the stakeholder involvement that will be needed for the cumulative assessment stage. FQPA requires the assessment of cumulative effects of pesticides that share a common mechanism of toxicity. Once the individual pesticide risk assessments are complete and the Agency has a cumulative assessment methodology, EPA and USDA will encourage the public to participate in the cumulative assessment process.

VI. The Pilot Public Participation Process

A. Description of the Pilot Public Participation Process

The following provides a brief overview of the pilot public participation process:

Phase 1—Registrant ''Error Only'' Review (30 days). EPA sends its preliminary human health and ecological risk assessments to registrant(s) of the pesticide for a 30-day error correction review, and to USDA. They are asked to identify any computational or other errors that EPA has made in developing its preliminary assessment of the pesticide's risks.

Phase 2—EPA Considers Registrants' Error Comments (up to 30 days). EPA summarizes and considers comments from registrants and USDA. EPA incorporates comments or makes changes in the preliminary risk assessments to correct any errors identified. By the end of this phase, EPA opens a public docket for the pesticide.

Phase 3—Public Comment on Preliminary Risk Assessments (60 days). EPA publishes a **Federal Register** (FR) Notice of Availability announcing its preliminary risk assessments, and opening a 60-day public review and comment period. Registrants, grower groups, other stakeholders, and the public are encouraged to submit data and other information to refine EPA's preliminary risk assessments. They also may begin submitting risk management proposals to address any risk concerns identified in the document. EPA may meet with registrants and other stakeholders to discuss risk related data, use information, and risk assessment/risk management alternatives.

Phase 4—EPA Revises Risk Assessments (up to 90 days). EPA summarizes and considers comments, data, and risk mitigation proposals received during the Phase 3 public comment period. EPA develops the revised risk assessments and sends them to USDA for review. EPA and USDA may host public meetings to share the revised risk assessments with interested stakeholders and discuss risk management ideas.

Phase 5—EPA Solicits Risk Management Ideas (60 days). EPA releases the revised risk assessments to the public for viewing in the public docket. EPA publishes an FR Notice of Availability opening a 60-day public consultation period during which risk management proposals are solicited. Registrants, grower groups, other stakeholders, and the public are encouraged to participate and submit their risk management proposals. EPA and USDA may meet with registrants and other stakeholders to discuss risk management alternatives and strategies. Meeting minutes will be included in the public docket.

Phase 6—EPA Develops Risk Management Strategies (up to 60 days). EPA considers all risk management proposals received. With input from USDA, EPA develops risk management strategies that ultimately will contribute to the Agency's risk management decisions for this and other organophosphate pesticides.

B. Success of the Pilot Public Participation Process

To date, the pilot public participation process has provided EPA and USDA with a great deal of information for use in refining the risk assessments and in developing risk management options. Stakeholder participation has risen substantially. In the fall of 1999, EPA and USDA took a qualitative look at the strengths and challenges of the pilot public participation process. The following provides a qualitative look at the comments EPA received from registrants and other stakeholders during the phases of the pilot public participation process, and how these comments affected the risk assessments and process schedules.

Registrants were given an opportunity in Phase 1 to identify computational errors as well as grammatical and spelling errors in the preliminary risk assessments. In this way, if the Agency agreed with the registrant's error identification, EPA could correct the errors in Phase 2 prior to the release of the preliminary risk assessments to the public docket (Phase 3). EPA would inform the public of the registrant's error comments and the corrective actions taken by the Agency. However, the large majority of comments received from registrants during their error-identification period were considered to be non-error comments. In the cases where errors were identified, only a few resulted in a substantial change to the preliminary risk assessments and a delay in the release of the assessments to the public. The majority of non-error comments received were general comments about the preliminary risk assessments and promises to submit new studies. New studies were submitted in a few instances.

Comments received during the public comment period on the preliminary risk assessments (Phase 3) substantially affected approximately one-third of the organophosphate preliminary risk assessments, typically because of the submission of information on the pesticide's use and usage, studies, or other technical information. In several cases, registrants submitted new studies and studies to confirm or upgrade existing, submitted studies.

The Agency and USDA used Phase 4 to revise the preliminary risk assessments based on public comment. EPA released the revised risk assessments and related documents to the public in Phase 5 and initiated a public participation period for risk management. Risk management comments and ideas were usually received by EPA during meetings and conference calls rather than through written submissions. Minutes of meetings and conference calls were recorded and placed in the public docket.

C. A Proposal for a Final Public Participation Process was Made at the October 20–21, 1999, TRAC Meeting

EPA and USDA proposed a modified public participation process to TRAC during their October 20–21, 1999, meeting. EPA and USDA approached TRAC with a proposal because the pilot public participation process had been tested for over 1 year and it was time to consider a final public participation process. The proposed modified public participation process was based on USDA's and EPA's experiences using the pilot public participation process. The proposed modified public participation process included several stakeholder participation enhancements. A special emphasis was placed on the public involvement activities that take place prior to Phase 1—before the start of the public participation process—to ensure that the most complete and accurate set of information was being used in the risk assessments. In addition, stakeholders would be much more informed of the schedule of pesticides that EPA and USDA would be working on in the next year, and would know when EPA and USDA needed information. Conference calls and public meetings (technical briefings that describe the revised risk assessments in general, and stakeholder meetings where the description of the risk assessments is focused on a particular pesticide user group's area of concern) would be used to initiate the public comment period on the risk assessments, engage the public in a discussion of the risk assessments, and begin the discussion of risk management.

The proposed modified public participation process would have eliminated a public comment period on the preliminary risk assessments. This modification was a result of the recognition that the risk assessments

now under development contain many more refinements than previous preliminary risk assessments. In the past, the preliminary risk assessments that were released to the public did not usually have refinements, such as probabilistic dietary risk assessment tools or the data needed for the use of these tools. The Agency saw the benefit of releasing these unrefined, preliminary risk assessments to the public as a means of encouraging the submission of data that could be used for refinement purposes. The risk assessments being developed now typically contain these refinements, therefore, the Agency proposed that 2 comment periods on the refined risk assessments were not necessary. Even though the proposed modified public participation process would have eliminated a public comment period on the preliminary risk assessments, EPA and USDA would continue to encourage and organize stakeholder communications throughout the modified public participation process through a series of meetings and conference calls.

In addition, EPA and USDA asked TRAC members if the modified public participation process should be applied to pesticides other than the organophosphates, which currently are the only class of pesticides in the pilot public participation process.

D. Summary of TRAC's Feedback

During the October 20–21, 1999, TRAC meeting, TRAC members verbally responded to the proposed modified public participation process that EPA and USDA presented. Many TRAC members voiced strong support for increased and enhanced EPA and USDA activities in the months prior to formal start of the public participation process (i.e., Pre-Phase 1), including stakeholder meetings and conference calls, the release to the public at the beginning of the process of a general pesticide use and usage description and the schedule of pesticides entering the process, and discussions with pesticide registrants and stakeholders about the submission of data and the data submission schedule.

Several TRAC members voiced concern over their perceived reduction in public participation opportunities resulting from the elimination of one risk assessment comment period, and also objected to the proposed plan for having public comment on the risk assessments and risk management options occur during the same phase. Certain TRAC members voiced concern that the risk management options issued for public comment would be perceived as the Agency's final risk management decision, giving stakeholders no real opportunity to weigh-in before the final decisions were made. Concern was also raised about issuing risk management decisions on any uses of a pesticide before the conclusion of the public participation process; however, the Agency has always reserved this authority if certain uses of a pesticide warranted action because of the risk levels identified in the risk assessments.

TRAC members expressed support for EPA issuing only highly refined risk assessments for public comment, and for longer public comment periods. Support was also expressed for technical briefings and stakeholder meetings at the time the risk assessments are released for public comment, and for an enhanced public role for USDA at that time, including the organization of stakeholder conference calls and meetings. In addition, TRAC members supported the application of the final public participation process to all other pesticides scheduled for tolerance reassessment and reregistration.

VII. Proposal for the Final Tolerance Reassessment and Reregistration Process

A. EPA and USDA's Consideration of a New Public Participation Process

EPA and USDA have considered the comments received from TRAC during their October 20–21, 1999, meeting, and are releasing in this notice a proposal for a final public participation process. EPA and USDA reconsidered the process approach presented to TRAC, and have developed a new public participation process proposal. The new proposed public participation process melds together the pilot public participation process and the modified public participation process that was proposed to TRAC. The new proposed public participation process retains the 6 phases and much of the structure of the pilot public participation process currently used for the organophosphate pesticides, and it incorporates the considerable enhancements to public participation found in the modified public participation process that was presented to TRAC. These enhancements include increasing the communication with stakeholders prior to the initiation of the public participation process, the addition of conference calls with stakeholders throughout the process, the lengthening of a public participation phase, and the release of risk management proposals to the public at the beginning of Phase 5. In addition, the proposed public participation process emphasizes increased communication among those Federal government agencies concerned with pesticides.

EPA is also proposing that this public participation process be applied to all pesticides scheduled for tolerance reassessment and reregistration. Interim planning for bringing non-organophosphate pesticides under a formal public participation process is discussed at the end of this notice.

The Agency anticipates that modifications to the public participation process will be appropriate for pesticides with limited use and usage, low risk concerns, small numbers of pesticide users, or other factors. EPA will inform the public of modifications to the public participation process that are warranted for a pesticide. For pesticides meeting these criteria, alterations to the public participation process will most typically include a tailoring of the stakeholder communication opportunities. For example, the public participation process could be modified for a pesticide with a small number of users by the substitution of a stakeholder meeting(s) for a technical briefing upon release of the risk assessments for public comment (Phase 3) (stakeholder meetings are opportunities for stakeholder groups to meet with EPA, USDA, and other appropriate Federal government agencies to discuss specific uses of the pesticide that are of significant concern to them, whereas technical briefings provide a general overview of the pesticide's risk assessments). In another example, a pesticide with limited use and usage, low risk concerns, and highly refined risk assessments may only need one public comment period on the risk assessments as long as ample public consultation opportunities are utilized. EPA will inform the public of pesticides that will have modified public participation processes.

EPA will continue to issue risk management decisions on certain uses of a pesticide at any time before or during the public participation process if such action is warranted by high risk levels identified in the risk assessments. While EPA may exercise this authority at anytime during this process, the Agency will ensure that stakeholders and other Federal government agencies will be informed and involved in the decisionmaking process through meetings and conference calls.

B. Proposed Public Participation Process

The proposed final public participation process contains many of the same elements of the Pilot Public

Participation Process and enhances public participation at important stages. It must be noted that the proposed final public participation process does not use the word ''preliminary'' to describe the risk assessments that are released to the public in the early phases of the public participation process. This is because the risk assessments now under development contain many more refinements than previous preliminary risk assessments.

Pre-Phase 1—Public Engagement. A significant focus of the process is to engage stakeholders as early as possible to ensure that risk assessments reflect actual use and usage, available data, current labeling, and other information on use practices that stakeholders can provide. In the months prior to the formal initiation of the public participation process (which starts with release of the risk assessments to the registrants for error correction), USDA, EPA, and other Federal government agencies (e.g., the Department of Health and Human Services (HHS), and the Food and Drug Agency (FDA)) will work cooperatively to organize meetings with interested stakeholders to discuss pesticide use and usage, and to encourage them to share their information with the agencies.

In addition, EPA will inform the public well in advance about pesticides that are scheduled for the public participation process. Registrants will be asked to identify any ongoing studies and analyses that are relevant to the risk assessments, and EPA will announce for each pesticide the due dates for the submission of data, information, and analyses. In this way, the public will be able to prepare for the initiation of the public participation process for pesticides that they may be interested in, including the preparation of data and information for consideration by the agencies.

Phase 1—Risk Assessment Registrant Error-Only Review, Chemical Use and Usage Description, and Federal Government Agency Engagement (30 Days). Phase 1 of the proposed public participation process is the same as the pilot public participation process, in that the risk assessments are sent to the pesticide's registrant(s) for error correction, but an increased effort at disseminating information to the public has been added as well as enhanced Federal agency communication. EPA initiates the public participation process by transmitting its human health and ecological risk assessments to registrant(s) of the pesticide for a 30-day error correction review. They are asked to identify and correct any computational or other errors that EPA has made in developing its assessment of the pesticide's risks. Registrants will be asked again about due dates for the submission of data and information to EPA, and for an indication of how the study or analysis may change the risk assessments. EPA will not delay its work in assessing the potential risks associated with the use of the pesticide when a study submission date is beyond the timeframe for the public participation process.

In addition, EPA recognizes that the public would find useful for their planning purposes a description of the pesticide that has started the public participation process. The Agency will publish a FR Notice of Availability announcing the release of the pesticide's use and usage description to the public docket and internet website for 30-day public comment. The pesticide's use and usage description would characterize the use, usage, and types of data and information used in the risk assessments.

At the same time that the risk assessments are sent to registrants, EPA transmits the risk assessments and related documents (including the pesticide's overview that summarizes the risk assessments, the Qualitative Usage Analysis, and the pesticide's use and usage description) to USDA and other appropriate Federal government agencies for review and comment.

Phase 2—Agency Considers Registrant Error Comments (Up to 30 Days). In Phase 2, EPA summarizes and considers the errors that have been identified by the registrant(s) and makes changes in the risk assessments to correct any errors, as appropriate. EPA will also address risk assessment comments received from other Federal government agencies. By the end of this phase, the risk assessments are prepared for public release. Discussions with other Federal government agencies on comments and issues will continue throughout the public participation process, as needed.

Phase 3—Public Participation Period: Public Comment on Risk Assessments and Risk Characterization (60–90 Days). Phase 3 provides the public with an opportunity to comment on the pesticide's risk assessments. The phase begins when EPA publishes a FR Notice of Availability of the risk assessments and related documents (e.g., overview, summary, table summarizing risk assessment information, registrant's error comments, and EPA's response to comments, etc.) for a 60 to 90-day public review and comment period. The summary documents will clearly characterize the risks associated with each use of the pesticide and include a use impact discussion that identifies possible pesticide alternatives for significant uses, thereby allowing the public to discern the Agency's level of concern (if any) for each use at this stage in the development of the risk assessments. All of the documents will be made available in the public docket and EPA's internet website. The length of the public comment period will be set according to the complexity of the risk issues associated with the pesticide in order to give stakeholders adequate time for review and comment.

In addition, an effort will be initiated among Federal government agencies to engage stakeholders in a dialogue on the risk assessments and risk characterization, and will continue through Phase 5 of the public participation process.

Phase 4—EPA Revises Risk Assessments and Develops Risk Management Proposal (up to 90 days). EPA considers stakeholders comments received during Phase 3's public comment period, and develops the revised risk assessments and a risk management proposal. An inter-Federal government agency senior management briefing will be held to discuss the revised risk assessments and risk management proposal.

USDA may organize conference calls with stakeholders to review and discuss the revised risk assessments and risk management proposal. Minutes from all meetings and conference calls will be included in the public docket. EPA and USDA will work to summarize and address the comments and ideas received during the stakeholder conference calls. In addition, an effort will be initiated among Federal government agencies to engage stakeholders in a dialogue on the risk assessments and risk characterization, and this effort will continue through Phase 5 of the public participation process.

A technical briefing and/or stakeholder meeting(s) (as appropriate for pesticides with limited use and usage, low risk concerns, small numbers of stakeholders, or other factors) will be held at the end of Phase 4 in order to share with the public the revised risk assessments and the range of possible risk management options.

Phase 5—EPA Solicits Comments on Risk Management Proposal (60 days). EPA publishes a FR Notice of Availability announcing the release to the public of the revised risk assessments and the Agency's response to public comments. This FR notice will also release EPA's risk management proposal, a use impact discussion that identifies possible pesticide alternatives for significant uses, and a transition

strategy, and open a 60-day comment period during which the public is encouraged to comment on the risk management proposal.

The effort among Federal government agencies to engage stakeholders in a dialogue on the risk management proposal will continue throughout Phase 5.

Phase 6—Develop Final Risk Management (up to 60 Days). In Phase 6, EPA summaries, reviews, and considers the comments, data, and risk management ideas and proposals received during the Phase 5 public comment period, and during stakeholder dialogue and the meetings that have occurred during Phases 3–5. With input from USDA and other Federal government agencies, EPA develops the risk management documents. EPA releases to the public the risk assessments, the response to public comments, and the risk management decisions for the pesticide.

VIII. Interim Public Participation Process

EPA and USDA are now considering how to accomplish the movement from the public participation process that was tested as a pilot (i.e., the pilot public participation process now used exclusively for organophosphate pesticides) to the public participation process that will be adopted for future pesticide tolerance reassessment and reregistration. The majority of organophosphate pesticides have made significant progress through the pilot public participation's phases, and many are nearing completion, therefore, the pilot public participation process will continue to be applied to those organophosphates. The public participation process that will be finalized after the notice and comment period described in this FR notice will be fully applied to pesticide tolerance reassessment and reregistration by 2001. An interim policy must be developed for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration development work in 2000.

The interim policy must take into account that the risk assessments are substantially complete for many of the non-organophosphate pesticides scheduled for 2000. An example of the public participation process that EPA is considering as an interim policy for pesticides that already have significant risk assessment work underway would involve: A registrant error correction period; a period for the Agency to respond to the registrant's error comments; the release of the refined risk assessments and risk characterizations to the public via the docket and internet without a formal public comment period; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management document to the public after the consideration of issues and discussions with stakeholders.

EPA and USDA are in the process of identifying the development status of each pesticide scheduled for tolerance reassessment and reregistration. EPA will inform stakeholders of the interim plan for each pesticide once a final public participation process is selected.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 9, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

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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. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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