NATIONAL

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Contents

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Vol. 65, No. 151

Friday, August 4, 2000

Separate Parts In This Issue

Editorial Note: In the Federal Register of August 2, 2000, the agency and page number listed under Part III at the end of that issue's table of contents were incorrect. Part III should have read, ''Department of Health and Human Services, Administration for Children and Families, 47618-47632.''

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 65, No. 151
Friday, August 4, 2000

Presidential Documents

Title 3—

The President

Proclamation 7332 of August 1, 2000

Helsinki Human Rights Day, 2000

By the President of the United States of America

A Proclamation

Twenty-five years ago today, in a world marked by brutal divisions and ideological conflict, the United States joined 33 European nations and Canada in signing the Helsinki Final Act. That watershed event established the Conference on Security and Cooperation in Europe (CSCE) and affirmed an international commitment to respect ''freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language, or religion.''

During the Cold War, the Helsinki Principles were the rallying point for courageous men and women who confronted tyranny—often at great personal risk—to win the fundamental freedoms set forth by the Final Act. Today, citizens of our vast Euro-Atlantic community from Vancouver to Vladivostok live by, or aspire to live, by those fundamental freedoms. The Helsinki Final Act has been instrumental in the progress we have made together toward building a Europe that is whole and free; a Europe where our partnership for peace is overcoming the possibility of war. The Helsinki Final Act continues to shape our vision for the future of transatlantic cooperation, and the Helsinki accords remain the basic definition of common goals and standards for how all countries in the new Europe should treat their citizens and one another.

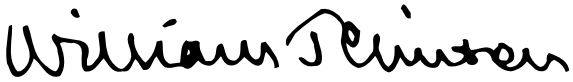
The evolution of the CSCE into the Organization for Security and Cooperation in Europe (OSCE) reflects the changing face of Europe. The OSCE's integrated structure of commitments in the areas of human rights, economics, arms control, and conflict resolution provides a defining framework for a free and undivided Europe. The United States will continue to promote the OSCE's efforts to build security within and cooperation among democratic societies; to defuse conflicts; to battle corruption and organized crime; and to champion human rights, fundamental freedoms, and the rule of law throughout the Euro-Atlantic community. We remain committed to the OSCE's essential work of bringing peace and civil society back to Bosnia and Kosovo, and we are grateful to the many dedicated men and women engaged in the OSCE's field missions, who in many ways are our front line of conflict prevention in Europe.

Today, as we mark the 25th anniversary of the Helsinki Final Act, the United States takes pride in remembering our role as one of its original signatories—a ringing call for freedom and human dignity that played a decisive role in lifting the Iron Curtain and ending the tragic division of Europe.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 1, 2000, as Helsinki Human Rights Day and reaffirm our Nation's support for the full implementation of the Helsinki Final Act. I urge the American people to observe this anniversary with appropriate programs, ceremonies, and activities that reflect our dedication to the noble principles of human rights and democracy. I also call upon the governments and peoples of all other

signatory states to renew their commitment to comply with the principles established and consecrated in the Helsinki Final Act.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 00–19939
Filed 8–2–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 2000–27 of July 21, 2000

Determination To Authorize the Furnishing of Emergency Military Assistance to the United Nations Mission in Sierra Leone (UNAMSIL), Countries Participating in UNAMSIL, and Other Countries Involved in Peacekeeping Efforts or Affiliated Coalition Operations With Respect to Sierra Leone

Memorandum for the Secretary of State [and] the Secretary of Defense

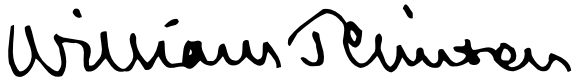
Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1)(A) (the ''Act''), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military assistance to UNAMSIL, countries currently or in the future participating in UNAMSIL, and other countries involved in peacekeeping efforts or affiliated coalition operations with respect to Sierra Leone, including the Government of Sierra Leone, and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a)(1) of the Act.

I therefore direct the drawdown of defense articles from the stocks of the Department of Defense, defense services from the Department of Defense, and military education and training of an aggregate value not to exceed $18 million to UNAMSIL and such countries to support peacekeeping efforts with respect to Sierra Leone.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 21, 2000.

[FR Doc. 00–19940
Filed 8–3–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 151
Friday, August 4, 2000

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI39

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations on the current career transition assistance programs. These programs assist Federal employees displaced from their jobs by downsizing. These programs began in 1995 as a temporary replacement for the Interagency Placement Program, with a planned sunset date of September 30, 1999. Interim regulations published July 27, 1999, extended the sunset date for an additional 2 years. These final regulations address comments submitted on the interim regulations.

DATES: This regulation is effective on September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman on (202) 606–0960, FAX (202) 606–2329, TDD (202) 606–0023, email: jryeatma@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, OPM published interim regulations with a request for comment on the government's career transition assistance programs in 5 CFR part 330. These regulations extended the Career Transition Assistance Plan (CTAP) and the Interagency Career Transition Assistance Plan (ICTAP) until September 30, 2001. The regulations also made some technical changes and clarifications.

Four agencies and one union commented on the interim regulations. All supported OPM's extension of these programs in light of their successful placement rates.

One agency stated its desire to move employees from one component to another, or to jobs in the same component located in a different commuting area, without checking for CTAP eligibles. We understand the concerns agencies have with this requirement. However, this was not part of the interim regulation as published—it would constitute a major change in the program, and the interim regulations included only minor technical changes and clarifications. Reassignments within a component and commuting area continue to be exempt from the CTAP requirements.

One agency asked for clarification on how the ICTAP exception in § 330.705(c)(19) relates to § 330.708(b) on selection. The exception in § 330.705(c)(19) allows an agency to select an ICTAP eligible at any time with or without announcing the vacancy. However, if the vacancy is announced and more than one well-qualified ICTAP eligible applies, then the agency is free to select any of them. Another agency commented that the term ''reassignment'' should be deleted from this paragraph. Since these eligibles would only be appointed through a transfer or reinstatement action, we agree that the word ''reassignment'' is unnecessary and have deleted it.

One agency recommended that we eliminate the requirement for a second review when an ICTAP eligible fails to meet the well-qualified requirement. The agency preferred to conduct this review only when the ICTAP eligible requested it. This provision was part of the final regulations published June 9, 1997, and no change to this provision was proposed in the July 27, 1999, interim regulation. Therefore, this provision remains unchanged.

Another agency suggested that we further define the type of documentation described in § 330.607(b) that the agency could use when they have no CTAP eligibles in a given location. We have considered this suggestion but feel that agencies should have the flexibility to use the type of documentation that best suits their needs.

Finally, we discovered a typographical error in the interim regulation which we are correcting here. In the process of adding a clarifying sentence in § 330.607(b), another sentence was accidentally deleted. We are restoring that dropped sentence here.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Government employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management

Janice R. Lachance,

Director.

Accordingly, the interim rule amending part 330 of title 5, Code of Federal Regulations, published at 64 FR 40506 on July 27, 1999, is adopted as final with the following changes:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subparts F–G also issued under Presidential memorandum dated September 12, 1995, entitled ''Career Transition Assistance for Federal Employees''; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note and sec. 4432 of Pub. Law 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. Law 105–33, 111 Stat. 251

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

2. In § 330.607, paragraph (b) is revised to read as follows:

§ 330.607 Notification of surplus and displaced employees.

* * * * *

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling in locations where there are CTAP eligibles, and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of ''well-qualified.'' If there are no CTAP eligibles in a local commuting area, the agency may document this fact as an alternative to posting the vacancy under the CTAP program.

* * * * *

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

3. In § 330.705, paragraph (c)(19) is revised to read as follows:

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

* * * * *

(c) * * *

(19) Transfer or reinstatement of an individual who meets the eligibility requirements of § 330.704 to a position having promotion potential no greater than the potential of a position the individual currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

* * * * *

[FR Doc. 00–19765 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule, permitting certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 13 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

EFFECTIVE DATE: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they, or, *inter alia,* any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On March 29, 2000, the Office of Government Ethics (OGE) published an interim rule with a 30-day request for comments to provide for an additional exemption under 5 CFR 2640.203 from the prohibition in the conflict of interest statute at 18 U.S.C. 208(a). See 65 FR 16511–16513 (March 29, 2000).

The new exemption, to be codified at 5 CFR 2640.203(l), permits employees who work for State, local, or tribal governments to work temporarily as enumerators, crew leaders, and field operations supervisors in a Local Census Office or an Accuracy and Coverage Evaluation function at the Department of Commerce Bureau of the Census (the Bureau). These employees have been hired under authority of 18 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers. However, the exemption does not cover employees who work for State, local, or tribal governments whose positions are filled through public election.

The interim rule was published after obtaining the concurrence of the Department of Justice pursuant to section 201 of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on the interim rule. No further consultation with the Department of Justice or the Office of Personnel Management is required because the interim rule is being adopted without change.

As noted, the interim rule provided for a 30-day comment period. Comments were received from two sources, one from the Department of Commerce and one from a private citizen. After carefully considering these comments, the Office of Government Ethics is adopting the interim rule as final without change.

Summary of Comments

The Department of Commerce recommended a change to the exemption to provide for a newly created position of ''crew leader assistant'' and to cover any future positions that the Department might create within the occupations of enumerator, crew leader, or field operations supervisor. These newly created positions would have similar duties and responsibilities as those occupations covered by the exemption, but would be performed at different activity levels, such as crew leader assistant. In OGE's view, it would not be necessary to amend the regulation to cover such newly created positions since all activity levels within those designated occupations in a Local Census Office or an Accuracy and Coverage Evaluation function would automatically be covered by the exemption.

The second commenter, an elected member of a city council, raised two concerns. The commenter believes that the distinction between elected and nonelected officials is arbitrary and both too broad and, at the same time, too narrow in that some elected officials (*e.g.,* coroners) would have no interest in the outcome of the census while some nonelected officials (*e.g.,* city managers) serve in policy-making positions and would have an interest in the outcome of the census. The commenter recommends that the line be drawn to exclude those employees who serve in policy-making positions.

As indicated in the preamble to the interim rule, the distinction between elected and nonelected officials was a general attempt to eliminate concerns about appearances arising from the greater interest that elected officials might have regarding the impact of the census count on their employers. The distinction represents the best line that could be drawn to include the greatest number of individuals who might be perceived as having an interest in the outcome of the census. It also serves the Department of Commerce's need to quickly and easily identify those

individuals whose non-Federal employment might present a conflict of interest or appearance thereof. It may be that, in drawing such a broad distinction, some individuals might be included who need not have been and that some few individuals might not have been excluded who perhaps could have been. However, the distinction represents OGE's best view of how the line should be drawn under the specified circumstances here.

Drawing the distinction on the basis of whether an individual holds a policy-making position would be both cumbersome and unworkable. The exemption must set forth a bright-line distinction because both the Department of Commerce and the employees it hires need to know who is clearly covered by the exemption and who is not. Any incorrect decisions about who is covered by the exemption could potentially subject the employee to criminal penalties should 18 U.S.C. 208(a) be violated. In addition, attempting to define who does and does not serve in a policy-making position would seriously hamper and unnecessarily complicate and impede a truncated hiring process.

The commenter also believes that the exemption would prevent the Department of Commerce from issuing individual waivers which would permit some elected officials to perform work on the decennial census. However, the exemption does not prevent the Department of Commerce from issuing waivers in individual cases in accordance with 18 U.S.C. 208(b)(1) and the requirements set forth in OGE regulations at 5 CFR 2640.301. An agency may issue such waivers in individual cases where it determines that a disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

Finally, the commenter believes that the exemption may not be necessary due to the nature of the work to be performed, the inability of the temporary employees to affect the census count to any significant degree, and the remoteness of the financial interests of their non-Federal government employers due to the number of various steps in the census process. However, on balance and in an abundance of caution, OGE believes that an exemption is in the best interest of the Department of Commerce which initiated the request for an exemption and in the best interest of individuals who will be employed by Commerce to work on the decennial census.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: June 1, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim rule amending 5 CFR part 2640 which was published at 65 FR 16511–16513 on March 29, 2000, as a final rule without change.

[FR Doc. 00–19772 Filed 8–3–00; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

RIN: 0584–AC81

Food Distribution Program on Indian Reservations: Income Deductions and Miscellaneous Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is amending the regulations for the Food Distribution Program on Indian Reservations. The changes are intended to improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction will be given to households that pay legally required child support for a nonhousehold member. This change conforms to an income deduction allowed under the Food Stamp Program. The second income deduction will be provided to households that pay the premium for their Medicare Part B medical insurance. This deduction was prompted by a resolution passed by the National Association of Food Distribution Programs on Indian Reservations. This rule will also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

EFFECTIVE DATE: This rule is effective October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866

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

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L.

104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567, and for the reasons set forth in the final rule of 7 CFR part 3015, subpart V, and related Notice (48 FR 29115), is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. While program participants and Indian Tribal Organizations and State agencies that administer the Food Distribution Program on Indian Reservations will be affected by this rulemaking, the economic effect will not be significant.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Paperwork Reduction Act

The information collection requirements included in 7 CFR 253.7(a)(6)(i) have been approved by the Office of Management and Budget under OMB. No. 0584–0293.

II. Background and Discussion of the Final Rule

On January 14, 2000, the Food and Nutrition Service (FNS) published a rule in the **Federal Register** (65 FR 2358) proposing amendments to the regulations at 7 CFR part 253 for the Food Distribution Program on Indian Reservations (FDPIR). We indicated that the proposed changes would improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. The Department also proposed making certain technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

Comments were solicited through March 14, 2000, on the provisions of the proposed rulemaking. FNS received two comments from the public on the proposed regulatory changes, and no comments on the proposed information collection burden changes. Both commenters wrote in support of the proposed changes. Consequently, we are adopting the proposed rule as final, with one minor change, which is discussed below. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the proposed rule.

One of the commenters requested clarification in regard to the verification requirements associated with this rulemaking. By this action, the regulations at 7 CFR 253.7(a)(6)(i)(B) and (C) require the verification of Medicare Part B premium withholdings or payments, and child support payments, before the income deductions can be granted to a household. The commenter asked whether the Medicare Part B premium must be verified if it is not included in the Social Security check received by the household member. The State agency is required to verify the payment of the Medicare Part B premium whenever this cost is incurred by a household member. When conducting an eligibility interview, the State agency should first determine whether any household members are Medicare beneficiaries. If none of the household members are Medicare beneficiaries, the income deduction cannot be granted. If the household contains a Medicare beneficiary, the State agency should determine whether the Medicare Part B premium is withheld from a Social Security, Railroad Retirement Board, or Civil Service Retirement payment, or if it is paid directly by the household member to Medicare. If the premium is withheld from one of the above retirement/disability payments, documentation of this expense could include a copy of the Social Security benefit statement (SSA–4926–SM) for the current calendar year, or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries. The proposed rule at 7 CFR 253.7(a)(6)(i)(C)(*1*) identified only the Social Security benefit statement as a source of documentation for premium withholdings. We have revised this provision to include Railroad Retirement Board and Civil Service Retirement benefit statements as additional sources of documentation. If the benefit statement does not reflect that the Medicare Part B premium is being withheld from the monthly retirement payment, the income deduction cannot be granted.

Some individuals make direct payments to Medicare because they do not receive a Federal retirement or disability payment from which the Medicare premium can be withheld. This may include persons under 65-years of age who have chronic kidney disease or other disabilities. Documentation for these individuals could include money order receipts, canceled checks, or other receipts showing payment for the current calendar year. Direct payments to Medicare are usually made on a quarterly basis; therefore, the premium payment in these cases must be averaged over the 3-month payment period to determine a monthly amount for certification purposes. If the household cannot provide adequate documentation of this expense, the income deduction cannot be granted.

Similarly, the State agency must verify the household's payment of child support to or for a non-household member. Specifically, the State agency must verify the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the

household actually pays. A court order, or similar documentation, is necessary to verify the household member's legal obligation to pay the child support, but it cannot be used to verify the household's actual monthly child support payments. Some non-custodial parents fail to fully meet their court-ordered obligation and owe hundreds of dollars in child support. Verification of actual payments will ensure that these non-custodial parents receive an income deduction for the amount of child support they pay—not the amount they are required, but fail, to pay each month.

During the eligibility interview, the State agency should determine the actual monthly amount of child support that has been paid by the household member, and obtain documentation of payment (for example, money order receipts or canceled checks). In many cases, the amount paid each month may fluctuate. In such instances, we recommend that the State agency average the amounts paid each month to determine the amount to be used for certification purposes. For example, Mr. Smith is legally obligated to pay $300 in child support each month. In December, he paid $300; in January, he only paid $200; in February, he paid $350, and in March he paid $350. The eligibility worker averages the total amount of child support paid over the four months ($1200 ÷ 4 months) and determines that Mr. Smith is entitled to receive an income deduction of $300.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.3, revise the third sentence of paragraph (d) to read as follows:

§ 253.3 Availability of commodities.

* * * * *

(d) * * * The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size—Vegetables, Fruit, Bread-Cereal-Rice-Pasta, Meat-Poultry-Fish-Dry Beans-Eggs-Nuts, Milk-Yogurt-Cheese, and Fats-Oils-Sweets. * * *

§§ 253.5 and 253.6 [Amended]

3. In § 253.5(a)(2)(vii) and § 253.6(e)(2)(iii)(B), remove the acronym ''AFDC'', wherever it appears, and add in its place the acronym ''TANF''.

§ 253.5 [Amended]

4. In § 253.5, remove paragraph (f)(2), and redesignate paragraph (f)(3) as paragraph (f)(2).

5. In § 253.6:

a. Remove paragraph (d)(2)(iv)(F);

b. Amend paragraph (e)(1)(ii) by removing the words ''January 1 and July 1'' and adding, in their place, the words ''October 1'';

c. Amend paragraph (e)(2)(i)(C) by removing the words ''Comprehensive Employment and Training Act'' and adding, in their place, the words ''Job Training Partnership Act'';

d. Amend paragraph (e)(2)(ii)(A) by removing the words ''Aid to Families with Dependent Children (AFDC)'' and adding, in their place, the words ''Temporary Assistance for Needy Families (TANF)'';

e. Remove paragraphs (e)(3)(x)(F) and (e)(3)(x)(G); and

f. Add new paragraphs (f)(3) and (f)(4) to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(f) * * *

(3) Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

6. In § 253.7, revise paragraph (a)(6)(i) to read as follows:

§ 253.7 Certification of households.

(a) * * *

(6) * * *

(i) *Mandatory verification.*

(A) *Gross non-exempt income.* The State agency must obtain verification of each household's gross non-exempt income prior to certification. Households certified under the expedited service processing standards at paragraph (a)(9) of this section are not subject to this requirement. Income does not need to be verified to the exact dollar amount unless the household's eligibility would be affected, since Food Distribution Program benefits are not reduced as income rises. If the eligibility worker is unable to verify the household's income, the worker must determine an amount to be used for certification purposes based on the best available information. Reasons for inability to verify income include failure of the person or organization providing the income to cooperate with the household and the State agency, or lack of other sources of verification.

(B) *Legal obligation and actual child support payments.* The State agency must obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household's legal obligation to pay child support, such as a court order, cannot be used to verify the household's actual monthly child support payments.

(C) *Medicare Part B medical insurance premium.* The State agency must obtain verification of the household's payment of the Medicare Part B medical insurance premium. Documentation of this expense could include:

(*1*) A copy of the current year Social Security benefit statement (SSA–4926–SM), or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries, which identifies the amount of the Medicare Part B premium withheld each month; or

(*2*) A receipt for Medicare Part B premium payments paid directly to Medicare by the household.

* * * * *

Dated: July 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–19726 Filed 8–3–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes crop provisions for the insurance of the Figs, Pears, Walnuts, Almonds, Prunes, Table Grapes, Peaches, Plums, Apples and Stonefruit. The intended effect of this action is to provide policy changes to better meet the needs of the insured. The changes will be effective for the 2001 and subsequent crop years.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On February 8, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 6033–6040 to revise 7 CFR 457.110 Fig Crop Insurance Provisions, section 457.111 Pear Crop Insurance Provisions, section 457.122 Walnut Crop Insurance Provisions, section 457.123 Almond Crop Insurance Provisions, section 457.133 Prune Crop Insurance Provisions, section 457.149 Table Grape Crop Insurance Provisions, section 457.153 Peach Crop Insurance Provisions, section 457.157 Plum Crop Insurance Provisions, section 457.158 Apple Crop Insurance Provisions, and section 457.159 Stonefruit Crop Insurance Provisions, effective for the 2001 and succeeding crop years.

Following publication of the proposed rule the public was afforded 30 days to submit written comments and opinions. A total of 10 comments were received from 2 reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

Comment. A reinsured company questioned if the wording ''could or would reduce the yield'' in section 2 or 3 of the applicable crop provisions (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities), is subject to interpretation. The commenter questioned: (1) If all of the acreage of the crop will need to be inspected if the producer requests a higher level of coverage or an increased price election; (2) if FCIC will determine that coverage cannot be increased in a specified area and publish this information in a bulletin, or if the company will be allowed to make the determination; and (3) when the determination must be made.

Response. The provisions require the insurance provider to determine whether a cause of loss occurred that ''could or would reduce the yield.'' The producer is not allowed to increase the coverage level or price election if it is evident that a cause of loss had occurred prior to the producer's request for such increase. There is no requirement to inspect any acreage to determine if a loss occurred. The insurance provider must simply determine whether a cause of loss has occurred prior to accepting the application for increased coverage. Therefore, no change has been made.

Comment. A reinsured company recommended changing the word ''unshelled'' to ''in-shell'' in the definition of ''meat pounds'' in section 1 of the Almond Crop Insurance Provisions because this is the common term used by the almond industry.

Response. FCIC has incorporated the change.

Comment. A reinsured company recommended that there should be one specific calendar date for the end of the insurance period for all of the crops listed in this final rule. The commenter stated there are so many dates represented by different varieties, crops, etc., that administrative problems are caused.

Response. Changing the end of insurance period to one specific date for all of the crops listed in this final rule is not feasible. The insurance period is set to provide insurance during the time when the crop is at risk from normal causes of loss. This period is not the same for all crops. There needs to be variance in the beginning and ending of insurance periods to reflect differences in the crops being insured and the areas where they are grown. The calendar date for the end of insurance period must reflect the normal harvest date for each crop. Therefore, no change has been made.

Comment. A reinsured company recommended that claim examples for almonds and walnuts listed in this final rule should not be included in the Settlement of Claim section. The commenter stated the examples are too simple and do not provide any explanation of ''Quality Adjustment or Stage.''

Response. FCIC does not agree with the comment. Claim examples were added to the Settlement of Claim section to provide a general explanation of how the indemnity payment would be calculated. There is no quality adjustment on almonds. Quality Adjustment for walnuts is provided only for mold damage and is rarely used. The claim examples for almonds and walnuts are consistent with other crop policies. Therefore, no change has been made.

Comment. A reinsured company recommended that almond rejects be counted as production to count and should remain part of the Almond Crop Insurance Provisions.

Response. FCIC disagrees with the idea that all rejects should be counted as production to count. Rejects that are due to an insured cause of loss which is beyond the control of the producer should not be counted as production to count. However, FCIC does agree that rejects due to uninsured causes of loss should be counted as production to count. Therefore, FCIC has revised section 11(c)(2) to include meat pounds damaged due to uninsured causes of loss as production to count.

Comment. A reinsured company recommended revising section 14 of the Apple Crop Insurance Provisions which allows optional units and price elections by varietal group. The commenter stated that apple trees may be planted in a block that consists of only a few trees in a row being the same variety or a few rows of trees being the same variety, or even a single tree of a variety that was planted as a replacement. To allow units by variety would create problems for determining production and acreage.

Response. A block of apples may include different varieties. However, producers harvest and market apples by variety. The provisions in this final rule provide producers with optional units and price elections based on varietal groups. These varietal groups, which currently consist of two groups, are listed in the Special Provisions. Producers have the responsibility of identifying the acreage of each varietal group and separately maintaining production records. FCIC has revised the option to specify that producers are not eligible if they do not have separate production records for each varietal group or cannot identify the acreage upon which each varietal group is produced.

Comment. A reinsured company questioned if the provisions under section 14 of the Apple Crop Insurance Provisions that provide prices and units by varietal group will be available under the Fresh Fruit Option B.

Response. Prices and units by varietal group under section 14 are available under Fresh Fruit Option B provided that both Option B and C are elected.

Comment. A reinsured company stated the requirement to give notice of loss 15 days prior to harvest of walnuts when there is mold damage will be very difficult. Walnuts will not show mold damage prior to removal from the tree, so the grower generally will not know there will be mold before harvest.

Response. FCIC has changed the policy to give notice when knowledge is obtained or 15 days prior to harvest. The 15 day requirement allows the insurance provider adequate time to inspect the damaged production. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following changes:

1. *Section 457.110 Fig crop insurance provisions.*

a. Added a definition of ''Interplanted'' to standardize the term interplanted between other perennial crop provisions and the Fig Crop Insurance Provisions.

b. Added a section 3(c) that requires the insured to report damage, removal of trees, change in practices or any other circumstance that may reduce yields. The insured must report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and type, if applicable, of any interplanted crop, the planting pattern, and any other information needed to establish the approved yield. If the insured fails to report these changes, the acreage or yield used to establish the production guarantee, or both, may be adjusted when the insurance provider becomes aware of the situation.

c. Redesignated sections 8 through 11 as sections 9 through 12 respectively and added a new section 8 to allow interplanting as an insurable farming practice if the fig crop is interplanted with another perennial crop. This change makes insurance available on more acreage and reduces reliance on the noninsured crop disaster assistance program (NAP) for protection for crop losses.

d. Removed language in previous designated sections 8(a), (c), (d), (e), as this language is in the Basic Provisions. Previous designated sections 8(b) and (d) have been added to new section 9(a)(2) of these provisions.

e. Added language to redesignated section 9(a) to clarify the date on which coverage begins for the year the application is first signed.

2. *Section 457.111 Pear crop insurance provisions.*

Section 8(c)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of the provisions contained in section 8(c) to clarify that the dates insurance attaches contained in section 8(a)(1) do not apply to subsequent crop years. The dates contained in section 8(a)(1) apply only to the initial crop year. This change clarifies when year round coverage begins for each crop year.

3. *Section 457.122 Walnut crop insurance provisions.*

a. Section 4—Revised to state that October 31 is the contract change date for California only and added the contract change date of August 31 for all other states. This change will promote the walnut crop insurance program in states outside California.

b. Section 5—Revised to state that January 31 is the cancellation and termination dates for California only and added the cancellation and termination dates of November 20 for all other states. This change will promote the walnut crop insurance program in states outside of California.

c. Section 8(a)(1), (2) and (3)—Revised (a)(1) to state that February 1 is the date when insurance attaches in California

and added November 21 when insurance attaches in all other states. This change will promote the walnut crop insurance program in states outside of California. Added to (a)(2) the words, ''(Exceptions, if any, for specific counties, or varieties or varietal group are contained in the Special Provisions.)'' Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 8(a)(3) to clarify that the dates insurance attach under paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. These changes provide insurance periods similar to other perennial crops and clarify when year round coverage begins.

4. *Section 457.123 Almond crop insurance provisions.*

Section 8(a)(3)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 8(a)(3) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

5. *Section 457.133 Prune crop insurance provisions.*

Section 8(c)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

6. *Section 457.149 Table grape crop insurance provisions.*

Section 9(c)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 9(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

7. *Section 457.153 Peach crop insurance provisions.*

Section 7(c)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 7(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

8. *Section 457.157 Plum crop insurance provisions.*

Section 8(c)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

9. *Section 457.158 Apple crop insurance provision.*

a. Section 8(c)—Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This paragraph as changed clarifies when year round coverage begins.

b. Section 11(c)(1)(iii)—Revised to read ''unharvested marketable production;'' This change provides clarification that quality standards for appraisals of unharvested production are based on the definition of ''marketable.''

10. *Section 457.159 Stonefruit crop insurance provisions.*

a. Section 1—Revised the definition of ''grading standards'' to refer to the Special Provisions. This change provides recognition of all other states grading standards. The current regulation contains only grading standards for the state of California.

b. Section 4—Revised to state that October 31 is the contract change date for California only and added the contract change date of August 31 for all other states. This change will promote the stonefruit crop insurance program in states outside of California and provide a contract change date similar to that for other perennial crops.

c. Section 5—Revised to state that January 31 is the cancellation and termination dates for California only and added the cancellation and termination dates of November 20 for all other states. This change provides cancellation and termination dates similar to other perennial crops.

d. Section 6(e)—Revised to provide for the recognized grading standards for all states, not just California. This change provides for the recognition of other states' grading standards. The current regulation contains only grading standards for the state of California.

e. Section 8(a)(1), (a)(2)(iii) and (c)—Revised (a)(1) to state that February 1 is the date when insurance attaches in California only and added November 21 for when insurance attaches for all other states. Added (a)(2)(iii) with regard to the end of insurance period to read ''As otherwise provided for specific counties or types in the Special Provisions.'' These changes will promote the stonefruit crop insurance program in states outside California. Added the phrase ''Notwithstanding paragraph (a)(1) of this section'' to the beginning of proposed section 8(c) to clarify that the dates insurance attach contained in paragraph (a)(1) do not apply to subsequent crop years. The dates contained in paragraph (a)(1) apply only to the initial crop year. This change provides insurance periods similar to other perennial crops and clarify when year round coverage begins.

Good cause is shown to make this rule effective upon publication in the Office of the Federal Register. This rule must be effective prior to the August 31, 2000, contract change date for Almond and Walnut, to be effective for the 2001 crop year. Therefore, public interest requires that FCIC act immediately to make these provisions available.

List of Subjects in 7 CFR Part 457

Almond, Apple, Crop insurance, Fig, Peach, Pear, Plum, Prune, Reporting and recordkeeping requirements, Stonefruit, Table Grape, and Walnut.

Final Rule

Accordingly, as set forth in the preamble, The Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) for the 2001 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend 457.110 as follows:

a. Revise the first sentence of the introductory text;

b. Add a definition of ''Interplanted'' in section 1 of the crop insurance provisions;

c. Redesignate sections 8 through 11 of the crop insurance provisions as sections 9 through 12;

d. Add a new section 8 to the crop insurance provisions;

e. Revise section 3 and newly designated section 9 of the crop insurance provisions to read as follows:

§ 457.110 Fig crop insurance provisions.

The Fig Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements under section 3 of the Basic Provisions, you may select only one price election for each fig type designated in the Special Provisions and insured in the county under this policy.

(b) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time you request the increase.

(c) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the figs, and type if applicable, and the planting pattern; and

(5) Any other information that we request in order to establish your approved yield. We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: Interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

* * * * *

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions, that prohibit insurance attaching to a crop planted with another crop, figs interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on March 1, except that for the year of application, if your application is received after February 19 but prior to March 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is October 31 or the date harvest of the figs (by type) should have started on any acreage that will not be harvested (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(b) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(c) If your fig policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

3. Amend 457.111 as follows:

a. Revise the first sentence of the introductory text;

b. In the crop insurance provisions add sections 3(c) and 8(c) and (d); all to read as follows:

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your pear policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

4. Amend 457.122 to:

a. Revise the first sentence of the introductory text;

b. Amend the introductory text of section 3 and section 3(b) of the crop provisions by removing in each place the parenthetical phrase, ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities);''

c. Add new section 3(c);

d. Revise sections 4 and 5 of the crop provisions;

e. Amend the introductory text to section 6 of the crop provisions, by removing the parenthetical phrase, ''(Insured Crop);''

f. Amend the introductory text to section 7 of the crop provisions, by removing the parenthetical phrase, ''(Insurable Acreage);''

g. In section 8 of the crop provisions, revise paragraph (a);

h. Amend the introductory text to section 9 of the crop provisions paragraph (a), by removing the parenthetical phrase ''(Causes of Loss);''

i. Revise section 10 of the crop provisions; and

j. In the crop provisions add an example of settlement of claim in section 11 after paragraph (b)(7) and revise paragraph (d) to read as follows:

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change dates are October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

* * * * *

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 in California and November 21 in all other states of each crop year, except that for the year of application, if your application is

received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 15 (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your walnut policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Duties in the Event of Damage or Loss.

(a) In addition to the requirements of section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(1) You must notify us prior to the beginning of harvest so that we may inspect the damaged production;

(2) You must give notice when knowledge is obtained of any mold damage or 15 days prior to harvest so that we may inspect the mold damaged production; and

(3) You must not sell or dispose of the damaged crop until we have given you written consent to do so.

(b) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of $0.61 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × $0.61 price election = $152,500 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × $0.61 price election = $122,000 total value of production to count;

(6) $152,500 total value guarantee—$122,000 total value of production to count = $30,500 loss; and

(7) $30,500 × 100 percent share = $30,500 indemnity payment.

* * * * *

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association or during our loss adjustment process. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. Walnut production that exceeds 30 percent mold damage and will not be sold, the production to count will be zero.

* * * * *

5. Amend 457.123 as follows:

a. Revise the first sentence of the introductory text;

b. In the crop provisions in section 1 revise the definition of ''meat pounds;''

c. In the crop provisions amend section 3, the introductory text and paragraph (b), by removing in each place the parenthetical phrase, ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities);''

d. In the crop provisions add section 3(c);

e. In the crop provisions amend section 4 by removing the parenthetical phrase, ''(Contract Changes);''

f. In the crop provisions amend section 5 by removing the parenthetical phrase, ''(Life of Policy, Cancellation and Termination);''

g. In the crop provisions amend section 6 by removing the parenthetical phrase, ''(Insured Crop);''

h. In the crop provisions amend section 7 by removing the parenthetical phrase, ''(Insurable Acreage);''

i. In the crop provisions amend section 8(a), by removing the parenthetical phrase, ''(Insurance Period);''

j. In the crop provisions add section 8(a)(3) and (4);

k. In the crop provisions amend section 9(a), by removing the parenthetical phrase, ''(Causes of Loss);''

l. In the crop provisions amend section 10 by removing the parenthetical phrase, ''(Duties In the Event of Damage or Loss);''

m. In the crop provisions add an example of settlement of claim in section 11 after paragraph (b)(7) and revise paragraph (c)(2) to read as follows:

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Meat pounds. The total pounds of almond meats (whole, chipped and broken, and in-shell meats). In-shell almonds will be converted to meat pounds in accordance with FCIC approved procedures.

* * * * *

3. Insurance Guaranteed, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that would or could reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period

* * * * *

(a) * * *

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your almond policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of almonds in the unit, with a guarantee of 1,200 pounds per acre and a price election of $1.70 per pound. You are only able to harvest 100,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 1,200 pounds = 120,000 pound insurance guarantee;

(2 & 3) 120,000 pounds × $1.70 price election = $204,000 total value of insurance guarantee;

(4 & 5) 100,000 pounds production to count × $1.70 price election = $170,000 total value of production to count;

(6) $204,000 total of value guarantee—$170,000 total value of production to count = $34,000 loss; and

(7) $34,000 × 100 percent share = $34,000 indemnity payment.

(c) * * *

(2) All harvested meat pounds, including meat pounds damaged due to uninsured causes of loss.

* * * * *

6. Amend 457.133 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add sections 3(c), 8(c) and (d); all to read as follows:

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your prune policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

7. Amend 457.149 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add sections 3(c), 9(c) and (d); all to read as follows:

§ 457.149 Table grape crop insurance provisions.

The Table Grape Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

9. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your table grape policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

8. Amend 457.153 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for ''marketable'' in section 1;

c. In the crop provisions add sections 2(c), and 7(c) and (d); all to read as follows:

§ 457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Marketable. Peach production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

* * * * *

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

7. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your peach policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

9. Amend 457.157 to:

a. Revise the first sentence of the introductory text; and

b. In the crop provisions add sections 3(c) and 8(c) and (d); all to read as follows:

§ 457.157 Plum crop insurance provisions.

The Plum Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your plum policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Amend 457.158 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for ''varietal group'' in section 1;

c. In the crop provisions revise section 2;

d. In the crop provisions section 3 revise paragraphs (a), (b) introductory text and (b)(4), and add paragraph (c);

e. In the crop provisions add sections 8(c) and (d);

f. In the crop provisions revise section 11(c)(1)(iii); and

g. In the crop provisions add a new section 14; all to read as follows:

§ 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Varietal group. Apple varieties with similar characteristics that are grouped for

insurance purposes as specified in the Special Provisions.

2. Unit Division.

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is located on non-contiguous land. Optional units may also be established by varietal group in accordance with section 14 of these provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type or varietal group, in which case you may select one price election for each apple type or varietal group designated in the Special Provisions. The price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type or varietal group, you must also choose 100 percent of the maximum price election for all other types or varietal group.

(b) You must report, by the production reporting date contained in section 3 of the Basic Provisions, by type or varietal group if applicable:

* * * * *

(4) The separate acreage for each varietal group of apples intended for fresh-market or processing, for each varietal group as shown on the actuarial documents; and

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your apple policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

11. Settlement of Claim.

* * * * *

(c) * * *

(1) * * *

(iii) Unharvested marketable production; and

* * * * *

14. Option C—Prices and Units by Varietal Group.

(a) Exclusive of other options, optional units and price elections by varietal group apply only if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement;

(2) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered notice of cancellation of the option by you; and

(3) You have maintained separate records of production for each varietal group and you can identify the acreage upon which each varietal group is produced.

(b) If you select the Fresh Fruit Option A for all insurable acreage, Option C is not available.

11. Amend 457.159 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions revise definition of ''grading standards'' in section 1;

c. In the crop provisions add section 3(c);

d. In the crop provisions revise sections 4, 5 and 6(e);

e. In the crop provisions in section 8 revise paragraphs (a)(1) and (a)(2)(ii) and add paragraphs (a)(2)(iii), (c) and (d); all to read as follows:

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Grading standards—As specified in the Special Provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

6. Insured Crop.

* * * * *

(e) That are regulated by the applicable state's Tree Fruit Agreement or related crop advisory board for the state (for applicable crop or type);

* * * * *

8. Insurance Period.

(a) * * *

(1) Coverage begins on February 1 in California and November 21 for all other states of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all other states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) * * *

(ii) September 30 for all nectarines and peaches; and

(iii) As otherwise provided for specific counties or types in the Special Provisions.

* * * * *

(c) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your stonefruit policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is the later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

Signed in Washington, DC on July 27, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–19659 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1479

RIN 0560–AG14

Agricultural Disaster and Market Assistance; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule; correction.

SUMMARY: This document contains corrections to the interim rule published in the **Federal Register** on Thursday, June 8, 2000 (65 FR 36549). This document corrects the section entitled ''Producer eligibility'', which was incorrectly numbered and the paragraphs of that section, which were incorrectly designated.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Operations Review and Analysis Staff, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0540, 1400 Independence Avenue, SW, Washington, DC, 20250–0540, telephone (202) 205–5851, or by e-mail to: tom__witzig@wdc.fsa.usda.gov.

Correction of Publication

Accordingly, in the interim rule published June 8, 2000, (65 FR 36549) make the following correction:

On page 36584, in the second column, the section number '' § 1439.7'' for the section entitled ''Producer eligibility'' is corrected to read ''§ 1479.7'' and paragraphs (d) through (f) of § 1479.7 are redesignated as paragraphs (c) through (e), respectively.

Signed at Washington, DC, on July 27, 2000.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–19811 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM173; Special Conditions No. 25–163–SC]

Special Conditions: Boeing Model 747–2G4B Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 747–2G4B series airplanes modified by Boeing Airplane Services. These modified airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new Electronic Flight Instrument System (EFIS) displays. The EFIS displays will utilize electrical and electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 27, 2000.

Comments must be received on or before September 5, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM173, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM173. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM173.'' The postcard will be date stamped and returned to the commenter.

Background

On August 25, 1997, Boeing Airplane Services, Wichita Division, P.O. Box 7730, Wichita, KS 67277–7730, applied for a Supplemental Type Certificate (STC) for the Boeing Model 747–2G4B series airplanes. The Boeing Model 747–2G4B is a Model 747–200 series airplane with four CF6–80C2B1 engines. The Model 747–200 series airplanes are an extended range passenger version of the Model 747–100 airplanes with changes to increase its strength and fuel capacity. The Model 747–2G4B will incorporate an Electronic Flight Instrument System (EFIS), which displays attitude and heading information and is manufactured by Astronautics. The modified airplanes are scheduled for certification in November 2000.

The Astronautics EFIS is a critical function that displays attitude and heading information. The EFIS must be designed and installed to ensure that their operations are not adversely affected by high intensity radiated fields (HIRF). These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by HIRF external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing Airplane Services must show that the Boeing Model 747–2G4B series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations included in the certification basis for the Boeing Model 747–2G4B series airplanes include Title 14, Code of Federal Regulations (14 CFR) part 25, as amended by Amendments 25–1 through 25–8, plus additional requirements in Type Certificate Data Sheet (TCDS) A20WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–2G4B series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–2G4B series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–2G4B series airplanes will incorporate the Astronautics EFIS system, which performs critical functions. The EFIS system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. This system may be vulnerable to HIRF external to the airplane. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747–2G4B airplanes modified to include the Astronautics EFIS system. These special conditions will require that this system, which performs critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

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

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

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

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–2G4B series airplanes modified by Boeing to include the Astronautics EFIS system. Should Boeing Airplane Services apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747–2G4B series airplanes modified by Boeing Airplane Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the

supplemental type certification basis for the Boeing Model 747–2G4B series airplanes modified by Boeing Airplane Services.

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

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

Issued in Renton, Washington, on July 27, 2000

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19841 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–23]

Establishment of Class D Airspace: Kissimmee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Kissimmee, FL. Air traffic controllers at Kissimmee Municipal Airport, FL, will be certificated weather observers by October 5, 2000. Therefore, the airport will meet criteria for Class D airspace on October 5, 2000. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,500 feet mean sea level (MSL) within a 4-mile radius of the Kissimmee Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Kissimmee, FL (65 FR 38224). Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Kissimmee Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Kissimmee, FL [New]

Kissimmee Municipal Airport, FL
(Lat. 28°17′23″N, long. 81°26′14″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4-mile radius of Kissimmee Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 27, 2000.

Wade T. Carpenter,

Acting Manager, Southern Region.

[FR Doc. 00–19838 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB35

Final Rules Concerning Amendments to Insider Trading Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') hereby amends Commission Regulation 1.59, which addresses various trading prohibitions imposed on persons associated with a self-regulatory organization (''SRO''). Regulation 1.59 requires SROs to adopt rules prohibiting employees, governing board members, and committee members from certain trading activities and from improperly disclosing any material, non-public

information obtained in the course of their official duties. The Commission is now amending Regulation 1.59 so that governing board members and committee members, and individuals serving as the ''functional equivalent'' of such members, are clearly excluded from the definition of ''employee'' for purposes of Regulation 1.59. The Commission also takes this opportunity to clarify the meaning of Regulation 1.59(b)(1)(i) regarding the scope of the SRO employee trading prohibition, and to make clear that ''non-paid advisors'' to exchange governing boards and committees will be deemed the ''functional equivalent'' of whomever they are advising. Finally, the Commission has determined to amend Regulation 1.59 so that consultants to SROs are, at minimum, subject to the same restrictions as governing board members.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 28, 1999, the Commission published proposed amendments to Regulation 1.59 (''proposing release''),[1] which generally requires SROs to adopt rules prohibiting employees, governing board members, and committee members from trading commodity interests on the basis of material, non-public information obtained in the course of their official duties (hereinafter referred to as ''material, non-public information''). As proposed, the amendments would exclude governing board members, and any ''functional equivalent'' thereof, from the definition of ''employee,'' and would clarify the scope of the SRO employee trading prohibition. The Commission also sought comment on how Regulation 1.59 should treat consultants to SRO management and staff, in addition to non-paid advisors to SRO governing boards and committees. The Commission received 6 comment letters in response to the proposed amendments.[2]

[1] *See* 64 FR 72587 (Dec. 28, 1999).

[2] Letters were received from (1) New York Mercantile Exchange, (2) National Futures Association (''NFA''), (3) Minneapolis Grain Exchange, (4) Chicago Mercantile Exchange (''CME''), (5) Chicago Board of Trade (''CBT''), and (6) Board of Trade Clearing Corporation (''BOTCC'').

II. Rule Amendments

A. Background

Historically, two categories of individuals have been subject to Commission Regulation 1.59: (1) SRO employees, including those employed by the SRO on a salaried or contract basis, and (2) SRO governing board and committee members. Regulation 1.59 prohibits these groups from trading under various circumstances.

Specifically, employees are absolutely prohibited from trading in any commodity interest traded on or cleared by their employing contract market or clearing organization, or from trading in any ''related commodity interest,'' as that term is defined by Regulation 1.59(a).[3] Additionally, employees with access to material, non-public information concerning a particular commodity interest are prohibited from trading in such commodity interest if it is traded on or cleared by contract markets or clearing organizations other than their employing SRO, or traded on or cleared by a linked exchange.

Governing board members and committee members, on the other hand, are prohibited only from using material, non-public information for any purpose other than the performance of their official duties. The possession of material, non-public information, therefore, does not absolutely bar these individuals from trading commodity interests. Rather, under Regulation 1.59(d), governing board and committee members are prohibited from trading for their own account, or for or on behalf of any other account, based on this material, non-public information.

B. Governing Board Members

The Commission proposed to exclude salaried governing board members from the definition of ''employee'' under Regulation 1.59(a) in order to ensure that salaried governing board members are not subject to two inconsistent trading restrictions—one for governing board members and another, more restrictive, prohibition for employees. At the time these clauses were adopted, members of governing boards generally were not salaried. Because the industry now typically gives stipends to governing board members, the Commission proposed to remove any confusion by excepting salaried governing board members from the definition of ''employee.''

The Commission believes that inclusion of salaried governing board members in the definition of ''employee'' might create disincentives for competent individuals to serve in this capacity. If excluded from the definition of ''employee,'' governing board members would remain prohibited from using material, non-public information for purposes other than performance of their official duties, pursuant to Regulation 1.59(c). All but one commenter supported this amendment,[4] and the Commission has determined to adopt the proposal.

C. Individuals Serving as the ''Functional Equivalent'' of Governing Board Members

The Commission proposed to add a clause defining the term ''governing board member'' to include certain individuals who work closely with, but who are not technically members of, the governing board, like *ex officio* or *emeritus* governing board members. The proposed language would deem such individuals to be the ''functional equivalent'' of governing board members. Because of their experience, these members can provide valuable guidance to the governing board. However, including them in the definition of ''employee'' would subject them to broad restrictions on trading, potentially creating a disincentive to counsel the board on matters within their expertise.

Four commenters supported the proposal, and another expressed its support while noting that its board presently does not have any such individuals participating.[5] The Commission has determined to adopt the proposal.

D. Employees With Access to Material, Non-Public Information Concerning Commodity Interests Traded on or Cleared by Other SROs

Regulation 1.59(b)(1)(i) requires SROs to maintain in effect rules which, at a minimum, prohibit employees from trading in the following four scenarios:

In any commodity interest traded on or cleared by the employing contract market or

[3] ''*Related commodity interest* means any commodity interest which is traded on or subject to the rules of a contract market, linked exchange, or other board of trade, exchange or market, other than the self-regulatory organization by which a person is employed, and with respect to which:

(i) Such employing self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing self-regulatory organization; or

(ii) Such other self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material, nonpublic information.''

[4] BOTCC did not express an opinion on this issue.

[5] *See* CBT comment letter, January 31, 2000. BOTCC did not comment on this issue.

clearing organization, in any related commodity interest, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, and in any commodity interest traded on or cleared by a linked exchange *where the employee has access to material nonpublic information concerning such commodity interest;*

Regulation 1.59(b)(1)(i) (emphasis added).

As discussed in the proposing release, the Commission believes the existing structure of this paragraph may create confusion as to which trading prohibitions the italicized clause modifies. In particular, because no punctuation precedes the clause ''where the employee has access to material nonpublic information concerning such commodity interest'' (hereinafter referred to as the ''access clause''), this precondition for the application of the trading restriction would appear to apply to only one trading scenario—the trading scenario that immediately precedes it. However, an examination of this provision as it existed prior to the 1993 amendments to Regulation 1.59 (''1993 Amendments''), and of the **Federal Register** releases promulgating the 1993 Amendments,[6] confirms that the access clause should also apply to the prohibition on trading ''in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization.''

The Commission has decided to amend Regulation 1.59(b)(1)(i) by subdividing each prohibition into a separate subparagraph, as proposed. This amendment to paragraph (b)(1)(i) will help differentiate between situations in which employees of SROs are absolutely prohibited from trading commodity interests from those in which they are prohibited from trading only if they have access to material, non-public information.

Toward that end, the Commission has also determined to edit the language of the third clause of the paragraph. In the proposing release, the Commission suggested adding the access clause back to the third prohibition, so that it would read as it was originally intended. No commenters disagreed with this proposal. However, it also has come to the attention of the Commission that merely inserting the access clause at the end of the third prohibition, without further editing, might still result in an unclear articulation of the nature of the prohibited conduct. The clause, as proposed, would have read:

From trading, directly or indirectly, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization where the employee has access to material, nonpublic information concerning such commodity interest; and

64 FR 72587, 72590 (Dec. 28, 1999).

Regulatory history clearly indicates that this clause was only meant to prohibit an SRO employee from trading a commodity interest on another, non-linked exchange if he or she has access to material, non-public information about that particular commodity interest. The **Federal Register** release promulgating Regulation 1.59 states unequivocally that exchanges may permit their employees to trade ''unrelated'' commodity interests on other exchanges, if they do not have access to material, non-public information.[7] The original rule proposal included an outright ban on employee trading at other exchanges,[8] but the Commission ultimately adopted less restrictive rules after receiving comments from the industry.[9]

On its face, however, the third clause could be misconstrued to mean that employees are prohibited from trading all commodity interests on a non-employing exchange, even if they only have access to material, non-public information concerning a single commodity interest traded on that exchange. This potential confusion arises out of the meaning of the word ''any,'' which connotes a slightly different meaning in the two preceding clauses. A reader applying the meaning of ''any'' consistently throughout the paragraph, as it is used in the first two clauses, might be led to believe that the prohibition extends to all contracts at another exchange. The Commission has therefore determined to edit the language of this third prohibition to read as follows:

From trading, directly or indirectly, in a commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization if the employee has access to material, non-public information concerning such commodity interest;[10]

E. Clarification of the Treatment of ''Consultants''

The Commission requested comment on whether ''consultants'' should be included in the definition of ''employee'' for purposes of Regulation 1.59, based upon its understanding that exchanges hire consultants for a variety of purposes,[11] often with respect to information technology issues. These consultants may or may not gain access to material, non-public information during the course of their duties, depending on the nature of the work they are performing. Although the current provisions do not explicitly include consultants within the definition of ''employee,'' the original promulgation of Regulation 1.59 in 1986 indicated the Commission's intention that consultants be included.[12] Furthermore, the definition of ''employee'' under Regulation 1.59(a) clearly states: ''Employee means any person hired or otherwise employed on a salaried *or contract basis* by a self-regulatory organization.'' (emphasis added) Although this language appears to indicate that consultants fall into the definition of ''employee'' under Regulation 1.59, it has recently come to the attention of the Commission that some exchanges retain consultants that they do not consider ''employees.''[13]

[6] *See* 58 FR 44470 (Aug. 23, 1993); 58 FR 54966 (Oct. 25, 1993).

[7] The word ''unrelated'' refers to ''related commodity interest,'' as defined by Regulation 1.59(a). *See* note 3, *supra.*

[8] *See* 50 FR 24533 (June 11, 1985).

[9] *See* 51 FR 44866, 44867 (Dec. 12, 1986). ''Commenters contended that * * * the provision need not bar employees from trading on other contract markets in commodity interests unrelated to the employing exchange's products merely because the employee was in a position to receive information that is material to activity on the employing contract market.'' In response, the Commission wrote: ''although remaining subject to the strict ban on trading on the employing exchange, if the exchange permits, an employee now would be able to trade an unrelated commodity interest on another exchange where he did not have access to material non-public information concerning such commodity interest. The Commission emphasizes that the two limiting factors with respect to trading by an employee on another exchange are: (1) That the commodity interest by [sic] unrelated to any commodity interest traded on the employing exchange, and (2) that the employee not have access to material, non-public information concerning the commodity interest or a related commodity interest.''

[10] As a result of these changes to the third prohibition, the Commission also made non-substantive changes to the language of the fourth prohibition—*i.e.*, new Regulation 1.59(b)(1)(i)(D)—for purposes of consistency.

[11] Barron's Business Guides define a consultant as an ''individual or organization providing professional advice to an organization for a fee. A wide variety of consultants exist for many areas of organizational concerns, including management, accounting, finance, and legal and technical matters. A consultant is an INDEPENDENT CONTRACTOR.'' Barron's Dictionary of Business Terms 120 (2d ed. 1994) (emphasis in original).

[12] 51 FR 44866, 44867 at note 6 (Dec. 12, 1986). ''It should be noted that consultants and independent contractors employed by the self-regulatory organization would be included within the definition of 'employee' under regulation 1.59 and, therefore, would be subject to the same restrictions applicable to all other exchange employees.''

[13] *See, e.g.*, BOTCC comment letter, February 10, 2000. ''The Clearing Corporation is further concerned by the characterization of such persons as 'employees', albeit for limited purposes. The Clearing Corporation, in its written agreements with

Continued

The Commission received a wide variety of comments with respect to this issue. Three commenters supported the idea of holding consultants to the same standard as governing board members, *i.e.*, they shall not use or disclose material, non-public information for any purpose other than the performance of official duties. NFA added that such a standard should apply only if the consultants ''are truly independent contractors and are not under the SRO's control.'' [14] Another commenter, BOTCC, stated that most of its consultants do not obtain access to material, non-public information, that it does not believe any ''purpose is served by requiring such persons to adhere to the complex policies that apply to its regular employees,'' and that it instead requires its consultants with access to material, non-public information to sign confidentiality agreements prohibiting personal use of such information.[15] CME and CBT expressed some support for classifying certain consultants as employees, or the ''functional equivalent'' thereof, depending on the nature and duration of their relationship with the SRO.[16] CME asserted, however, that consultants not subject to an employee-type trading restriction should sign an agreement not to use or disclose any material, non-public information obtained from its relationship with the SRO. CBT represented that it has no effective means of policing these consultants' trading activities.

Based upon comments received, the Commission has determined that consultants should, at minimum, be held to the same standard as governing board members. This prohibition, more narrow than one which would absolutely ban trading in any commodity interest on the contracting SRO, is based in large part on commenters' representations that most consultants do not gain access to material, non-public information during the course of their work. Moreover, the Commission acknowledges that the relationship between SROs and their consultants is generally more attenuated than their relationship with employees and, as a result, policing the trading activity of consultants could be difficult for an SRO. Accordingly, the Commission has determined to apply a less restrictive trading prohibition that will still establish appropriate safeguards against the misuse of material, non-public information.

The Commission believes that, in the first instance, it is the SRO's responsibility to distinguish between its ''employees'' and ''consultants.'' Such determinations should be made consistent with the purposes of Regulation 1.59, and should also take into account how the SRO distinguishes between employees and consultants for other business purposes.[17] The Commission will review that process in an oversight role, as appropriate.

The Commission reminds SROs that it remains their duty to enforce their own rules. In that connection, the Commission suggests that one way SROs can ensure consultants do not abuse their access to material, non-public information is to require consultants to sign confidentiality agreements prohibiting use or disclosure of material, non-public information gained as a result of the relationship. As previously noted, this is the practice of BOTCC, which was supported by CME in its comment letter. Finally, the Commission notes that those exchanges desiring greater restrictions on personal trading by consultants remain free to enforce stricter procedures.

F. Use of Non-Paid Advisors by Governing Boards and Committees

The Commission also sought comment on the application of Regulation 1.59 to non-paid advisors of SRO governing boards and committees, and requested information about the extent to which these advisors are utilized and their level of participation in deliberations. Such individuals have not been subject to Regulation 1.59 requirements. All commenters were generally in agreement that non-paid advisors to governing boards and committees should not be held to a standard more strict than the one applicable to governing board members or committee members, and several noted that they do not use such advisors. The Commission agrees and has determined that these individuals are the ''functional equivalent'' of governing board members or committee members.

G. Committee Members and the ''Functional Equivalent'' Thereof

In association with its comments regarding the exclusion of governing board members from the definition of ''employee,'' CBT noted that it also routinely pays a small fee to non-member panelists of disciplinary committees and arbitration panels and asked that the Commission also consider excepting ''committee members who are compensated by a self-regulatory organization solely for committee activities.'' [18] The Commission has considered this idea and agrees that it should be incorporated into final amendments.[19] These individuals often provide valuable advice and counsel, and the Commission would like to ensure that the potential disincentive for members to serve in this capacity is removed.

III. Conclusion

The Commission believes that these amendments to Regulation 1.59 clarify existing ambiguities and appropriately adapt to business practices and changes in the industry since the regulation was last amended. This action is taken pursuant to the Commission's authority under Sections 5(7), 8a(5) and 9(f) of the Commodity Exchange Act (''Act''). Amendments to Commission Regulation 1.59 will not become effective until 120 days after the date of publication, to provide SROs time to adopt and submit to the Commission conforming rules. The Commission expects SROs to act expeditiously in submitting appropriate rules.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies, in promulgating rules, consider the impact of those rules on small businesses.[20] The Commission previously has determined that contract markets are not ''small entities'' for purposes of the RFA and that the Commission, therefore, need not consider the effect of proposed rules on contract markets.[21] Furthermore, the Acting Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting registered futures associations, if adopted, would not have a significant

consultants, takes great care to ensure that such persons may not be deemed to be 'employees' for any purposes. We believe that the Commission's characterization of consultants as 'employees' under Regulation 1.59 undermines this effort.''

[14] *See* NFA comment letter, January 25, 2000.

[15] *See* BOTCC comment letter, February 10, 2000.

[16] *See* CME comment letter, January 26, 2000; CBT comment letter, January 27, 2000.

[17] To the extent an SRO outsources a significant function which affords access to material, non-public information, the persons with such access should be treated as SRO employees, to the extent practicable. The Commission intends to address this issue on a case-by-case basis and, in the future, will consider whether other action is indicated.

[18] *See* CBT comment letter, January 27, 2000.

[19] This change to the final amendments requires adding to Regulation 1.59(a) both a definition of ''committee member'' and a specific exception to the definition of ''employee,'' for reasons consistent with those in sections II.B., II.C., and II.F., *supra*.

[20] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[21] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

economic impact on a substantial number of small entities.[22]

This rulemaking will impact SROs—both contract markets and registered futures associations—and their employees, governing board members, committee members, and certain independent contractors. The Commission previously has determined that the establishment of Regulation 1.59, as well as subsequent amendments to the regulation, have not created significant economic impact for affected entities or persons.[23]

The Commission does not believe that these amendments will have a significant economic impact on SROs or employees, governing board members, committee members, and independent contractors. The new amendments merely clarify the existing rule. The obligations and prohibitions established by the amendments are essentially the same as those created by SRO rules promulgated pursuant to existing Regulation 1.59.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA''),[24] which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes the rule does not contain information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract markets.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission hereby amends Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.59 is amended as follows:

A. The section title is revised.

B. Paragraphs (a)(3) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(10).

C. Paragraph (a)(2) is redesignated as paragraph (a)(4) and revised, and new paragraphs (a)(2) and (a)(3) are added.

D. Paragraph (b) introductory text, paragraph (b)(1), and paragraph (b)(1)(i) are revised.

E. Paragraphs (c) and (d) are revised.

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

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

* * * * *

(2) *Governing board member* means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(3) *Committee member* means a member, or functional equivalent thereof, of any committee of a self-regulatory organization.

(4) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization, but does not include:

(i) Any governing board member compensated by a self-regulatory organization solely for governing board activities; or

(ii) Any committee member compensated by a self-regulatory organization solely for committee activities; or

(iii) Any consultant hired by a self-regulatory organization.

* * * * *

(b) *Employees of self-regulatory organizations; Self-regulatory organization rules.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization from:

(A) Trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization;

(B) Trading, directly or indirectly, in any related commodity interest;

(C) Trading, directly or indirectly, in a commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization if the employee has access to material, non-public information concerning such commodity interest;

(D) Trading, directly or indirectly, in a commodity interest traded on or cleared by a linked exchange if the employee has access to material, non-public information concerning such commodity interest; and

* * * * *

(c) *Governing board members, committee members, and consultants; Self-regulatory organization rules.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 (or, pursuant to Section 17(j) of the Act in the case of a registered futures association) which provide that no governing board member, committee member, or consultant shall use or disclose—for any purpose other than the performance of official duties as a governing board member, committee member, or consultant—material, non-public information obtained as a result of the performance of such person's official duties.

(d) *Prohibited conduct.* (1) No employee, governing board member, committee member, or consultant shall:

(i) Trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or

(ii) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties.

(2) No person shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (d)(1) of this section from an employee, governing board member, committee member, or consultant.

Issued in Washington, DC, on July 27, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19443 Filed 8–3–00; 8:45 am]

BILLING CODE 6351–01–P

[22] *See* 58 FR 13565, 13569 (Mar. 12, 1993).

[23] *See* 47 FR 18618 (Apr. 30, 1982); 50 FR 24533 (June 11, 1985); 51 FR 44866 (Dec. 12, 1986); 52 FR 32568 (Aug. 28, 1987); 52 FR 48974 (Dec. 29, 1987); 58 FR 44470 (Aug. 23, 1993); and 58 FR 54966 (Oct. 25, 1993).

[24] 44 U.S.C. 3507(d).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4, 30, 140 and 180

RIN 3038–AB37

Exemption from Certain Part 4 Requirements for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Persons and for Commodity Trading Advisors With Respect to Advising Qualified Eligible Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is revising Commission Rule 4.7 (''Revision'')[1] through both substantive and technical revisions. Rule 4.7 provides a simplified regulatory framework for commodity pool operators (''CPOs'') operating commodity pools consisting of certain highly accredited pool participants and for commodity trading advisors (''CTAs'') directing or guiding the commodity interest trading accounts of certain highly accredited clients. These persons formerly were termed ''qualified eligible participants'' (or ''QEPs'') and ''qualified eligible clients'' (or ''QECs''), respectively. Under the Revision, all such persons are termed ''qualified eligible persons.''

The substantive revisions will make Rule 4.7 available to more CPOs and CTAs and under more situations, by bringing within the scope of the rule additional persons. They add, among others, the following persons to the qualified eligible person definition: Principals of certain registered investment professionals who themselves are defined as qualified eligible persons; certain registered securities investment advisers and their principals; ''qualified purchasers'' and ''knowledgeable employees'' as those terms are defined under the federal securities laws; certain employees and agents of pools, CPOs and CTAs and certain of those employees' and agents' immediate family members; and trusts whose advisors and settlors are qualified eligible persons. In addition, these revisions make it easier for certain charitable organizations, trusts and collective investment vehicles to be qualified eligible persons, and it includes persons who are not ''United States persons'' in the qualified eligible person definition with respect to both Rule 4.7 exempt pools and exempt accounts. Certain of the technical revisions, *i.e.*, those which reorganize the rule, will facilitate employment of the rule. Other technical revisions conform the nomenclature of the text of Rule 4.7 to reflect the revised structure of the Rule. The Commission has made similar conforming revisions to Rules 30.6(b), 140.99(i)(A) and 180.3(b)(2)(vi), which prior to these revisions referred to, *e.g.*, ''qualified eligible participants'' in their text.

In light of the breadth of the revisions to Rule 4.7, the Commission is including at Part IV of this release a distribution table that indicates where the provisions of the former rule can be found in the revised rule and a derivation table that indicates where the provisions of the revised rule can be found in the former rule.

DATES: Effective August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Stern Gold, Assistant Chief Counsel, Helene D. Schroeder, Attorney-Advisor or Ky Tran-Trong, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

In 1992, the Commission adopted Rule 4.7 as part of the Commission's ongoing program for review of its rules.[2] Rule 4.7 provides an exemption from certain disclosure, reporting and recordkeeping requirements for registered CPOs in connection with their operation of commodity pools whose participants meet specified eligibility criteria.[3] The exemption provides relief from all of the specific disclosures required by Rules 4.21 and 4.24 through 4.26 and streamlines the reporting and recordkeeping requirements of Rules 4.22 and 4.23, respectively.[4] Rule 4.7 provides similar relief from the specific disclosure requirements of Rules 4.31 and 4.34 through 4.36 and recordkeeping requirements of Rule 4.33 to registered CTAs who direct or guide the commodity interest trading accounts of clients who meet specified eligibility criteria.[5]

Subsequent to the adoption of Rule 4.7, and consistent with the purposes of the rule, Commission staff permitted various CPOs and CTAs to claim relief under the rule with respect to certain persons who did not meet the specified eligibility criteria of the rule. In addition, in 1996, Congress enacted the National Securities Markets Improvement Act of 1996 (''NSMIA'').[6] Among other things, NSMIA added Section 3(c)(7) to the ICA[7] thereby providing an additional exemption from the definition of the term ''investment company'' under the ICA with respect to funds comprised exclusively of qualified purchasers (''QPs''). NSMIA also directed the Securities and Exchange Commission (''SEC'') to promulgate rules that would permit ownership by knowledgeable employees

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] 57 FR 34853 (Aug. 7, 1992). The Commission made certain technical, non-substantive amendments to Rule 4.7 in 1995. 60 FR 38146, 38182–93 (July 25, 1995). These amendments were necessary to conform certain of the references in Rule 4.7 to other Part 4 rules the Commission had renumbered in connection with revising the disclosure rules generally applicable to CPOs and CTAs.

[3] As stated above, these persons formerly were termed ''qualified eligible participants.'' As a result of the Revision, they are now termed ''qualified eligible persons.''

[4] Under Rule 4.7, however, a registered CPO operating a pool for which it has claimed Rule 4.7 relief (''exempt pool'') remains subject to all other applicable requirements of the Act and the Commission's regulations issued thereunder with respect to the exempt pool and any other pool the CPO operates or intends to operate. Former Rule 4.7(a)(4); Revised Rule 4.7(d)(4)(i). For example, it remains subject to the antifraud provisions of Sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o* (1994), the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20 and 4.41, respectively, and the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Moreover, if a CPO distributes an offering memorandum in connection with soliciting participations in an exempt pool, the memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading. Former Rule 4.7(a)(2)(i)(A); Revised Rule 4.7(b)(1)(i).

[5] As also stated above, these persons formerly were termed ''qualified eligible clients.'' As a result of the Revision, they, too, are termed ''qualified eligible persons.''

Under Rule 4.7, a CTA that has claimed Rule 4.7 relief with respect to a qualified eligible person likewise remains subject to all other applicable requirements of the Act and the Commission's regulations with respect to the qualified eligible person and any other client to which the CTA provides or intends to provide commodity interest trading advice. Former Rule 4.7(b)(4); Revised Rule 4.7(d)(4)(ii). Similarly, if a CTA delivers a brochure or other disclosure statement to qualified eligible persons, the brochure or statement must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading. Former Rule 4.7(b)(2)(i)(A); Revised Rule 4.7(c)(1)(i).

[6] Pub. L. No. 104–290, 110 Stat. 3416 (codified as amended in scattered sections of 15 U.S.C. and 29 U.S.C.). Many collective investment vehicles trade both securities and commodity interests, and absent an exemption, they are subject to registration as an investment company under the Investment Company Act of 1940 (the ''ICA'') and their operators are subject to registration as a CPO under the Act. *See, e.g., Peavey Commodity Futures Funds I, II, III,* [1983–1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,511 (June 2, 1983).

[7] 15 U.S.C. 80a–3(c)(7) (Supp. III 1997).

of the securities of the issuer (or affiliate) without loss of the issuer's definitional exemption under Section 3(c)(1)[8] or 3(c)(7) of the ICA. In 1997, the SEC adopted Rule 3c–5 under the ICA,[9] which defines the term ''knowledgeable employee.''[10]

Based upon staff's experience in administering Rule 4.7 and taking into account these recent developments in the federal securities laws, on March 2, 2000 the Commission published for comment in the **Federal Register** proposed revisions to Rule 4.7 (the ''Proposal'').[11] Certain of the proposed revisions were substantive in nature—*i.e.,* they would expand the definitions employed in Rule 4.7, which would have the effect of permitting registered CPOs and CTAs to claim relief in additional circumstances under the rule. In proposing this action, the Commission noted that it had been guided by the purposes of Rule 4.7. With respect to CPOs, these purposes are to: (1) Reduce unnecessary regulatory burdens with respect to persons who appear not to need the full protections of the Part 4 framework; and (2) coordinate the Commission's rules with certain federal securities laws.[12] As for CTAs, the rationale for relief ''is analogous to that for * * * CPOs, *i.e.,* that [qualified eligible persons] are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require.''[13]

B. The Comments

The Commission received six comment letters on the Proposal: one from a firm registered as a futures commission merchant, CPO and CTA; one from a firm registered as a CPO; one from a designated self-regulatory organization; one from a bar association; one from a member of the commodities bar; and one from a trade association representing CPOs and CTAs.[14] All of the persons who commented on the proposed revisions to Rule 4.7 expressed strong support for the Proposal. Among the reasons commenters provided for their support were that the Proposal: (1) Would coordinate and harmonize the commodities and securities laws where they have a common purpose; (2) would relieve Commission staff from expending its resources on what have become routine and redundant Rule 4.7 letters; (3) would provide similar relief to the applicants for those letters; and (4) would make the rules more ''user friendly.''

In light of the comments received, the Commission generally has adopted the revisions to Rule 4.7 that it proposed.[15] In addition, the Commission has further reorganized the rule and has included more persons in the qualified eligible person definition. Each of the changes from the Proposal is discussed below, and distribution and derivation tables are provided at Section IV below.

In the **Federal Register** release announcing the Proposal (''Proposing Release''), the Commission gave a detailed explanation of each revision it had proposed to make to Rule 4.7.[16] The scope of this **Federal Register** release generally is restricted to the comments received on the Proposal and changes to the Proposal that the Commission has made in response thereto. Accordingly, the Commission encourages interested persons to read the Proposing Release for a discussion of the purpose of each of the revisions the Commission proposed to make to the various provisions under Rule 4.7.

II. Responses to the Comments Received

A. Reorganization of Rule 4.7

The Commission proposed to reorganize Rule 4.7 to assist CPOs and CTAs in determining the availability of the rule to them. This proposed reorganization would have put all of the definitions used in Rule 4.7 in one place, proposed paragraph (a) of the rule.[17] In particular, proposed paragraph (a)(1) would have contained the general definitions used throughout Rule 4.7.[18] One of those definitions was the term ''Portfolio Requirement'' in proposed paragraph (a)(1)(v).[19] One of the commenters questioned the need for two separate definitions of the term ''Portfolio Requirement'' (one for QEPs and one for QECs) because, as it noted, these definitions were virtually identical except for those references where the definition applicable to QEPs concerned ''pool participants'' and ''exempt pool'' and the definition applicable to QECs concerned ''clients'' and ''exempt account.'' Accordingly, the commenter recommended that the Commission should merge the two ''Portfolio Requirement'' definitions into one definition. The Commission believes this is a useful recommendation, and it has thus adopted in Rule 4.7(a)(1)(v) a single definition of ''Portfolio Requirement'' that equally applies to pool participants and exempt pools and to clients and exempt accounts.

In furtherance of this comment, the Commission additionally has streamlined other definitions used in Rule 4.7, such that now the rule solely refers to ''qualified eligible persons.'' Under both the former rule and the Proposal, persons for whom a CPO or CTA could claim relief under Rule 4.7 were termed QEPs and QECs, respectively, and the criteria each such person had to satisfy was separately set forth depending on whether the person had to meet the Portfolio Requirement. Thus, under proposed Rule 4.7(a)(2), two categories of persons were defined as QEPs (persons who were QEPs irrespective of the Portfolio Requirement and persons who were required to satisfy the Portfolio Requirement to be QEPs) and under proposed Rule 4.7(a)(3) two categories of persons were defined as QECs (persons who were QECs irrespective of the Portfolio Requirement and persons who were required to satisfy the Portfolio Requirement to be QECs). This

[8] 15 U.S.C. 80a–3(c) (1)(1994 & Supp. III 1997).

[9] 17 CFR 270.3c–5 (1999).

[10] 62 FR 17512 (Apr. 9, 1997).

[11] 65 FR 11253.

[12] 57 FR 3148, 3150–51 (Jan. 28, 1992).

[13] 57 FR at 3151.

[14] Not all of the comments, however, were directly related to the Proposal. One comment recommended adoption of a uniform ''sophisticated customer definition'' for various of the Commission's rules (*i.e.,* Rules 1.3, 1.55, 4.7, 35.1 and 36.1); another comment recommended adoption of an exemption from CPO registration for operators of privately-offered collective investment vehicles limited solely to Non-United States persons; and yet another comment recommended adoption of an exclusion from the CPO definition for a collective investment vehicle using commodity interests solely for recognized risk management purposes. Inasmuch as these comments do not specifically concern Rule 4.7, the Commission is not by this **Federal Register** release addressing them (although, as discussed below, the Commission has revised Rule 4.7 so that it now provides relief with respect to ''qualified eligible *persons*'' (emphasis added)). The Commission does, however, intend to consider these comments in connection with other regulatory reform initiatives that it may propose—*e.g.,* in connection with revisions to the registration requirements for CPOs and CTAs that it may propose.

[15] As discussed more fully below, the Commission has adopted certain provisions without the qualifying limitations it had proposed thereon. These provisions concern the treatment of family members of—*e.g.,* the CPO of the exempt pool or the CTA of the exempt account—as qualified eligible persons for other purposes of Rule 4.7 (*see* Section II.D.3. below) and the availability of rule 4.7 relief to a CTA with respect to those of its clients who are Non-United States persons (*see* Section II.E. below).

[16] The Commission also cited at various places in the Proposing Release to the letters its staff had issued granting relief from the definitional requirements of Rule 4.7.

[17] *See generally* 65 FR at 11255–56.

[18] 65 FR at 11256.

[19] *Id.*

made for a total of four eligibility categories under Rule 4.7.[20] By employing solely the term ''qualified eligible person'' in Rule 4.7, the Commission has reduced to two from four the categories of persons defined under the rule: Persons who do not need to satisfy the Portfolio Requirement to be qualified eligible persons (Rule 4.7(a)(2))[21] and persons who do need to satisfy the Portfolio Requirement to be qualified eligible persons (Rule 4.7(a)(3)).[22]

The Commission additionally has streamlined Rule 4.7 by combining at one place, Rule 4.7(d), text applicable to the notice of claim for exemption that must be made to claim the relief available under Rule 4.7. Under both the former rule and the Proposal, text applicable to this notice was included at two places in Rule 4.7: After the relief that CPOs could claim and after the relief that CTAs could claim. Inasmuch as this text was virtually identical at both places, the Commission has combined it into one location, Rule 4.7(d).

Finally, to assist CPOs and CTAs in their reading and application of Rule 4.7, the Commission has adopted introductory text to the rule, which explains the organization of Rule 4.7 as follows: Paragraph (a) contains definitions for the purposes of Rule 4.7; paragraph (b) contains the relief available to CPOs under Rule 4.7; paragraph (c) contains the relief available to CTAs under Rule 4.7; paragraph (d) concerns the Notice of Claim for Exemption under Rule 4.7; and paragraph (e) concerns insignificant deviations from a term, condition or requirement of Rule 4.7.

B. Clarification of the Term ''Non-United States Person''

Under the Proposal, the term ''Non-United States person'' would have been defined at proposed Rule 4.7(a)(1)(iv).[23] Similar to the definition of the term ''Portfolio Requirement,'' the Commission did not propose to change the definition but, rather, it proposed to change its placement within the rule and to replace with the term ''Non-United States person'' the former reference in the rule to ''a person that is not a United States person.''

Under the Proposal, a Non-United States person would have been defined to include, among other persons:

> (D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; *Provided,* That units of participation in the entity held by persons who do not qualify as Non-United States persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain requirements of Part 4 of the Commission's regulations by virtue of its participants being Non-United States persons.

One of the commenters stated that it was unclear as to how, if at all, persons who did not qualify as Non-United States persons but who otherwise were QEPs should be counted for purposes of the 10% limitation of this definition. This commenter contended that they should not be counted because they were, after all, QEPs in their own right.

The Commission agrees with this commenter, and has revised the rule accordingly. Thus, as adopted, the ownership limitation of Rule 4.7(a)(1)(iv)(D) provides that ''units of participation in the entity held by persons who do not qualify as Non-United States persons *or otherwise as qualified eligible persons* represent in the aggregate less than 10% of the beneficial interest in the entity'' (emphasis added).

C. The Reasonable Belief Standard

Because of the organization of the former rule, CPOs and CTAs were required to have a ''reasonable belief'' that certain persons defined in Rule 4.7 as QEPs and QECs, respectively were, in fact, QEPs and QECs. Under the proposed reorganization of the rule, CPOs and CTAs would have been required to have a ''reasonable belief'' that *all* persons defined as QEPs and QECs, respectively, were, in fact, QEPs and QECs. While the Commission stated that it did not believe that this should impose any additional burdens on CPOs and CTAs, it nonetheless requested comment on the proposed revision.[24] The three persons who commented on this proposed revision stated that they had no objection to it. And, in response to one of those commenters, the Commission is clarifying that CPOs and CTAs have latitude in determining how to obtain a ''reasonable belief''—e.g., whether by statements from the prospective participant or client, its agent, or other similar means. Of course, what will establish a ''reasonable belief'' will depend on the facts of each particular case.

D. Transferees of Insiders, Agents Engaged by Insiders, and the Family Members of Insiders as Qualified Eligible Persons

1. Transferees of Insiders as Qualified Eligible Persons

Under the Proposal, the QEP definition would have been expanded in proposed Rule 4.7(a)(2)(i)(H) to include, in addition to the CPO or the CTA of the exempt pool, the following persons: the investment adviser of the exempt pool; an affiliate of the exempt pool, CPO, CTA or investment adviser; a principal of these persons; certain employees of these persons; and certain family members of these persons.[25] Similarly, the QEC definition would have been expanded in proposed Rule 4.7(a)(3)(i)(B) to include the following persons: an affiliate of the CTA of the exempt account; a principal of the CTA or the affiliate; certain employees of these persons; and certain family members of these persons.[26] For the purposes of the discussion below, all of the foregoing persons collectively are referred to as ''Insiders.''

The Commission has adopted as proposed the provisions that would define each of the Insiders as a qualified eligible person. Further, in response to the comments received, the Commission

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[20] *See generally* 65 FR at 11256–61 for persons who were proposed to be QEPs and QECs irrespective of the Portfolio Requirement and 65 FR at 11261–62 for persons who were proposed to be QEPs and QECs if they satisfied the Portfolio Requirement.

[21] As proposed, the Commission employed the phrase ''persons who are QEPs or QECs irrespective of the Portfolio Requirement.'' As adopted, the Commission is employing the phrase ''persons who do not need to satisfy the Portfolio Requirement to be qualifying eligible persons.'' This phrase is consistent with the other phrase employed for eligibility status under Rule 4.7 applicable to ''persons who must satisfy the Portfolio Requirement to be qualified eligible persons.''

[22] As a result of this reorganization, Rule 4.7(a)(3)(xi) now defines a qualified eligible person as:

> A *pool,* trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of either participating in the exempt pool or opening an exempt account, and whose participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person (emphasis added.)

Former Rule 4.7 included pools within the applicable QEP definition but it did not include pools within the applicable QEC definition. The Commission stated that this difference in definitions was ''to ensure that pools generally, that is pools whose participants are not all QEPs, continue to receive a Disclosure Document from their CTAs.'' 57 FR at 34856. Upon reconsideration, the Commission is now of the view that all pools which meet the criteria of Rule 4.7(a)(3)(xi) should be defined as qualified eligible persons. With respect to exempt accounts in particular, this is because investment by a pool in an exempt account must be directed by a qualified eligible person—who, as the CPO of the pool and on behalf of the participants in the pool, will direct the investment in the exempt account.

[23] 65 FR at 11256 and n.32.

[24] 65 FR at 11257.

[25] 65 FR at 11259–61.

[26] *Id.*

has included certain other persons as qualified eligible persons and has expanded from the Proposal the availability of the qualified eligible person definition to certain family members of Insiders.

For example, one of the commenters on the proposed addition of Insiders to the QEP and QEC definitions suggested that the Commission include in Rule 4.7 a provision allowing transfers of interests in a Rule 4.7 exempt pool or exempt account from Insiders to other persons by gift or bequest. This commenter stated that support for including such a provision is found in rules under the ICA,[27] which permit transfers of interests in a Section 3(c)(1) or 3(c)(7) fund from a knowledgeable employee or QP to another person under specified situations. The Commission agrees with this suggestion and has adopted it in Rule 4.7(a)(2)(viii), which provides that a qualified eligible person includes the following: (1) Asny person who acquires a participation in the exempt pool or an interest in the exempt account by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from an Insider; (2) the estate of an Insider; or (3) a company established by an Insider exclusively for the benefit of (or owned exclusively by) the Insider and any other permitted transferee. This language generally follows the provisions of Rule 3c–6(b) under the ICA, which applies to transfers of interests in Section 3(c)(1) and (3)(c)(7) funds.

2. Agents Engaged by Insiders as Qualified Eligible Persons

Proposed Rule 4.7(a)(2)(i)(H)(*4*) would have included within the QEP definition certain employees of the exempt pool, CPO, CTA, investment adviser of the exempt pool, or affiliate thereof, and proposed Rule 4.7(a)(3)(i)(B)(*4*) would have included within the QEC definition certain employees of the CTA of the exempt account or of an affiliate of the CTA, provided that the employee: (1) Was an accredited investor as defined in Rule 501(a)(5) or (a)(6) under the Securities Act of 1933 [28] (''Accredited Investor''); and (2) had been employed by any of the foregoing persons, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. As the Commission explained, the purpose of these rules was in furtherance of the intent of Rule 4.7: to reduce unnecessary regulatory prescriptions for CPOs and CTAs with respect to persons who do not appear to need the full protections offered by the Part 4 framework.[29] The Commission has adopted this proposed definition and, in response to a comment received, has additionally included certain agents as qualified eligible persons under this rule.

One of the commenters on the Proposal suggested that the Commission consider including as QEPs and QECs certain attorneys and other persons similarly engaged whose activities and degree of sophistication would merit their being treated as QEPs and QECs. The Commission agrees with this comment and has incorporated it in Rule 4.7. Specifically, Rule 4.7(a)(2)(viii)(A)(*4*) defines a qualified eligible person with respect to an exempt pool as ''any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for,'' the exempt pool or the CPO, CTA or investment adviser of the exempt pool, or for an affiliate of any of the foregoing, provided that the employee or agent: (1) Is an Accredited Investor; and (2) has been engaged by the exempt pool, CPO, CTA, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. Similarly, Rule 4.7(a)(2)(viii)(B)(*4*) defines a qualified eligible person with respect to an exempt account as ''any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for,'' the CTA of the exempt account, or for an affiliate of the CTA, provided that the employee or agent: (1) Is an Accredited Investor; and (2) has been engaged by the CTA or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. Consistent with the treatment of employees under Rule 4.7, this definition excludes agents who perform solely clerical, secretarial or administrative functions.

3. Restriction on Family Members of Insiders Being Qualified Eligible Persons

Proposed Rule 4.7(a)(2)(i)(H)(*5*) would have included in the QEP definition the spouse, child, sibling or parent of an Insider, provided that an investment in the exempt pool by any such family member was made with the knowledge and at the direction of the Insider.[30] Proposed Rule 4.7(a)(3)(i)(B)(*5*) similarly would have included in the QEC definition the spouse, child, sibling or parent of an Insider, provided that the establishment of an exempt account by any such family member was made with the knowledge and at the direction of the trading advisor.[31] The Commission received no comments on these criteria and, accordingly, has adopted them as proposed in Rules 4.7(a)(2)(viii)(A)(*5*)(*i*) with respect to exempt pools and 4.7(a)(2)(viii)(B)(*5*)(*i*) with respect to exempt accounts.

The proposed rules also would have strictly limited the application of the QEP and QEC definitions, such that these family members would not have been QEPs or QECs for any other purposes of Rule 4.7—*e.g.,* for the purpose of being a QEP settlor of a trust under proposed Rule 4.7(a)(2)(i)(I). The commenter on this proposed criterion stated that it was unnecessarily opaque, and urged the Commission to treat these family members as QEPs and QECs for all purposes of Rule 4.7. Upon further reflection, the Commission agrees that the proposed limitation may have been overly broad where the source of funds used for participating in an exempt pool or investing in an exempt account was one of the specified family members. Accordingly, Rules 4.7(a)(2)(viii)(A)(*5*)(*ii*) with respect to exempt pools and (a)(2)(viii)(B)(*5*)(*ii*) with respect to exempt accounts provide that these family members are qualified eligible persons *except for* the purposes of paragraph (a)(3)(xi) of the rule. That paragraph provides that certain collective investment vehicles, such as a pool, are qualified eligible persons if, among other things, they satisfy the Portfolio Requirement, have in excess of $5,000,000 in total assets and their ''participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person.'' Because the source of funds in a collective investment vehicle such as a pool will always be either in addition to or other than from the family member, the Commission has provided that the family member is not a qualified eligible person for the purposes of Rule 4.7(a)(3)(xi).

E. Non-United States Persons as Qualified Eligible Persons for the Purpose of Opening an Exempt Account With a CTA

Proposed Rule 4.7(a)(3)(i)(A)(*2*) would have defined Non-United States persons as QECs, provided that the CTA who sought to direct or guide the commodity interest trading account of the Non-United States person: (1) Provided

[27] 17 CFR 270.3c-5 and 3c-6 (1999).

[28] 17 CFR 230.501(a)(5) or (a)(6)(1999), respectively.

[29] 65 FR at 11260.

[30] *Id.*

[31] *Id.*

commodity interest trading advice exclusively to persons who were QECs (including persons who were Non-United States persons); and (2) had filed a notice of claim for exemption under Rule 4.7. In the Proposing Release, the Commission noted that a CTA who directs or guides the accounts of United States persons who are not QECs would be subject to the Disclosure Document requirements of Rules 4.31, 4.34, 4.35 and 4.36 and the recordkeeping requirements of Rule 4.33. Accordingly, the Commission reasoned that requiring the CTA to comply with requirements to which it already would be subject would not impose any additional burden on the CTA with respect to clients who are Non-United States persons.[32]

Four persons commented on this proposed provision. While they generally expressed support for expanding the QEC definition to include Non-United States persons, they objected to the proposed limitation on permitting CTAs to claim relief under Rule 4.7 where the CTA has both United States and Non-United States persons as clients. Commenters disagreed with the Commission's argument that this framework would not impose any additional burdens on these CTAs because they would already be subject to disclosure and recordkeeping requirements with regard to their (other) Non-QEC clients. One of these commenters further stated that while this may be true where the trading programs and solicitation documents are substantially the same, this frequently will impose a significant burden on CTAs where the trading programs and solicitation documents are different—thereby requiring significant additional work for the CTA in what is likely to be a very different context. In support of permitting CTAs to treat Non-United States persons as QECs without limitation, commenters noted that a CTA soliciting Non-United States persons is subject to the requirements of applicable foreign law, including any mandatory disclosure requirements. On the whole, then, the commenters on this proposed provision saw no reason why the Commission should treat Non-United States persons differently for the purpose of participating in an exempt pool or opening an exempt account.

Based upon the comments received, and in light of the increasing globalization of the futures markets and competitiveness concerns, the Commission has decided not to adopt the proposed limitation. Thus, Rule 4.7(a)(2)(xi) defines a Non-United States person as a qualified eligible person, without regard to whether the Non-United States person is seeking to participate in an exempt pool or to open an exempt account.[33]

III. QPs and Knowledgeable Employees as Qualified Eligible Persons

By the Proposal the Commission proposed to add QPs and knowledgeable employees to the QEP and QEC definitions, [34] and by the Revision the Commission has included QPs and knowledgeable employees in the qualified eligible person definition. As the Commission stated in the Proposing Release:

> The Commission intends to follow interpretations issued by the SEC and its staff of the QP and knowledgeable employee definitions. The Commission has the right further to interpret or to amend Rule 4.7 to exclude from the [qualified eligible person definition] any person that the SEC or its staff found to be a QP or knowledgeable employee or to include in the [qualified eligible person definition] any person the SEC or its staff excluded from the QP or knowledgeable employee definition, if such action is found to be necessary to effectuate the purposes of the Act and the Commission's regulations. The Commission expects that it would exercise this right infrequently.[35]

In particular, the Commission noted that in April of 1999, staff of the SEC's Division of Investment Management responded to a series of inquiries from the Subcommittee on Private Investment Entities of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association concerning the scope of both the qualified purchaser and knowledgeable employee definitions.[36] As stated in the SEC staff's letter:

> Whether an employee actively participates in the investment activities of a Fund is a factual determination that must be made on a case-by-case basis by the Fund. Nevertheless, as a general matter, with the possible exception of some research analysts (*e.g.,* a research analyst who researches all potential portfolio investments and provides recommendations to the portfolio manager), we believe that the types of employees described * * * [*i.e.,* certain marketing and investor relations professionals, research analysts, attorneys, brokers, traders and financial, compliance, operational and accounting officers of a fund] would not qualify as knowledgeable employees under Rule 3c–5.[37]

IV. Distribution and Derivation Tables

The following distribution table indicates where the provisions of former Rule 4.7 can be found in revised Rule 4.7 and the derivation table indicates where the provisions of revised Rule 4.7 can be found in former Rule 4.7. The derivation table indicates by ''—'' any provision in the revised rule that is not derived from the former rule (*i.e.,* it is an entirely new provision). To avoid what otherwise would be a very lengthy presentation, as appropriate each table groups together certain paragraphs.

A. DISTRIBUTION TABLE

Former rule 4.7	Revised rule 4.7
(a)(1)	(a)(1)
(a)(1)(i)	(a)(1)(iii)
(a)(1)(ii)(A)	(a)(2)
(a)(1)(ii)(A)(*1*)–(*4*)	a)(2)(i)–(iv)
(a)(1)(ii)(A)(*5*)	(a)(2)(viii)(A)(*1*)
(a)(1)(ii)(B)(*1*)	(a)(1)(v)
(a)(1)(ii)(B)(*2*)(*i*)–(*xii*)	(a)(3)(i)–(xii)
(a)(1)(ii)(C)	(a)(1)(iv); (a)(1)(vi); (a)(2)(xi)
(a)(1)(ii)(D)	(a)(1)(xii)(A)
(a)(2)	(b)
(a)(3)	(d)

[32] 65 FR at 11261.

[33] CTAs claiming relief under Rule 4.7 are nonetheless required under paagraph (c)(1)(i) of the rule to display a prescribed disclaimer statement on the cover page of any brochure or other disclosure statement they provide to prospective clients or, if none is provided, immediately above the signature line of the agreement the client must execute before it opens an account. CPOs claiming relief under Rule 4.7 are subject to a similar requirement under paragraph (b)(1)(i).

[34] 65 FR at 11258–59.

[35] 65 FR at 11259 (footnote omitted).

[36] *American Bar Ass'n* [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,548 (Apr. 22, 1999).

[37] *Id.* at 78,746 (footnote omitted).

A. DISTRIBUTION TABLE—Continued

Former rule 4.7	Revised rule 4.7
(b)(1)	(a)(1)
(b)(1)(i)	(a)(1)(ii)
(b)(1)(ii)(A)	(a)(2)(i)–(iv)
(b)(1)(ii)(B)(*1*)	(a)(1)(v)
(b)(1)(ii)(B)(*2*)(*i*)–(*xii*)	(a)(3)(i)–(xii)
(b)(1)(ii)(C)	(a)(2)(xii)(B)
(b)(1)(ii)(D)	(a)(2)(xii)(A)
(b)(1)(ii)(E)	(a)(2)(xii)(C)
(b)(2)	(c)
(b)(3)	(d)
(c)	(e)

B. DERIVATION TABLE

Revised rule 4.7	Former rule 4.7
(a)	(a)(1)
(a)(1)	- -
(a)(1)(i)	- -
(a)(1)(ii)	(b)(1)(i)
(a)(1)(iii)	(a)(1)(i)
(a)(1)(iv)	(a)(1)(ii)(C)
(a)(1)(v)	(a)(1)(ii)(b)(*1*); (b)(1)(ii)(B)(*1*)
(a)(1)(vi)	(a)(1)(ii)(C)
(a)(2)	(a)(1)(ii)(A); (b)(1)(ii)(A)
(a)(2)(i)–(iv)	(a)(1)(ii)(A)(*1*)–(*4*); (b)(1)(ii)(A)
(a)(2)(v)–(vii)	- -
(a)(2)(viii)(A)(*1*)	(a)(1)(ii)(A)(*5*)
(a)(2)(viii)(A)(*2*)–(6)	- -
(a)(2)(viii)(B)	- -
(a)(2)(ix)–(x)	- -
(a)(2)(xi)	(a)(1)(ii)(C)
(a)(2)(xii)(A)	(a)(1)(ii)(D); (b)(1)(ii)(D)
(a)(2)(xii)(B)	(b)(1)(ii)(C)
(a)(2)(xii)(C)	(b)(1)(ii)(E)
(a)(3)	(a)(1)(ii)(B)(*2*); (b)(1)(ii)(B)(*2*)
(a)(3)(i)–(xii)	(a)(1)(ii)(B)(*2*)(*i*)–(*xii*); (b)(1)(ii)(B)(*2*)(*i*)–(*xii*)
(b)	(a)(2)
(c)	(b)(2)
(d)	(a)(3); (b)(3)
(e)	(c)

V. Technical Revisions to Rules 30.6(b), 140.99(i)(A) and 180.3(b)(2)

A. Rule 30.6(b)

Part 30 of the Commission's rules governs the offer and sale of foreign futures and foreign options contracts to persons located in the United States. Rule 30.6 sets forth the disclosure requirements that apply to domestic and foreign persons who are registered or required to be registered under Part 30 or who have obtained an exemption from such registration under Rule 30.5. Specifically, Rule 30.6(b) sets forth those requirements with respect to CPOs and CTAs, differentiating between disclosures applicable in the context of participants and clients, respectively, who meet the requirements of Rule 4.7 (Rule 30.6(b)(1)) and those who do not (Rule 30.6(b)(2)).

As discussed above, under the Revision persons who formerly were termed ''qualified eligible participants'' or ''qualified eligible clients'' are now all termed ''qualified eligible persons'' and the provisions of Rule 4.7 have been reorganized. The Commission accordingly has conformed the nomenclature of Rule 30.6(b) to that of revised Rule 4.7.

B. Rule 140.99(i)(A)

Rule 140.99 governs requests for exemptive, no-action and interpretative letters. Among other things, it sets forth the procedures that an applicant must follow in making a request for a letter. Paragraph (i)(A) makes clear that Rule 140.99 does not affect the requirements of, or is otherwise applicable to, notice filings required to be made to claim relief from the Act or from a Commission rule—*e.g.,* pursuant to Rule 4.7.

As stated above, all claims for relief under Rule 4.7 are now found in paragraph (d) of the rule. Accordingly, the Commission has revised Rule 140.99(i)(A) such that it similarly refers to Rule 4.7(d).

C. Rule 180.3(b)(2)

Part 180 of the Commission's rules governs arbitration or other dispute settlement procedures. Rule 180.3(b)(2) concerns the signing of a pre-dispute arbitration agreement and certain endorsement procedures that may be followed by certain persons. The Commission similarly has conformed the nomenclature of Rule 180.3(b)(2)(vi) so that it now refers to ''A person who is a 'qualified eligible person' under § 4.7(a) of this chapter.'' [38]

[38] This action is consistent with the Commission's recent regulatory reform proposals, which, among other things, would provide in new Rule 166.5 for the use of pre-dispute arbitration agreements for certain customer claims and grievances and which ''expands the use of the 'single-signature format' for

Continued

VI. Related Matters

A. Paperwork Reduction Act

Rule 4.7 affects information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission has submitted a copy of this Rule 4.7 to the Office of Management and Budget (OMB) for its review.[39] The Commission did not receive any comments on any potential paperwork burden associated with the Proposal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[40] requires each federal agency to consider the impact of proposed rules on small entities. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[41] The Commission has determined that registered CPOs are not small entities for the purposes of the RFA.[42] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[43]

Rule 4.7 reduces the regulatory burdens on registered CPOs and CTAs by providing exemptive relief from the disclosure, reporting and recordkeeping requirements that are otherwise applicable to these registrants. As revised, Rule 4.7 makes this relief available to more CPOs and CTAs and under more situations. This expanded relief, moreover, is available to all CPOs and CTAs, regardless of size.

C. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.''[44] Rule 4.7 makes available an exemption from certain Part 4 requirements for CPOs who operate commodity pools consisting of qualified eligible persons and for CTAs who direct or guide the commodity interest trading accounts of qualified eligible persons. Accordingly, the Commission has determined to make the proposed amendments to Rule 4.7 effective immediately.

List of Subjects

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 30

Definitions, Foreign futures, Foreign options, Reporting and recordkeeping requirements, Registration requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount, Customer protection.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 180

Arbitration or other dispute settlement procedures, Consumer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 1a(4), 1a(5), 4b, 4*l,* 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a, 6b, 6*l,* 6m, 6n, 6*o* and 12a, the Commission hereby amends Parts 4, 30, 140 and 180 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a, and 23.

2. Section 4.7 is revised to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

This section is organized as follows: Paragraph (a) contains definitions for the purposes of § 4.7; paragraph (b) contains the relief available to commodity pool operators under § 4.7; paragraph (c) contains the relief available to commodity trading advisors under § 4.7; paragraph (d) concerns the Notice of Claim for Exemption under § 4.7; and paragraph (e) addresses the effect of an insignificant deviation from a term, condition or requirement of § 4.7.

(a) *Definitions.* Paragraph (a)(1) of this section contains general definitions, paragraph (a)(2) of this section contains the definition of the term *qualified eligible person* with respect to those persons who do not need to satisfy the Portfolio Requirement and paragraph (a)(3) of this section contains the definition of the term *qualified eligible person* with respect to those persons who must satisfy the Portfolio Requirement. For the purposes of this section:

(1) *In general.*

(i) *Affiliate* of, or a person *affiliated* with, a specified person means a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.

(ii) *Exempt account* means the account of a qualified eligible person that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(iii) *Exempt pool* means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(iv) *Non-United States person* means:

(A) A natural person who is not a resident of the United States;

(B) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal place of business in a foreign jurisdiction;

(C) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; *Provided,* That units of participation in the entity held by persons who do not qualify as Non-United States persons or otherwise as qualified eligible persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain

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account opening agreements to include * * * 'qualified eligible clients' as defined in Rule 4.7.'' 65 FR 39008, 39016 n. 31 (June 22, 2000). As footnote 31 sates, the Commission has proposed to delete Part 180 in its entirety. If the Commission adopts these regulatory reform proposals, references in Rule 166.5 solely will be to ''qualified eligible persons.''

[39] 44 U.S.C. 3507(d) (Supp. I 1995).

[40] 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996).

[41] 47 FR 18618 (Apr. 30, 1982).

[42] *Id.* at 18619–20.

[43] *Id.* at 18620.

[44] 5 U.S.C. 553(d) (1994).

requirements of Part 4 of the Commission's regulations by virtue of its participants being Non-United States persons; and

(E) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States.

(v) *Portfolio Requirement* means that a person:

(A) Owns securities (including pool participations) of issuers not affiliated with such person and other investments with an aggregate market value of at least $2,000,000;

(B) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the exempt pool or the date that the person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(C) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(A) and (B) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(A), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(v)(B), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(C) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(A)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(B)).

(vi) *United States* means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities.

(2) *Persons who do not need to satisfy the Portfolio Requirement to be qualified eligible persons. Qualified eligible person* means any person, acting for its own account or for the account of a qualified eligible person, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, or who the commodity trading advisor reasonably believes, at the time that person opens an exempt account, is:

(i) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(ii) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, or a principal thereof;

(iii) A commodity pool operator registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the pool operator:

(A) Has been registered and active as such for two years; or

(B) Operates pools which, in the aggregate, have total assets in excess of $5,000,000;

(iv) A commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the trading advisor:

(A) Has been registered and active as such for two years; or

(B) Provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more futures commission merchants;

(v) An investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 (''Investment Advisers Act'') or pursuant to the laws of any state, or a principal thereof; *Provided,* That the investment adviser:

(A) Has been registered and active as such for two years; or

(B) Provides securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers;

(vi) A ''qualified purchaser'' as defined in section 2(51)(A) of the Investment Company Act of 1940 (the ''Investment Company Act'');

(vii) A ''knowledgeable employee'' as defined in § 270.3c-5 of this title;

(viii)(A) With respect to an exempt pool:

(*1*) The commodity pool operator, commodity trading advisor or investment adviser of the exempt pool offered or sold, or an affiliate of any of the foregoing;

(*2*) A principal of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing;

(*3*) An employee of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the exempt pool, other commodity pools operated by the pool operator of the exempt pool or other accounts advised by the trading advisor or the investment adviser of the exempt pool, or by the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the exempt pool, pool operator, trading advisor, investment adviser or affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(*4*) Any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or any other employee of, or agent so engaged by, an affiliate of any of the foregoing (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee or agent:

(*i*) Is an accredited investor as defined in § 230.501(a)(5) or (6) of this title; and

(*ii*) Has been employed or engaged by the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months;

(*5*) The spouse, child, sibling or parent of a person who satisfies the criteria of paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*) or (*4*) of this section; *Provided,* That:

(*i*) An investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person; and

(*ii*) The family member is not a qualified eligible person for the purposes of paragraph (a)(3)(xi) of this section;

(*6*)(*i*) Any person who acquires a participation in the exempt pool by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from a person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section;

(*ii*) The estate of any person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section; or

(*iii*) A company established by any person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (5) of this section exclusively for the benefit of (or owned exclusively by) that person and any person listed in paragraph (a)(2)(viii)(A)(*6*)(*i*) or (*ii*) of this section;

(B) With respect to an exempt account:

(*1*) An affiliate of the commodity trading advisor of the exempt account;

(*2*) A principal of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor;

(*3*) An employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the trading advisor or the affiliate; *Provided*, That such employee has been performing such functions and duties for or on behalf of the trading advisor or the affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(*4*) Any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the commodity trading advisor of the exempt account or any other employee of, or agent so engaged by, an affiliate of the trading advisor (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided*, That such employee or agent:

(*i*) Is an accredited investor as defined in § 230.501(a)(5) or (a)(6) of this title; and

(*ii*) Has been employed or engaged by the commodity trading advisor or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(*5*) The spouse, child, sibling or parent of the commodity trading advisor of the exempt account or of a person who satisfies the criteria of paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*) or (*4*) of this section; *Provided*, That:

(*i*) The establishment of an exempt account by any such family member is made with the knowledge and at the direction of the person; and

(*ii*) The family member is not a qualified eligible person for the purposes of paragraph (a)(3)(xi) of this section;

(*6*)(*i*) Any person who acquires an interest in an exempt account by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from a person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section;

(*ii*) The estate of any person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section; or

(*iii*) A company established by any person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section exclusively for the benefit of (or owned exclusively by) that person and any person listed in paragraph (a)(2)(viii)(B)(*6*)(*i*) or (*ii*) of this section;

(ix) A trust; *Provided*, That:

(A) The trust was not formed for the specific purpose of either participating in the exempt pool or opening an exempt account; and

(B) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible person;

(x) An organization described in section 501(c)(3) of the Internal Revenue Code (the ''IRC''); *Provided*, That the trustee or other person authorized to make investment decisions with respect to the organization, and the person who has established the organization, is a qualified eligible person;

(xi) A Non-United States person;

(xii)(A) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible persons;

(B) An exempt pool; or

(C) Notwithstanding paragraph (a)(3) of this section, an entity as to which a notice of eligibility has been filed pursuant to § 4.5 which is operated in accordance with such rule and in which all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible persons.

(3) *Persons who must satisfy the Portfolio Requirement to be qualified eligible persons. Qualified eligible person* means any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, or any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account, satisfies the Portfolio Requirement and is:

(i) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of such Act not formed for the specific purpose of either investing in the exempt pool or opening an exempt account;

(ii) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the ''Securities Act'') or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible person;

(iii) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible person;

(iv) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(v) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974; *Provided*, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible persons;

(vi) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(vii) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(viii) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of either participating in the exempt pool or opening an exempt account;

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of either his purchase in the exempt pool or his opening of an exempt account exceeds $1,000,000;

(x) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(xi) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of either participating in the exempt pool or opening an exempt account, and whose participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person; or

(xii) Except as provided for the governmental entities referenced in paragraph (a)(3)(iv) of this section, if

otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing.

(b) *Relief available to commodity pool operators.* Upon filing the notice required by paragraph (d) of this section, and subject to compliance with the conditions specified in paragraph (d) of this section, any registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible persons in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 CFR 230.901 *et seq.*, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible persons, may claim any or all of the following relief with respect to such pool:

(1) *Disclosure relief.* (i) Exemption from the specific requirements of §§ 4.21, 4.24, 4.25 and 4.26 with respect to each exempt pool; *Provided*, That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool:

''PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PERSONS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL.''

(ii) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided*, That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(2) *Periodic reporting relief.* Exemption from the specific requirements of §§ 4.22(a) and (b); *Provided*, That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(i) The net asset value of the exempt pool as of the end of the reporting period;

(ii) The change in net asset value from the end of the previous reporting period; and

(iii) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(3) *Annual report relief.* (i) Exemption from the specific requirements of §§ 4.22(c) and (d); *Provided*, That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, signed and affirmed in accordance with § 4.22(h) which contains, at a minimum:

(A) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(B) A Statement of Income (Loss) for that year; and

(C) Appropriate footnote disclosure and any other material information.

(ii) Such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(iii) Legend. (A) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(B) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report and state that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator.

(4) *Recordkeeping relief.* Exemption from the specific requirements of § 4.23; *Provided*, That the commodity pool operator must maintain the reports referred to in paragraphs (b)(2) and (b)(3) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible persons and substantiating any performance representations) at his main business address and must make such books and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(c) *Relief available to commodity trading advisors.* Upon filing the notice required by paragraph (d) of this section, and subject to compliance with the conditions specified in paragraph (d) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible persons may claim any or all of the following relief with respect to the accounts of qualified eligible persons who have given due consent to their account being an exempt account under § 4.7:

(1) *Disclosure relief.* (i) Exemption from the specific requirements of §§ 4.31, 4.34, 4.35 and 4.36; *Provided*, That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible persons, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it opens an account with the commodity trading advisor:

''PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE PERSONS, THIS BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT.''

(ii) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided*, That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible persons whose performance is not disclosed in this Disclosure Document.

(2) *Recordkeeping relief.* Exemption from the specific requirements of § 4.33; *Provided*, That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of qualified eligible persons (including, without limitation, records relating to the qualifications of such qualified eligible persons and substantiating any performance representations) and must make such books and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(d) *Notice of claim for exemption.*

(1) A notice of a claim for exemption under this section must:

(i) Be in writing;

(ii) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator or commodity trading advisor identification number of the person claiming the exemption;

(iii)(A) Where the claimant is a commodity pool operator, provide the name(s) of the pool(s) for which the request is made; *Provided*, That a single notice representing that the pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(B) Where the claimant is a commodity trading advisor, contain a representation that the trading advisor anticipates providing commodity interest trading advice to qualified eligible persons;

(iv) Contain representations that:

(A) Neither the commodity pool operator or commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (d);

(B) The commodity pool operator or commodity trading advisor will comply with the applicable requirements of § 4.7; and

(C) Where the claimant is a commodity pool operator, that the exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(v) Specify the relief claimed under § 4.7;

(vi) Where the claimant is a commodity pool operator, state the closing date of the offering or that the offering will be continuous;

(vii) Be signed by the commodity pool operator or commodity trading advisor as follows: If it is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(viii) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(ix)(A)(*1*) Where the claimant is a commodity pool operator, except as provided in paragraph (d)(1)(iii)(A) of this section with respect to single-investor pools and in paragraph (d)(1)(ix)(A)(*2*) of this section, be received by the Commission:

(*i*) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(2), (3) and (4) of this section; or

(*ii*) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1) of this section.

(*2*) Where participations in a pool have been offered or sold in full compliance with Part 4, the notice of a claim for exemption may be filed with the Commission at any time; *Provided*, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (d)(1)(ix)(A)(*2*) shall either provide disclosure and reporting in accordance with the requirements of Part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(B) Where the claimant is a commodity trading advisor, be received by the Commission before the date the trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible person pursuant to § 4.7.

(2) The notice will be effective upon receipt by the Commission with respect to each pool for which it was made where the claimant is a commodity pool operator and otherwise generally where the claimant is a commodity trading advisor; *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the pool operator or trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(3) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity pool operator of an exempt pool to be ineligible for the relief claimed with respect to such pool or which would cause a commodity trading advisor to be ineligible for the relief claimed. The pool operator or trading advisor must promptly file a

notice advising the Commission of such change.

(4)(i) Any exemption from the requirements of § 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26 claimed hereunder with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to the pool and any other pool the pool operator operates or intends to operate.

(ii) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35 or 4.36 claimed hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible person and any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(e) *Insignificant deviations from a term, condition or requirement of § 4.7.*

(1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible person;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular exempt account; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (e)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

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

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

4. Section 30.6 is amended by revising paragraph (b) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to persons who satisfy the requirements of qualified eligible persons, as defined in § 4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible person with the Risk Disclosure Statement set forth in § 4.24(b)(2) of this chapter and the statement in § 4.7(b)(1)(i) of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each qualified eligible person with the Risk Disclosure Statement set forth in § 4.34(b)(2) of this chapter and the statement in § 4.7(c)(1)(i) of this chapter.

(2) With respect to persons who do not satisfy the requirements of qualified eligible persons, as defined in § 4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

5. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

§ 140.99 [Amended]

6. In § 140.99, paragraphs (i)(A) and (B) are correctly designated as paragraphs (i)(1) and (2). In paragraph (i)(1), the phrase ''§§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter'' is revised to read ''§§ 4.5, 4.7(d), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter''.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

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

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21, unless otherwise noted.

8. Section 180.3 is amended by revising paragraph (b)(2)(vi) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * * *

(2) * * *

(vi) A person who is a ''qualified eligible person'' as defined in § 4.7(a) of this chapter.

* * * * *

Issued in Washington, D.C., on July 27, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19445 Filed 8–3–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[USMS NO. 100F; AG Order No. 2316–2000]

RIN 1105–AA64

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings. A proposed rule with invitation to comment was published in the Federal Register on December 7, 1999, at 64 FR

68307. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, 600 Army Navy Drive, CS–3, Arlington, Virginia 22202, telephone number (202) 307–9054.

SUPPLEMENTARY INFORMATION:

What Legal Authority does the United States Marshals Service Have to Charge Fees?

The Attorney General must establish fees to be taxed and collected for certain services rendered by the United States Marshals Service in connection with Federal court proceedings. 28 U.S.C. § 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. The Attorney General initially established the fee schedule in 1991 based on the actual costs, *e.g.,* salaries, overhead, etc., of the services rendered and the hours expended at that time. See 56 FR 2436 (January 23, 1991). Due to an increase in the salaries and benefits of United States Marshals Service personnel over time, the current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

What Federal Cost Accounting and Fee Setting Standards and Guidelines are Being Used?

When developing fees for services, the United States Marshals Service adheres to the principles contained in OMB Circular No. A–25, User Charges. OMB Circular A–25 states that, as a general policy, a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.''

The guidance contained in OMB Circular A–25 is applicable to the extent that it is not inconsistent with any Federal statute. Specific legislative authority to charge fees for services takes precedence over OMB Circular A–25 when the statute ''prohibits assessment of a user charge on a service or addresses an aspect of the user charge (*e.g.,* who pays the charge; how much is the charge; where collections are deposited).'' When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular A–25 to the fullest extent allowable. The guidance directs Federal agencies when calculating fees to charge the ''full cost'' of providing services that provide a specific benefit to recipients. OMB Circular A–25 defines full cost as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of'':

- Direct or indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- The management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

What Processes Were Used to Determine the Amount of the Fee Revision?

As previously stated, the Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The 1991 rates are:

For each item served (or service attempted) in person:

(a) Within two hours, during published duty hours—a minimum charge of $40 per Deputy (or guard). If necessary, for each associated additional hour, or portion thereof—$20 per Deputy (or guard) per additional hour.

(b) Within two hours, after published duty hours—a minimum charge of $50 per Deputy (or guard). If necessary, for each associated additional hour, or portion thereof—$25 per Deputy (or guard) per additional hour.

In addition, the Attorney General established a flat fee of $3 for each item served by mail or forwarded for service in another judicial district.

In November 1995, the Department of Justice, Office of Inspector General, issued an audit report on the United States Marshals Service's Collection of Service Fees and Commissions (Audit Report 96–01).[1] In the report, the Office of Inspector General recommended that the United States Marshals Service determine whether the fee schedule reflects actual and reasonable costs of the services provided. As a result of the audit report, in 1998, the United States Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over time, the existing fee schedule accurately reflects the costs of serving process. The following cost module reflects the average hourly cost of serving process in person on behalf of a requesting party.

	Cost module
Hourly Wage	$27.53
Fringe Benefits	11.01
Indirect Costs	6.94
Total Personnel Costs	$45.48

The hourly wage was determined by dividing the annual salary, including locality pay, of the average Deputy U.S. Marshal in 1998 who serves process into the total work hours in a year. The cost of Law Enforcement Availability Pay is also factored into the hourly wage of a Deputy U.S. Marshal.[2] The fringe benefits rate reflected 40 percent of wage costs. Finally, the indirect costs, which are reflective of the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, are approximately 18 percent of the total wage and benefits costs.[3] As a result of the cost module, the United States Marshals Service has determined that the existing fee schedule no longer reflects the actual and reasonable costs of serving process.

The total personnel costs of serving process were rounded to the nearest whole dollar. Thus, in order to recover the actual and reasonable costs of serving process, the United States Marshals Service will be charging $45 per hour (or portion thereof) for each item served by one Deputy U.S. Marshal. In order to simplify the calculation of the fees, the United States Marshals Service is eliminating the minimum charge for serving process within two hours and, instead, will

[1] Copies of the audit report are available at www.usdoj.gov/oig/au9601/au9601.htm.

[2] In 1994, Congress passed the Law Enforcement Availability Pay Act, Pub. L. No. 103–329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. § 5545a), which provides that law enforcement officers, such as Deputy U.S. Marshals, who are required to work unscheduled hours in excess of each regular work day, are entitled to a 25% premium pay in addition to their base salary.

[3] The indirect cost rate was derived by determining the proportion of management costs expended by the United States Marshals Service relative to direct program expenses assumed by the agency in Fiscal Year 1998.

charge a fee based on a straight hourly rate for service.

The United States Marshals Service also conducted a survey of a representative sampling of its district offices to determine whether the $3 flat fee for mailing process reflected the actual costs of mailing. The results of the survey indicated that the average actual cost of mailing process (which in most cases, required certified mail, return receipt delivery) is approximately $7 per item. Thus, the United States Marshals Service has determined that the flat mailing fee of $3 per item no longer reflects the costs of mailing. The United States Marshals Service will be charging a flat fee of $8 per item as an accurate reflection of the costs of mailing or forwarding process. The $8 fee is based on the combination of the average actual cost of mailing or forwarding process and the indirect costs associated with mailing or forwarding process.

What are the Other Revisions to the Fee Regulation?

The United States Marshals Service makes three additional clarifications to the fee regulation. One of the revisions establishes a specific fee for the administrative preparation of a notice of sale, bill of sale, or U.S. Marshal deed on behalf of a requesting party. The other two revisions are housekeeping revisions, setting forth the definitions of ''item'' and ''process.''

1. Fee for Administrative Preparation of Notice of Sale, Bill of Sale, or U.S. Marshal Deed

28 U.S.C. § 1921(a)(1)(D) authorizes the United States Marshals Service to collect a fee for the preparation of a notice of sale or bill of sale on behalf of a requesting party. When the Attorney General initially established the fee schedule in 1991, there was no specific provision made for a fee for the preparation of a notice of sale, bill of sale (in cases where personality is sold), or a U.S. Marshal deed (in cases where realty is sold).

The United States Marshals Service conducted an analysis to determine the administrative cost of preparing a notice of sale, bill of sale, or a U.S. Marshal deed. The following module reflects the average hourly administrative costs to complete this task.

	Cost Module
Average Hourly Wage of GS–7/9 Employee	$21.49
Fringe Benefits	7.73
Indirect Costs	5.26
Total Costs	$34.48

The hourly wage was determined by dividing the average annual salary of an administrative employee who prepares the notice of sale, bill of sale, or U.S. Marshal deed into the total work hours in a year. The fringe benefits rate of 36 percent [4] of wage costs was also added to reflect the average hourly personnel cost of preparing these documents. Finally, as previously described, the indirect costs are approximately 18 percent of the total wage and benefits costs.

The analysis disclosed that the average administrative employee spent approximately 30–45 minutes conducting the task of preparing each of these documents. Thus, the typical cost for the preparation of these documents is between $17.24 and $25.86 for each item. Because the time to prepare notices of sale, bills of sale, or U.S. Marshal deeds does not vary widely, and in most cases takes less than one hour to accomplish, the United States Marshals Service will be charging a flat fee of $20 per item rather than calculating the fee based on a straight hourly rate per item.

2. Housekeeping Provisions

The calculation of the fee charged under the current fee regulation is dependent upon the number of endeavors to serve a piece of process, also referred to in the regulation as an ''item.'' Although ''item'' is not defined in 28 U.S.C. § 1921 or the fee regulation, it has been defined by the United States Marshals Service in its internal guidance disseminated to its employees, as ''all papers issued in one action which are served simultaneously on one person or organization.'' The regulation includes this definition of ''item.'' Under this definition, a Deputy U.S. Marshal who serves one person with one or more pieces of process in one case at one time serves one item. When two different people or organizations, however, are served with one or more pieces of process from one case at one time, then the number of items served would be two. Although the United States Marshals Service has the discretion to determine the number of items upon which fees will be calculated, the United States Marshals Service will exercise reasonableness to avoid excessive charges.

[4] The fringe benefits rate to budget for an administrative position is less than the rate to budget for a Deputy U.S. Marshal position.

Similarly, consistent with 28 U.S.C. 1921(a)(1)(A), the United States Marshals Service broadly defines ''process'' to include, but not be limited to, a summons and complaint, subpoena, writ, and the execution of court-ordered injunctions, and civil commitments on behalf of a requesting party. Process may also include the execution of ancillary court orders (other than subpoenas issued on behalf of indigent defendants and arrest warrants) in criminal cases. The regulation sets forth the United States Marshals Service's internal policy regarding this matter.

As previously stated, this rule revised the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings. A proposed rule with invitation to comment was published in the **Federal Register** on December 7, 1999, at 64 FR 68307. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the United States Marshals Service collected $1,341,921 in service of process fees in FY1998.[5] The implementation of this rule will provide the United States Marshals Service with an additional $1,000,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase is a recovery of costs based on an increase in salaries, expenses, and employee benefits.

The economic impact on individual entities that utilize the services of the United States Marshals Service is minimal. The service of process fees only affect entities that pursue litigation in Federal court and, in most instances, seek to have the United States Marshals Service levy upon or seize property. The service of process fees, currently set at essentially $20 per duty hour and $25 per non-duty hour, will be increased to $45 per hour. The fees are consonant with similar fees already paid by these entities in state court litigation.

[5] This amount does not include $1,152,565 in United States Marshals Service commissions collected for sales during FY1998. This rule does not affect commissions, only the fees charged for service of process.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866 (Regulatory Planning and Review), section 1(b) (Principles of Regulation). The Department of Justice, United States Marshals Service, has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice, United States Marshals Service, has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

This rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501–20).

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Joe Lazar, Associate General Counsel, United States Marshals Service, 600 Army Navy Drive, CS–3, Arlington, Virginia 22202, telephone number (202) 307–9054.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, Title 28, Part 0, Subpart U of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

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

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.114 is transferred from subpart U to the end of subpart T; paragraphs (b) through (d) are redesignated as paragraphs (f) through (h), respectively; paragraph (a) is revised; and new paragraphs (b) through (e) are added to read as follows:

§ 0.114 Fees for services.

(a) The United States Marshals Service shall routinely collect fees according to the following schedule:

(1) For process forwarded for service from one U.S. Marshals Service Office or suboffice to another—$8 per item forwarded;

(2) For process served by mail—$8 per item mailed;

(3) For process served or executed personally—$45 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service employee, agent, or contractor who is needed to serve process—$45 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.

(4) For copies at the request of any party—$.10 per page;

(5) For preparing notice of sale, bill of sale, or U.S. Marshal deed—$20 per item;

(6) For keeping and advertisement of property attached— actual expenses incurred in seizing, maintaining, and disposing of property.

(b) Out-of-pocket expenses include, but are not limited to, advertising, inventorying, storage, moving, insurance, guard hire, prisoner transportation and housing, and any other third-party expenditure incurred in executing process.

(c) Travel costs, including mileage, shall be calculated according to 5 U.S.C. chapter 57.

(d) ''Item'' is defined as all documents issued in one action which are served simultaneously on one person or organization.

(e) ''Process'' is defined to include, but is not limited to, a summons and complaint, subpoena, writ, orders, and the execution of court-ordered injunctions, and civil commitments on behalf of a requesting party. Process may also include the execution of ancillary court orders (other than subpoenas issued on behalf of indigent defendants and arrest warrants) in criminal cases.

* * * * *

Dated: July 28, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–19809 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 026–CORR; FRL–6733–5]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects language to Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on April 19, 2000. It also corrects language that appeared in various other final **Federal Register** actions.

EFFECTIVE DATE: This action is effective August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: On April 19, 2000 at 65 FR 20913, EPA published a direct final rulemaking action approving a rule from the Sacramento Metropolitan Air Quality Management District of the California State

Implementation Plan (SIP). The direct final rulemaking contained amendments to 40 CFR part 52, subpart F. The amendment which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(263)(i)(C)(*2*) is incorrect. The amendment is being corrected in this action. Paragraph (C) should have been identified as Sacramento Metropolitan Air Quality Management District and paragraph (1) should have listed Rule 464 instead of paragraph (*2*). The identification of these two paragraphs is being corrected in this action.

On May 7, 1996, at 61 FR 20454, EPA published a direct final rulemaking action approving Rule 359 for the Santa Barbara County Air Pollution Control District. The direct final rulemaking contained amendments to 40 CFR part 52, subpart F. The material incorporated by reference into § 52.220, Identification of plan, paragraph (c)(198)(i)(K)(*2*) was identified in the **Federal Register**, however, the information was not transferred to the Code of Federal Regulations (CFR). Paragraph (*2*) should read: ''Rule 359, adopted on June 28, 1994.'' This omission is being corrected in this action.

Additional omissions in 40 CFR 52.220 are being corrected in this action. Paragraph (c)(184)(i)(D) should be identified as San Diego County Air Pollution Control District. Paragraph (c)(220)(i)(B) should be identified as Placer County Air Pollution Control District. Paragraph (c)(225)(i)(C) should be identified as El Dorado County Air Pollution Control District. The identification of these paragraphs is being corrected in this action.

On March 1, 1996, at 61 FR 7994, the deletion of Kern County Air Pollution Control District Rule 425 was incorrectly added as paragraph (c)(194)(i)(D)(*3*). In today's action, the deletion of Rule 425 is being correctly added to paragraph (c)(132)(B) and paragraph (c)(194)(i)(D)(*3*) is being removed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is correcting omissions and amending the rules listed in the currently approved information. The affected regulations are codified at 40 CFR part 52, subpart F, § 52.220. These rules were previously subject to notice and comment prior to EPA approval. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implication of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 8, 2000 **Federal Register** document.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 4, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Nora McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (132)(i)(B), (184)(i)(D) introductory text, (198)(i)(K)(2), (220)(i)(B) introductory text, (225)(i)(C) introductory text, (263)(i)(C) introductory text, (263)(i)(C)(*1*) and by removing

(194)(i)(D)(*3*) and (263)(i)(C)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(132) * * *

(i) * * *

(B) Previously approved on May 3, 1984 and now deleted without replacement, Rule 425.

* * * * *

(184) * * *

(i) * * *

(D) San Diego County Air Pollution Control District.

* * * * *

(198) * * *

(i) * * *

(K) * * *

(*2*) Rule 359, adopted on June 28, 1994.

* * * * *

(220) * * *

(i) * * *

(B) Placer County Air Pollution Control District.

* * * * *

(225) * * *

(i) * * *

(C) El Dorado County Air Pollution Control District.

* * * * *

(263) * * *

(i) * * *

(C) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 464, adopted on July 23, 1998.

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[FR Doc. 00–18641 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6846–3]

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submissions From the States of Michigan, Ohio, Indiana, and Illinois, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (i.e., March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submissions of the States of Michigan, Ohio, Indiana and Illinois. EPA's final action consists of approving those elements of the States' submissions that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of each State within the Great Lakes basin where a State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance. EPA is separately taking final action on the Guidance submissions of the States of Minnesota, New York, Pennsylvania and Wisconsin.

EFFECTIVE DATE: September 5, 2000.

ADDRESSES: The public docket for EPA's final actions with respect to the Guidance submissions of the States of Michigan, Ohio, Indiana, and Illinois is available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mery Jackson-Willis (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202–260–0312); or Mery Jackson-Willis, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 (312–353–3717).

SUPPLEMENTARY INFORMATION

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the States of Michigan, Ohio, Indiana and Illinois. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in the States identified above.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in the States identified above.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected. This table lists the types of entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by these final actions, you should examine the definition of ''Great Lakes System'' in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the Part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA published the Guidance. *See* 60 FR 15366 (The term ''Guidance'' as used below refers to the regulation promulgated by EPA on March 23, 1995 and codified at 40 CFR Part 132). The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron*

and Steel Institute, et al. v. *EPA (AISI),* 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance ''insofar as it would eliminate mixing zones for [BCCs] and impose [WQBELs] upon internal facility waste streams.'' 115 F.3d at 985. On October 9, 1997, EPA published a notice revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second notice amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR Part 132 (found in Procedure 3.C. of Appendix F) and to remove language in the Pollutant Minimization Program provisions (Procedure 8.D. of Appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third notice withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the Part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner,* Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** notice making Part 132 effective in any State in the Great Lakes Basin that failed to make a submission to EPA by that date under 40 CFR Part 132. However, all of the Great Lakes States made complete submissions to EPA on or before the February deadline. On March 2, April 14, April 20 and April 28, 1998, EPA published in the **Federal Register** notices of its receipt of each of the States' Great Lakes Guidance submissions and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portions of those submissions. 63 FR 10221; 63 FR 18195; 63 FR 19490; 63 FR 23285.

40 CFR 132.5(f) provides that, once EPA completes its review of a State's submission, it must either publish notice of approval of the State's submission in the **Federal Register** or issue a letter notifying the State that EPA has determined that all or part of its submission is inconsistent with the CWA or the Guidance, and identify any changes needed to obtain EPA approval. If EPA issues a letter to the State making findings of inconsistencies, the State then has 90 days to make the necessary changes. If the State fails to make the necessary changes, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that will apply to discharges within the State.

On November 15, 1999, the National Wildlife Federation and the Lake Michigan Federation filed suit alleging that EPA had a non-discretionary duty to take action on the Great Lakes States' Guidance submissions. *National Wildlife Federation* v. *Browner,* Civ. No. 99–3025–HHK (D.D.C.). EPA negotiated a consent decree providing that EPA must sign **Federal Register** notices by July 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Pennsylvania; and **Federal Register** notices by September 29, and October 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of New York and Wisconsin, respectively. Today's **Federal Register** notice fulfills EPA's obligations under that Consent Decree with respect to the States of Michigan, Ohio, Indiana and Illinois. EPA is separately taking final action with respect to the States of Minnesota, New York, Pennsylvania and Wisconsin. EPA notes that each of the States' Guidance submissions may contain provisions that revise its NPDES program or water quality standards in areas or with respect to regulated entities not covered by the Guidance. EPA is not taking action at this time to either approve or disapprove any such provisions.

EPA has conducted its review of the States' submissions in accordance with the requirements of Section 118(c)(2) of the CWA and 40 CFR Part 132. Section 118 requires that States adopt policies, standards and procedures that are ''consistent with'' the Guidance. EPA has interpreted the statutory term ''consistent with'' to mean ''as protective as'' the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

Where EPA has promulgated a final rule that identifies a provision of the Guidance that shall apply in a State, EPA explains below its reasons for concluding that the State failed to adopt requirements that are consistent with the Guidance. Additional explanation of EPA's conclusions are contained in EPA's correspondence with each State (identified in relevant sections below) where EPA initially identified inconsistencies in the States's submission. Notice of the availability of each of these letters was published in the **Federal Register** and EPA has considered all public comments received regarding any conclusions as to whether a State had adopted provisions consistent with the Guidance.

In this proceeding, EPA has reviewed the States' submissions to determine their consistency with 40 CFR Part 132. EPA has not reopened Part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of Part 132. To the extent any members of the public commented during this proceeding that any provision of Part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to those elements of the State submissions being approved by EPA, EPA is approving those provisions as amendments to each State's NPDES permitting program under Section 402 of the CWA and as revisions to each State's water quality standards under Section 303 of the CWA. Today's notice identifies those approved elements. Additional explanations of EPA's review of and conclusions regarding the States' submissions, including the specific State provisions that EPA is approving, are contained in the administrative record for today's actions in documents prepared for each State entitled ''[particular State] Provisions Being Approved as Being Consistent With the Guidance,'' ''Analysis of Whether [the particular State] Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps

Taken By [the particular State] in Response to EPA's 90-Day Letter.''

C. Today's Final Actions

1. The State of Michigan

On June 30 and August 16, 1999, EPA issued letters notifying the Michigan Department of Environmental Quality (MDEQ) that, while the State of Michigan had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 30 and August 16, 1999, letters. 64 FR 49803. EPA has completed its review of the State of Michigan's response to, and all public comments on, the June 30 and August 16, 1999, letters, and has determined that, with one exception described below, Michigan has adopted requirements consistent with all aspects of the Guidance. Specifically, Michigan has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to: the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with one exception, the implementation procedures in Appendix F. As explained more fully below, Michigan has not adopted requirements consistent with the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's June 30, 1999, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, MDEQ provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which MDEQ commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its Memorandum of Agreement (MOA) or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled ''Michigan Provisions Approved as Being Consistent With the Guidance,'' ''Analysis of Whether Michigan Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps Taken By Michigan in Response to EPA's 90-Day Letter'' included in the record for this action.

EPA has determined that Michigan's provisions at R 323.1219(4) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Michigan's whole effluent toxicity requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132. The Guidance procedure for evaluating reasonable potential for whole effluent toxicity (WET) is based on comparing a projected 95th percentile WET value at a 95 percent confidence level with the acute and chronic WET criteria after accounting for any available dilution. This conservative approach is designed to ensure that WQBELs are imposed when there is a reasonable potential for toxicity, taking into account the effluent variability and the size of the data set, even if no toxicity has actually been observed.

In evaluating State reasonable potential procedures for WET, EPA looked for an equivalent level of protection to that provided by the Guidance procedure. In the case of a procedure to determine when a WQBEL is needed, one important consideration is whether the alternative procedure would indicate the need for a WQBEL in similar situations to those that would trigger a WQBEL under Section D of Procedure 6.

In most cases where there is quantifiable effluent data, EPA's procedure will project an effluent value greater than the maximum observed value to characterize the reasonable worst case effluent. Michigan's procedures for determining WET reasonable potential are based on comparisons of preliminary effluent limits to average effluent toxicity values (with further possible adjustment based on the frequency of failures), rather than comparisons of preliminary effluent limits to maximum effluent toxicity values multiplied by factors to account for effluent variability and size of the data set as required by Paragraph D of Procedure 6 of the Guidance. Michigan's use of the average effluent toxicity value will, except in highly unusual circumstances, be lower than the maximum toxicity value multiplied by the factors to account for effluent variability set forth in the Guidance. Indeed, in certain circumstances, Michigan's procedure would not require a reasonable potential finding even where testing has shown actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

EPA notes that Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Michigan's R. 323.1219(2) also provides that WQBELs shall be imposed whenever the WET reasonable potential procedures in Michigan's R. 323.1219(4) show reasonable potential. As discussed above, however, Michigan's WET reasonable potential rules are not consistent with the Guidance. Because R.323.1219(2) links establishment of WQBELs for WET to a finding of reasonable potential under procedures that EPA has determined are not consistent with Section D of Procedure 6 (i.e., the procedures in R. 323.1219(4)), R.323.1219(2) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of R. 323.1219 (2) and (4), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Michigan.

EPA understands that MDEQ intends to initiate rulemaking to revise its regulations to insure that the State's WET reasonable potential provisions are consistent with the Guidance. EPA will work closely with MDEQ to insure that its revised regulations will be consistent with the Guidance. MDEQ will then submit its revised regulations to EPA for approval pursuant to 40 CFR 123.62 as a revision to its NPDES program and, upon EPA approval of those revisions, EPA will revise its regulations so that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 will no longer apply to discharges into the Great Lakes System in the State of Michigan. EPA also notes

that, based upon Michigan's adoption of criteria consistent with the Guidance, EPA intends, in a separate action in the future, to remove Michigan from the list of States specified at 40 CFR 131.36 for which EPA has promulgated specific criteria under Section 304(a) of the Clean Water Act.

2. The State of Ohio

On June 30 and August 16, 1999, EPA issued letters notifying the Ohio Environmental Protection Agency (OEPA) that, while the State of Ohio had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 30 and August 16, 1999, letters. 64 FR 49803. EPA has completed its review of the State of Ohio's response to, and all public comments on, the June 30 and August 16, 1999, letters, and has determined that, with only one exception described below, Ohio has adopted requirements consistent with all aspects of the Guidance. Specifically, Ohio has adopted requirements consistent with and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with one exception, the implementation procedures in Appendix F. As explained more fully below, Ohio has not adopted requirements consistent with the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's June 30, 1999, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, OEPA provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which OEPA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled ''Ohio Provisions Approved as Being Consistent With the Guidance,'' ''Analysis of Whether Ohio Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps Taken By Ohio in Response to EPA's 90-Day Letter.''

EPA has determined that Ohio's procedure at OAC 3745–33–07(B) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Ohio's whole effluent toxicity requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132. Ohio's procedure is based on consideration of a wide range of available data, including the number of tests performed, the magnitude and frequency of toxicity exhibited by the effluent and available biological data. Ohio's procedure is not consistent with the Guidance because rather than provide safety factors to be applied to observed WET data as does Procedure 6, they apply factors that devalue observed WET test results and would not require a WQBEL even where WET test results show observed levels of unacceptable toxicity.

Specifically, where biological data are unavailable to corroborate effluent toxicity data, Ohio's procedures generally do not require establishment of a WQBEL unless the maximum observed toxicity value is at least three times greater than the expected toxicity limit, the average toxicity exceeds one-third the expected effluent limit, and more than 30 percent of the test results exceed a projected wasteload allocation. Where biological data are present to corroborate effluent data that a toxicity problem exists, Ohio's procedure would allow a permit writer to consider WET data at full value (*i.e.,* compare the maximum observed WET result to the expected toxicity limit), but it also requires the permit writer, in determining whether a WQBEL is needed, to weigh factors related to a minimum frequency of actual exceedances and a comparison of the average of WET test results to a percentage of the expected toxicity limit similar to those that must be considered when only WET data are available. Because these procedures devalue toxicity results and fail to require a limit even in cases of observed toxicity, Ohio's procedure would not require a reasonable potential finding even where testing has showed actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

As discussed above with respect to Michigan, Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Ohio's rules at OAC 3745–33–07(B)(2) provide that WQBELs shall be imposed whenever the WET reasonable potential procedures in Ohio's rules at OAC 3745–33–07(B) show reasonable potential. Because OAC 3745–33–07(B)(2) links establishment of WQBELs for WET to a finding of reasonable potential under procedures that EPA has determined are not consistent with Section D of Procedure 6 (*i.e.,* the procedures in OAC 3745–33–07(B)), OAC 3745–33–07(B)(2) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of OAC 3745–33–07(B), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Ohio.

3. The State of Indiana

On August 16, 1999, EPA issued a letter notifying the Indiana Department of Environmental Management (IDEM) that, while the State of Indiana had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its August 16, 1999, letter. 64 FR 49803. EPA has completed its review of the State of Indiana's response to, and all public comments on, the August 16, 1999, letter, and has determined that, with the exceptions described below, Indiana has adopted requirements consistent with all aspects of the Guidance. Specifically, Indiana has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water

quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with the exceptions described below, the implementation procedures in Appendix F. As explained more fully below, Indiana has not adopted requirements consistent with the criteria for granting variances set forth in Paragraph 1 of Section C of Procedure 2 in Appendix F, requirements for including WQBELs in permits set forth in Paragraph 2 of Section F of Procedure 5 in Appendix F, and the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's August 16, 1999, letter concluded that some of the provisions that EPA is now approving were inconsistent with the Guidance because authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, IDEM provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which IDEM commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with exceptions identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled ''Indiana Provisions Approved as Being Consistent With the Guidance,'' ''Analysis of Whether Indiana Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps Taken By Indiana in Response to EPA's 90-Day Letter.''

EPA has determined that Indiana's provisions at 327 IAC 2–1.5–17(b), which allow IDEM to grant a variance from water quality standards if the permit applicant demonstrates that failure to grant the variance ''will cause an undue hardship or burden upon the applicant,'' are inconsistent with the criteria for granting variances set forth at Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132. Specifically, the Guidance only allows variances based upon economic considerations if the failure to grant the variance ''would result in substantial and widespread economic and social impact.'' EPA believes, and Indiana agrees, that it is possible that a failure to grant a variance could result in ''an undue hardship or burden upon [a particular discharger]'' without also causing ''substantial and widespread economic and social impact.'' Consequently, Indiana's provisions allow variances to be issued that relax water quality standards, and consequently permit conditions to meet standards, in instances where such a loosening of applicable requirements would not be permitted by the Guidance. Therefore, these provisions of Indiana's submission are not consistent with the Guidance.

EPA, therefore, disapproves of 327 IAC 2–1.5–17(b), and has determined that Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana. EPA notes that Indiana's ''undue hardship or burden upon the applicant'' criterion for granting a variance, as applied to municipal dischargers, may often be consistent with the ''substantial and widespread social and economic impact'' criterion in Paragraph 1.f of Section C of Procedure 2 in Appendix F to 40 CFR Part 132. This is because an undue hardship on the discharger (*i.e.*, the community served by the municipal discharger) may also constitute widespread social and economic impact. Consequently, EPA believes that specifying that Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132 applies to discharges into the Great Lakes System in the State of Indiana may, as a practical matter, not have a significant effect on the granting of variances for municipalities in Indiana. In any case, under today's rule, Indiana may only grant variances that meet the criteria specified in Procedure 2 in Appendix F to 40 CFR Part 132.

EPA has further determined that Indiana's provisions at 327 IAC 5–3–4.1(b)(1), which prevent Indiana from including necessary WQBELs in permits simply because a variance application has been submitted, is inconsistent with Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 and with 40 CFR 122.44(d). Under those federal provisions, WQBELs must be included in NPDES permits whenever there is reasonable potential that a discharge will cause or contribute to causing nonattainment of an existing water quality standard. The mere filing of a variance application does not change a water quality standard. Consequently, 327 IAC 5–3–4.1(b)(1), which prevents Indiana from including WQBELs when there is reasonable potential for a discharge to cause or contribute to causing nonattainment of an existing water quality standard where a permittee has applied for a variance from that standard, is not consistent with the Guidance and 40 CFR 122.44(d).

EPA, therefore, disapproves of 327 IAC 5–3–4.1(b)(1), and has determined that Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana.

EPA also has determined that Indiana's provisions at 327 IAC 5–2–11.5(c)(1) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Indiana's WET requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132.

As described above with respect to Michigan, EPA's procedure, in most cases, will project an effluent value greater than the maximum observed value to characterize the reasonable worst case effluent. Indiana's procedure, on the other hand, uses the mean value of effluent data, further ''discounted'' by the fraction of tests exceeding the wasteload allocation. This both lessens the impact of observed toxicity on the calculation and fails to account for the reasonable possibility that effluent toxicity may exceed the level observed in the tests because sampling did not coincide with periods of maximum toxicity. An analysis of Indiana's procedure shows that those procedures often do not require a limit on WET where one would be required under the procedures in the Guidance. In fact, in some cases, Indiana's procedure would not require imposition of a WQBEL even where testing has showed actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

As discussed above with respect to Michigan and Ohio, Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Indiana's rules at 327 IAC 5–

2–11.5(c), which specify when the permitting authority must include a WQBEL for WET, limits the permitting authority to using the WET reasonable potential procedures in Indiana's rules at 327 IAC 5–2–11.5(c)(1). Because 327 IAC 5–2–11.5(c) links establishment of WQBELs for WET to the Indiana WET reasonable potential procedures that EPA has determined are not consistent with Section D of Procedure 6 (i.e., the procedures in 327 IAC 5–2–11.5(c)(1)), 327 IAC 5–2–11.5(c) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of 327 IAC 5–2–11.5(c), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana.

4. The State of Illinois

On November 12, 1999, EPA issued a letter notifying the Illinois Environmental Protection Agency (IEPA) that, while the State of Illinois had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the State's rules were not consistent with corresponding provisions of the Guidance. On December 9, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its November 12, 1999, letter. 64 FR 69019. EPA has completed its review of the State of Illinois' response to, and all public comments on, the November 12, 1999, letter, and has determined that, with one exception, Illinois has adopted requirements consistent with all aspects of the Guidance. Specifically, Illinois has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B—D; the antidegradation policy in Appendix E; and, with one exception described below, the implementation procedures in Appendix F. As explained more fully below, Illinois has not adopted requirements consistent with the requirements governing total maximum daily loads in Procedure 3 in Appendix F.

EPA's November 12, 1999, letter, had concluded that some of the provisions that EPA is now approving were inconsistent with the Guidance because they authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, Illinois provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which IEPA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled ''Illinois Provisions Approved as Being Consistent With the Guidance,'' ''Analysis of Whether Illinois Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps Taken By Illinois in Response to EPA's 90-Day Letter.''

EPA has determined that Procedure 3 in Appendix F to 40 CFR Part 132 shall apply with regard to development of total maximum daily loads (TMDLs) for the Great Lakes System in the State of Illinois because Illinois decided not to adopt TMDL provisions for the Great Lakes System. Illinois did not adopt such provisions because EPA has indicated that it will be developing a TMDL for Lake Michigan and so Illinois does not believe that the State should be required to develop any TMDLs for the Great Lakes System. Today's action ensures that the provisions of Procedure 3 in Appendix F will apply in developing TMDLs in the Great Lakes System in the State of Illinois, regardless of who develops the TMDL. EPA notes that this promulgation has no effect on the reasonable potential procedures at 35 Ill. Adm. Code 309.141(h)(4), which EPA approves as being consistent with the reasonable potential procedures in Procedure 5 in Appendix F to 40 CFR Part 132, and which therefore apply in the Great Lakes System in the State of Illinois for purposes of developing preliminary effluent limitations in making reasonable potential determinations.

As noted above, EPA, in this notice, is not taking action to approve or disapprove portions of the States' Guidance submissions pertaining to NPDES permitting and water quality standards issues that are not addressed by the Guidance. While EPA is not taking action under Section 118 with regard to the following issue, EPA nevertheless wishes to describe its understanding with regard to one aspect of Illinois' submission that is not addressed by the Guidance. Specifically, Illinois' rules at 35 Ill. Adm. Code 352.700(a)(2) provide that, when a WQBEL is below the level of quantification, ''[t]he analytical method adopted by the [Illinois Pollution Control] Board and specified in the permit shall be the method used for compliance assessment including enforcement actions.''

EPA is concerned about this language because EPA believes, as a matter of law, that any credible evidence (subject to generally applicable rules of evidence), not just evidence generated by use of an analytical method specified in a permit, can be used in an enforcement action to establish that a violation of an effluent limitation has occurred. IEPA has clarified that 35 Ill. Adm. Code 352.700(a)(2) is only a limitation on the types of evidence that IEPA may use in an enforcement action; it does not place limits on the types of evidence that the federal government or third parties can use in an enforcement action or citizen suit. IEPA also has clarified that it does not intend to include the language of 35 Ill. Adm. Code 352.700(a)(2) in NPDES permits. Finally, IEPA is considering revising its rules to address EPA's concerns. While EPA is not, at this time, taking action to either approve or disapprove 35 Ill. Adm. Code 352.700(a)(2) as a modification of Illinois NPDES program, EPA notes that revisions to State NPDES programs do not become effective until approved by EPA. 40 CFR 123.62(b)(4).

D. Public Comments

EPA received a large number of public comments in response to its **Federal Register** notices of its receipt of the States' Guidance submissions and of the availability of EPA's letters to the States of Michigan, Ohio, Indiana and Illinois regarding their Guidance submissions. EPA has responded to each of those comments in a document entitled ''EPA Responses to Comments Regarding the Great Lakes Guidance Submissions of the States of Michigan, Ohio, Indiana and Illinois' that has been included as part of the record in this matter. The following is a summary of EPA's responses to the most significant of these comments.

Comment: A number of commenters asserted that EPA's regulatory

determinations are being made without affected parties having any chance to review the Agency's reasoning or to raise issues as to the validity of that reasoning, in violation of the Administrative Procedure Act and EPA's public participation regulations at 40 CFR 25.

Response: The final rule being promulgated today makes certain provisions of 40 CFR Part 132 applicable to discharges in certain States within the Great Lakes System. Those provisions were adopted after publication of a proposed rule for public comment. See 58 FR 20802 (April 16, 1993). EPA is not modifying those provisions, but merely making them effective in accordance with 40 CFR 132.5(f)(2). Therefore, the public had a full opportunity to comment on the contents of today's rule. Moreover, public comment was also received regarding EPA's review of the State submissions. EPA provided public notice of the availability of, and solicited comment on, the NPDES portions of these States' Guidance submissions in **Federal Register** notices dated March 2, 1998 and April 28, 1998. 63 FR 10221; 63 FR 23285. In **Federal Register** notices dated September 14, 1999, and December 9, 1999, EPA subsequently provided notice of the availability of letters to the States of Michigan, Ohio, Indiana and Illinois in which EPA provided (a) detailed explanations of the bases for its findings that certain States had not adopted provisions consistent with certain provisions of the Great Lakes Guidance and (b) its preliminary conclusions that, with the exception of those findings, the States had adopted provisions consistent with the Guidance. 64 FR 49803, 64 FR 69019. EPA also solicited comment on all aspects of those letters, and has considered and responded to all comments received before taking today's final actions. Consequently, EPA has complied with all applicable public participation requirements.

Comment: A number of commenters raised questions regarding the basis for EPA's decisions to approve a State's provisions pertaining to a specific element of the Guidance where the State's provisions, on their face, do not plainly require the State's permitting or water quality standards authority to act in a manner consistent with the Guidance.

Response: EPA believes that these commenters' view is both unreasonable and contrary to EPA regulations governing the Agency's review of the State submissions. EPA regulations required each State to submit to EPA not only the criteria, methodologies, policies and procedures developed pursuant to the Guidance but also ''general information which will aid EPA in determining whether the criteria, methodologies, policies and procedures are consistent with'' the Act and the Guidance, and ''information on general policies which may affect their application and administration.'' 40 CFR 132.5(b)(1) and (4). Consistent with these regulations, EPA has not limited its review to solely the plain language of each State's criteria, methodologies, policies and procedures, but has considered the totality of the State's submission in determining whether it was consistent with the Guidance, including information regarding interpretation or implementation of a State's criteria, methodologies, policies and procedures.

As noted previously, the States were not required to adopt requirements that are identical to the Guidance. States' submissions can—and do—differ from the Guidance, and this difference is permissible provided the State's approach is consistent with (i.e., as protective as) the Guidance. Given the complexity of the States' submissions and EPA's review, it is not surprising that particular State provisions may be amenable to more than one interpretation or manner of application. Where a State's provision was either unclear or authorized the State to act consistent with the Guidance, but there was uncertainty as to whether the State would actually exercise its discretion consistent with the Guidance, EPA considered supplementary information to aid in determining the meaning and protectiveness of the State's provision vis-a-vis the Guidance. This information included, for example, States' legal interpretations of its criteria, methodologies, policies and procedures, or a State's position on how it would implement State law. For each of the States, clarification on the manner in which the State would exercise its discretion was provided on some issues in an addendum of the MOA with EPA governing its administration of the NPDES program. See 40 CFR 123.24. This MOA governs how each State will administer its NPDES program, and failure to comply with the terms of the MOA is grounds for EPA objection to a State permit and withdrawal of State's NPDES program. See 40 CFR 123.44(c)(3) and 123.63(a)(4).

Commenters suggest that EPA is required to ignore such supplementary information in its review and appear to believe that, simply because a State provision may be ambiguous or grants some flexibility to the State, EPA has no choice but to disapprove the provision as being inconsistent with the Guidance. Nothing in EPA's regulations or in the CWA compels such a cabined exercise of judgment by EPA. Where the totality of a State's submission demonstrates that the State will administer its program consistent with the Guidance, EPA believes that it is appropriate to approve the submission.

Comment: A commenter disagrees that Indiana's variance procedures, which allow Indiana to grant variances based upon a finding that compliance with the existing water quality standard would have an ''undue hardship or burden upon the applicant,'' is not consistent with the Guidance requirement that variances only be granted where compliance with the existing standard ''would result in widespread economic and social impact.'' According to the commenter, Indiana has the ability to obtain and consider information regarding societal impacts in deciding whether to grant a variance and so Indiana's provisions are consistent with the Guidance. The commenter also argues that, even if Indiana's provisions are not consistent with the Guidance, EPA can apply its ''substantial and widespread'' test in deciding whether to approve of any variance that Indiana decides to grant under its applicant-specific test.

Response: The fact that Indiana ''has the ability to obtain and consider information regarding societal impacts in deciding whether to grant a variance'' does not change the fact that Indiana law requires that variances be allowed in circumstances where the Guidance does not allow for variances to be granted: i.e., where the failure to grant the variance would have an ''undue hardship or burden upon the applicant'' but not cause ''widespread social and economic impact.'' Indiana's variance provisions, therefore, are not consistent with the Guidance.

With regard to the comment that EPA can apply the Guidance variance procedures in reviewing any variances that Indiana decides to grant, 40 CFR 132.4(a) requires that States ''adopt requirements * * * that are consistent with * * * [t]he Implementation Procedures in Appendix F [to 40 CFR Part 132].'' The affirmative obligation imposed on States by 40 CFR 132.4(a) to adopt such requirements would be rendered meaningless if EPA simply relied upon its approval/disapproval authorities as a basis to approve a State's provisions where the State does not interpret or implement a State provision in a manner that would be consistent with the Guidance.

Comment: One commenter believes that Indiana's provisions prohibiting it

from imposing necessary WQBELs in NPDES permits simply because a variance application is pending are consistent with the Guidance. According to the commenter, ''EPA has no authority, based on ''protectiveness,'' to demand that the State issue a limit that will later need to be withdrawn because a variance has been granted. Moreover, * * * [u]nder the EPA rule, the State would be fully authorized to issue a limit while a variance application is pending and, at the same time, issue a compliance schedule that applies to that limit, so that the limit would not take effect until after the variance application is either granted * * * or denied. That would achieve exactly the same end as the process that is currently contained in the Indiana rules.''

Response: Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 and 40 CFR 122.44(d)(1) both require imposition of water quality based effluent limits whenever there is reasonable potential for a discharge to cause or contribute to causing nonattainment of existing water quality standards. Nothing in those provisions, or anywhere else in the Clean Water Act or in EPA's regulations, creates an exception to this requirement to account for the fact that existing water quality standards may eventually change. Consequently, to the extent that 327 IAC 5–3–4.1(b)(1) prohibits Indiana from including WQBELs where there is reasonable potential that a discharge will cause or contribute to an exceedance of a standard simply because someone has merely requested a change to Indiana's existing water quality standards (but the standard has not yet been modified by issuance of the variance), it is inconsistent with Paragraph F.2 of Procedure 5 and 40 CFR 122.44(d)(1).

The commenter is correct that Indiana might be able to accomplish the same result in certain situations by granting the permittee a compliance schedule. However, under the Guidance, any such compliance schedule would have to meet the requirements governing compliance schedules in Procedure 9 in Appendix F to 40 CFR Part 132 (Indiana's Great Lakes compliance schedule provisions, which EPA is approving as being consistent with Procedure 9, are at 327 IAC 5–2–12.1). 327 IAC 5–3–4.1(b)(1), which prohibits Indiana from including WQBELs when a variance application has been applied for, is not limited only to situations when the requirements governing compliance schedules in Procedure 9 and 327 IAC 5–2–12.1 are met. Thus, 327 IAC 5–3–4.1(b) is not consistent with the Guidance.

Comment: A number of commenters believe that EPA should disapprove Indiana's rule at 327 IAC 5–2–11.7, which the commenters assert allows Indiana to ''downgrade'' Indiana's historically held third tier, highest quality waters that were identified in the 1990 water quality standards approved by EPA as Outstanding State Resource Waters, which are Indiana's equivalent to Outstanding Natural Resource Waters (ONRW). These commenters also believe that EPA should disapprove Indiana's Guidance rules regarding mixing zones in Lake Michigan at 327 IAC 5–2–11.4(b)(2)(A) and (B), (b)4)(A)(iii) and (b)(4)(C), and (b)(5)-(7) because these sections allow a mixing zone in Lake Michigan contrary to the statewide ban on mixing zones in lakes at 327 IAC 2–1–4(c) of Indiana's EPA approved 1990 rules. The commenters believe that these changes constitute ''downgrading'' Indiana's standards for Lake Michigan.

Response: The term ''downgrading'' generally refers to a decision to modify a designated use where the current designated use cannot be attained for one of the reasons specified at 40 CFR 131.10(g). EPA's regulations at 40 CFR 131.10 place significant restrictions on a State's ability to engage in such ''downgrading.''

EPA's regulations at 40 CFR 131.12 and Appendix E to 40 CFR Part 132 describe various levels of antidegradation protections that must be afforded to water bodies. These various levels of protection, which are known as ''Tier I,'' ''Tier II'' and ''Tier III,'' are not ''use designations,'' and so the restrictions placed on the States' ability to modify ''designated uses'' set forth at 40 CFR 131.10 do not apply to State decisions with regard to which ''tier'' of antidegradation protection should be afforded to particular water bodies. EPA further notes that EPA's regulations leave the question of whether a particular water body constitutes a ''Tier III'' water (or ONRW) to the States' discretion. Consequently, EPA does not agree that it should disapprove Indiana's antidegradation provisions.

With regard to the commenters' concerns regarding Indiana's mixing zone provisions, the availability of mixing zones does not represent a change or ''downgrade'' in use and thus is not subject to 40 CFR 131.10. Nevertheless, while States generally have discretion to change mixing zone requirements, the States' mixing zone requirements must still ensure attainment of designated uses and, in the case of requirements applicable to the Great Lakes System, must be consistent with the Guidance. EPA believes that Indiana's mixing zone requirements do insure attainment of designated uses and are consistent with the Guidance. Consequently, EPA is approving those provisions of Indiana's rules, notwithstanding the possibility that those provisions of Indiana's rules may have relaxed Indiana's previously adopted mixing zone provisions.

Comment: Citing a May 4, 1999, letter from EPA to Indiana, a number of commenters believe that EPA should disapprove certain exemptions in Indiana's antidegradation rule at 327 IAC 5–2–11.7(c).

Response: The Guidance specifies certain minimum requirements which all Great Lakes States must include in their antidegradation policies and implementation procedures that are specific to protecting the waters of the Great Lakes System. Specifically, the Guidance establishes minimum requirements for States' antidegradation policies which are largely identical to those of 40 CFR 131.12, and implementation requirements that are specific to BCCs. Indiana's policy and implementation procedures are consistent with the requirements identified in the Guidance. To the extent that Indiana's revised rules contain changes addressing other elements of the State's antidegradation policy not addressed by the Guidance (i.e., procedures addressing non-BCCs), those elements are outside the scope of this action and will be addressed in a separate proceeding.

Comment: EPA received numerous comments asserting that Section D of Procedure 6 in Appendix F, the WET reasonable potential procedure, was not valid because not all WET data sets appear to be lognormally distributed (as readily acknowledged by EPA). Based on this observation, the commenters conclude that Section D of Procedure 6 is scientifically indefensible and, therefore, EPA must accept the other procedures submitted by the States of Ohio, Michigan, and Indiana. These commenters further assert that EPA has no basis for disapproving these State procedures as not being consistent with the Guidance. (The same comments were made about the Illinois procedure even though it is based primarily on the Guidance procedure and is being approved by EPA. Accordingly, the discussion below does not relate to Illinois.) EPA believes that these commenters misunderstand the scope of the scientific defensibility provision of the Guidance. They also fail to refute EPA's conclusion that Ohio's,

Michigan's and Indiana's procedures are not consistent with the Guidance.

The Guidance procedure for using effluent data to calculate a projected effluent quality (PEQ) for determining when a WET limit is needed Section D of Procedure 6 estimates an upper bound effluent value (95th percentile) by multiplying the maximum observed effluent value (expressed as toxic units) by a factor designed to take into account long-term effluent variability and the number of data available to make the projection. The size of the multiplying factor is determined by the number of data points in the data set, the variability of the effluent, the assumed distribution of the data, and the chosen confidence level for capturing the true 95th percentile (95 percent in the case of Table F6–1). Except in rare cases where there are large amounts of data, the projected 95th percentile will be greater than maximum observed effluent value.

Some commenters contended that Section D of Procedure 6—which uses multiplying factors that are based on the assumption that data are lognormally distributed—is scientifically indefensible within the meaning of 40 CFR 132.4(h), and that the States are therefore free to adopt other approaches. Section 132.4(h) allows States to adopt alternative methodologies or procedures different from those contained in the Guidance where a State demonstrates that a methodology or procedure is not scientifically defensible. EPA included this flexibility to address pollutants identified in the future for which some of the methodologies or procedures may not be technically appropriate. 58 Fed. Reg. 20843 (April 16, 1993). See also, Supplemental Information Document for the Water Quality Guidance for the Great Lakes System (March 23, 1995) (SID) at 58–59. No party contends that new pollutants pose unique technical attributes that render application of the existing WET methodologies or procedures invalid. Rather, these commenters simply contend that certain aspects of Procedure 6 promulgated by EPA are technically unsound and overly conservative. However, Section 132.4(h) is not a vehicle for parties to challenge anew the Guidance itself. The CWA requires the States to adopt policies, standards and procedures that are consistent with the Guidance promulgated by EPA. CWA § 118(c)(2)(C). EPA is reviewing State submissions to determine their consistency with the Guidance but has not reopened any provision of the Guidance in our review. The public had a full opportunity to provide its views on Procedure 6 during the rulemaking establishing the Guidance, and the time period for challenging the Guidance has passed. See CWA § 509(b). Therefore, none of the comments provide any basis for allowing the States to establish alternative methodologies and procedures pursuant to 40 CFR 132.4(h) to address whole effluent toxicity.

Even if Section 132.4(h) were relevant, none of the States has actually proposed an alternative approach of projecting effluent toxicity that attempts to meet even the basic parameters of the Guidance. While the States have flexibility to adopt approaches that make different assumptions about the distribution of WET data than is assumed in Procedure 6, no one has presented EPA with an analysis identifying a different distribution or statistical method that fits WET data better, either in general or in a particular case. More fundamentally, however, the procedures submitted by Ohio, Michigan and Indiana do not address in any manner the underlying premise of Procedure 6—that effluent quality is variable and, therefore, a method for assessing WET data must account for the likelihood that the maximum value in a particular data set is less than the true maximum that is likely to be experienced by the environment as a result of the discharge. In evaluating the potential for a discharge to cause or contribute to an exceedance of water quality standards, EPA believes it prudent to employ a procedure that minimizes the likelihood of misclassifying a discharge as not needing an effluent limitation, given the potential in such circumstances for unacceptable adverse impacts on the aquatic resource. Because the purpose of the PEQ reasonable potential procedure is to extrapolate from typically small data sets a reasonable worst case effluent quality that could be expected over the life of a permit, using a conservative assumption is in keeping with the purpose of the procedure. The reasonable potential determination is intended to allow the permitting authority to make a decision that will protect water quality with a high degree of confidence in the face of uncertainty and with a relatively small data set.

Rather than providing alternative methods of accounting for the uncertainty associated with small data sets by using an alternative mechanism that more precisely predicts likely maximum toxicity levels (*e.g.*, alternative multipliers or ''safety factors''), the Michigan and Indiana procedures make no attempt to extrapolate likely toxicity levels (i.e., they lack any safety factor whatsoever). Indeed, these States' procedures move in the opposite direction by averaging the observed effluent data in some fashion and applying either a mandatory or optional adjustment downward based on a ''failure'' rate. Ohio's procedure is more complex and less predictable, but it also provides for ''discounting'' observed WET data rather than applying a safety factor. Thus, not only do these procedures fail entirely to consider the potential of the discharge to cause or contribute to an exceedance taking into account long-term effluent variability and the fact that a small number of data sets may not capture the worst case effluent quality, they actually allow a finding of ''no reasonable potential'' where available data has indicated unacceptable toxicity. EPA does not consider these approaches to be either as protective as the Guidance, or in accordance with applicable national regulations (40 CFR 22.44(d)(1)).

EPA also received comments that EPA should find Ohio's weight-of-evidence approach for determining reasonable potential for WET as protective as the Guidance. These commenters support the Ohio approach as superior in considering all data regarding the toxicity of an effluent and note especially a feature of the Ohio procedure that they say would use biosurvey data as a substitute for the multiplier in Table F6–1 when considering WET data.

EPA does expect permitting authorities to consider all relevant information in determining whether reasonable potential exists. EPA believes that this is best accomplished by considering each line of evidence regarding the effect of an effluent on the environment separately and without differential weighting of data drawn from different sources. As discussed in the Technical Support Document for Water Quality-based Toxics Control (EPA/505/2–90–001, March 1991) (TSD) and reflected in paragraph 3 of Section F of Procedure 5 in Appendix F, the chemical-specific, bioassessment, and WET characterization approaches each have unique as well as overlapping attributes, sensitivities, and program applications, no single approach for detecting impact should be considered uniformly superior to any other approach (See Chapter 3.1.3, p. 49). Consistent with this principle, data showing an effect or potential for an effect is sufficient to require effluent limits and the results of one assessment technique should not be used to contradict or overrule the results of the other techniques that indicate the need for an effluent limit. This is especially appropriate when the task at hand is not only to identify existing problems but to

predict the possibility of future adverse impacts and impose effluent limits to prevent those adverse impacts from occurring.

EPA recognizes some merit in the position that biological data can reduce the uncertainties about the effect of the discharge and thus could serve a similar purpose as the multipliers or ''safety factors'' used in the Guidance procedure. Taken as a whole, however, the Ohio procedure has the significant shortcoming discussed above of ''discounting'' WET data. Specifically, where biological data are unavailable to corroborate effluent toxicity data, Ohio's procedure would require that the maximum observed toxicity be at least three times greater than the expected toxicity limit, that the average toxicity exceed one-third the expected effluent limit, and that more than more than 30 percent of the test results exceed a projected wasteload allocation before it would be likely that a limit will be imposed. Where biological data are present to corroborate effluent data, it is not clear, as the commenter asserts, that a limit would be required if the maximum observed effluent value exceeded the projected effluent limit. In this situation, Ohio's procedure still could require that the maximum observed effluent value be greater than the projected wasteload allocation, that the average of the effluent test results exceed half the expected effluent limit for acute toxicity and two-thirds the expected effluent limit for chronic toxicity, and that more than 30 percent of the effluent values exceed the expected toxicity limit before a limit is imposed. Thus, Ohio's procedures will not necessarily require a limit even in situations where the effluent toxicity is observed in excess of the expected toxicity limit. As discussed above, such a procedure is inconsistent with the Guidance.

Another set of comments asserted that EPA must examine a State's whole approach to addressing WET and determine whether it reduces effluent toxicity to a similar extent as EPA's approach, rather than simply focusing on whether the State's procedures will result in imposition of effluent limits for WET in all situations where the Great Lakes Guidance would require imposition of such limits.

It is unclear how the commenter believes EPA's analysis is deficient and why a different analysis would show a different result. Certainly, the procedure that determines whether or not a permit includes a WQBEL for a particular pollutant or parameter (the reasonable potential procedure) is a critical element for determining the level of protection that will be achieved when implementing a water quality standard. Where a reasonable potential procedure is not as protective as the Guidance, a State's WET program cannot be considered to achieve the same level of protection as the Guidance.

EPA also notes that in addition to the requirements of the Procedure 6 of the Guidance itself, Section 301(b)(1)(C) of the Clean Water Act requires ''limitation[s] * * * necessary to meet any applicable water quality standard.'' Moreover, EPA's regulations implementing Section 301(b)(1)(C) at 40 CFR 122.44(d)(1)(iv) and (v) require that NPDES permits contain ''effluent limits for whole effluent toxicity'' or chemical-specific limits in lieu of WET limits, whenever there is reasonable potential that a discharge will cause or contribute to an in-stream excursion above a numeric criterion for WET or a narrative criterion of no toxics in toxic amounts. Therefore, the CWA and EPA's implementing regulations require permitting authorities to impose WQBELs for WET when there has been a reasonable potential finding, and EPA does not believe it would be consistent with the CWA and EPA regulations to approve an alternative approach that omits this fundamental requirement. EPA notes that, in appropriate cases, a permitting authority can include a compliance schedule for the WQBEL that would allow for additional monitoring and identification and reduction of toxicants, followed by a reassessment of the need for a limit or the identification of a specific toxicant that could be subject to a WQBEL rather than WET.

Some commenters contended that EPA's actions with respect to Indiana's, Michigan's and Ohio's WET reasonable potential procedures were not consistent with statements by EPA that permitting authorities retain the right to determine whether data is relevant and valid.

EPA agrees that permitting authorities have the right to exercise reasonable discretion to reject unrepresentative or invalid data in making reasonable potential determinations. EPA does not agree, and the commenter fails to explain why it believes, that EPA's actions with respect to Indiana's, Michigan's and Ohio's WET reasonable potential procedures conflict with that position. Section D of Procedure 6 is neutral with respect to the validity of particular pieces of WET data (*e.g.,* were the quality assurance/quality control requirements of the method correctly followed) or whether that data is representative of the discharge (*e.g.,* was the sample taken during normal operations of the facility). It is designed to work on the assumption that the permittee has submitted data the permitting authority agrees are valid and representative of the discharge. If the commenter is saying that States have the discretion to determine that valid, representative data that show effluent toxicity are irrelevant in determining whether a WET limit is needed, EPA disagrees.

PA is nonetheless aware that there has been considerable concern about the possibility that variability in WET test results could erroneously indicate toxicity. EPA recently addressed this issue in the document, ''Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program'' (EPA 833–R–00–003, June 2000). This document clarifies several issues regarding WET variability and reaffirms EPA's earlier guidance and recommendations published in the Technical Support Document for Water Quality-Based Toxics Control (TSD, USEPA 1991). The document discusses analysis of WET data that shows WET test method precision is comparable to chemical-specific method precision. Significantly, the document recommends that, rather than adjusting the reasonable potential procedures, WET test method variability be minimized by adhering to the EPA test methods (especially the quality assurance/quality control procedures), representative sample collection, and other recommendations provided in the document related to evaluating the validity of specific WET test results. The **Federal Register** notice announcing the availability of this document and the document itself may be viewed or downloaded on the Internet at http://www.epa.gov/owm/npdes.htm.

E. Consequences of Today's Action

As a result of today's action, the Guidance provisions specified in today's rule apply in the Great Lakes System in the States specified in the rule until such time as a State adopts requirements consistent with the specific Guidance provisions at issue, and EPA approves those State requirements and revises the rule so that the provisions no longer apply in that State.

II. ''Good Cause'' Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public

interest, the agency may issue a rule without publishing a notice of proposed rulemaking. EPA has determined that there is good cause for promulgating today's rule final without publishing a notice of proposed rulemaking because EPA finds it unnecessary and contrary to the public interest. Today's rule does not promulgate any new regulatory provisions. Rather, in accordance with the procedures in 40 CFR132.5(f), today's rule identifies the provisions of Part 132 promulgated previously by EPA that shall apply to discharges in certain States within the Great Lakes System. Those provisions have already been subject to a notice of proposed rulemaking, and publication of a new proposed rule is therefore unnecessary. See 58 FR 20802 (April 16, 1993). In addition, while EPA's approval/disapproval decisions described in this notice do not constitute rulemaking, EPA has nonetheless received substantial public comment on these decisions. See 63 FR 10221 (March 2, 1998) and 63 FR 23285 (April 28, 1998) (notices of receipt of State Guidance submissions and requests for comment); 64 FR 49803 (September 14, 1999), and 64 FR 69019 (December 9, 1999) (notices of letters identifying inconsistencies and requests for comment). EPA also believes the public interest is best served by fulfilling the CWA's requirements without further delay and publication of a notice of proposed rulemaking therefore would be contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described in Section II, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to Sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, because this action does not promulgate any new requirements, but only makes certain existing provisions of 40 CFR Part 132 effective in several States, it does not impose any new costs. The costs of Part 132 were considered by EPA when it promulgated that regulation. Therefore, today's rule does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in Sections 203 and 204 of UMRA, or significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective September 5, 2000.

List of Subjects in 40 CFR Part 132

Administrative practice and procedure, Great Lakes, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth above, EPA amends 40 CFR Part 132 as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Text is added to § 132.6 to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

(a) Effective September 5, 2000, the requirements of Paragraph C.1 of Procedure 2 in Appendix F of this Part and the requirements of paragraph F.2 of Procedure 5 in Appendix F of this Part shall apply to discharges within the Great Lakes System in the State of Indiana.

(b) Effective September 5, 2000, the requirements of Procedure 3 in Appendix F of this Part shall apply for purposes of developing total maximum daily loads in the Great Lakes System in the State of Illinois.

(c) Effective September 5, 2000, the requirements of Paragraphs C.1 and D of Procedure 6 in Appendix F of this Part shall apply to discharges within the Great Lakes System in the States of Indiana, Michigan and Ohio.

[FR Doc. 00–19792 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301027; FRL–6598–8]

RIN 2070–AB

Avermectin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for the combined residues of the insecticide and miticide avermectin (a mixture of avermectins B_{1a} and B_{1b} and its delta-8,9-isomer) in or on basil at 0.05 parts per million (ppm) for an additional 19-month period. This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under

section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), authorizing use of the pesticide on basil. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of (FIFRA).

DATES: This regulation is effective August 4, 2000. Objections and requests for hearings, identified by docket control number OPP–301027, must be received by EPA on or before October 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301027 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' 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–301027. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of October 29, 1997 (62 FR 56082) (FRL–5750–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of avermectin and its delta-8,9-isomer in or on basil at 0.05 ppm, with an expiration date of September 30, 1998. EPA extended the time-limited tolerance for avermectin on basil in the **Federal Register** of October 7, 1998 (63 FR 53835) (FRL–6033–7) with an expiration date of January 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of avermectin on basil for this year's growing season due to continued pressure on basil crops from leafminers. Leafminers damage marketable basil in a variety of ways. After having reviewed the submission, EPA concurs that emergency conditions exist and has determined that it is appropriate to re-establish this time-limited tolerance. EPA has authorized under FIFRA section 18 the use of avermectin on basil for control of leafminers in basil.

EPA assessed the potential risks presented by residues of avermectin in or on basil. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of October 29, 1997 (62 FR 56082). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 19-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on basil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a

hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301027 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301027, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined

that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

§ 180.449 [Amended]

2. In § 180.449, amend the table in paragraph (b) by revising the expiration/revocation date for ''basil'' from ''1/31/00'' to read ''7/31/01.''

[FR Doc. 00–19795 Filed 8–3–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301019; FRL–6596–3]

RIN 2070–AB78

Diflubenzuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of diflubenzuron and its metabolites in or on rangeland grass. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 4, 2000. Objections and requests for hearings, identified by docket control number OPP–301019, must be received by EPA on or before October 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301019 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' 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–301019. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents

that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM#2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 5, 2000 (65 FR 17872) (FRL–6550–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP) for a tolerance by IR–4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. This notice included a summary of the petition prepared by Uniroyal Chemical Company, the registrant.

The petition requested that 40 CFR 180.377 be amended by establishing a tolerance for combined residues of the insecticide diflubenzuron, (N–[[4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA), in or on rangeland grass at 6.0 parts per million (ppm).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of diflubenzuron and its metabolites on rangeland grass at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diflubenzuron are discussed in Unit II.A. of the Final Rule on Diflubenzuron Pesticide Tolerance published in the **Federal Register** of April 19, 1999 (64 FR 19050) (FRL–6075–4).

B. Toxicological Endpoints

1. *Acute toxicity*. A toxicological endpoint for acute dietary exposure (1 day) was not established since 1 day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 milligrams/kilograms (mg/kg) of diflubenzuron.

2. *Short- and intermediate-term toxicity*. The toxicological endpoint for short-term occupational or residential exposure (1 to 7 days) is sulfhemoglobinemia observed in the 14-day subchronic oral study in mice dosed with technical grade diflubenzuron. The no observed adverse effect level (NOAEL) in this study was 40 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 200 mg/kg/day.

The toxicological endpoint for intermediate-term occupational or residential exposure (1 week to several months) is methemoglobinemia observed in the 13-week subchronic feeding study in dogs. For the purpose of risk assessments, the NOAEL of 1.64 mg/kg/day in this study was considered to be 2 mg/kg/day so as to be consistent with the NOAEL of 2 mg/kg/day in the chronic study used to calculate the Reference Dose (RfD). The LOAEL in this study was 6.24 mg/kg/day.

Since an oral NOAEL was selected for a dermal endpoint, a dermal absorption factor of 0.5% was used for this risk assessment when converting dermal exposure to oral equivalents. Therefore, the dermal equivalent dose producing a NOAEL by the oral route is 400.0 mg/kg/day (i.e., 2.0 mg/kg/day divided by 0.005 = 400.0 mg/kg/day).

3. *Chronic toxicity*. EPA has established the RfD for diflubenzuron at 0.02 mg/kg/day. This RfD is based on the NOAEL of 2.0 mg/kg/day in the 52-week chronic oral study in dogs. An uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation) was used to determine the chronic Reference Dose (cRfD) of 0.02 mg/kg/day. The chronic Population Adjusted Dose (cPAD) is equal to the cRfD divided by the FQPA Safety Factor. Since the FQPA Safety Factor was reduced to 1X, the cPAD is equal to the cRfD.

4. *Carcinogenicity*. Based on the available evidence, which included adequate carcinogenicity studies in rats and mice and a battery of negative mutagenicity studies, diflubenzuron *per se* has been classified as Group E (evidence of non-carcinogenicity for humans). However, p-chloroaniline (PCA), a metabolite of diflubenzuron, is classified as a Group B2 carcinogen (probable human carcinogen). See Unit II. B. in the Final Rule on Diflubenzuron Pesticide Tolerance published in the **Federal Register** of April 19, 1999 (64 FR 19050).

For the purpose of calculating dietary risk assessments from exposure through food to these metabolites of diflubenzuron, the following procedure was used:

i. P-chlorophenylurea (CPU) and p-chloroacetanilide (PCAA), additional metabolites of diflubenzuron that are closely related to PCA and for which there are no adequate carcinogenicity data available, was considered to be potentially carcinogenic and to have the same carcinogenic potency (Q_1*) as PCA.

ii. The sum of PCA, CPU, and PCAA residues in ingested food was used to estimate the dietary exposure of humans to the carcinogenic metabolites of diflubenzuron in food.

iii. In addition to ingested residues of these three metabolites, amounts of PCA, CPU, and/or PCAA formed *in vivo* following ingestion of diflubenzuron was also included when estimating the total exposure of humans to the

carcinogenic metabolites of diflubenzuron. The *in vivo* conversion of ingested diflubenzuron to PCA and/or CPU was estimated to be 2.0%, based on data in the rat metabolism study.

The Q_1* (estimated unit risk) for PCA, based upon spleen sarcoma rates in male rats, was calculated to be 6.38 x 10^{-2} (mg/kg/day) in human equivalents. It has been determined that PCAA does not occur in animal or plant tissues in significant amounts.

C. Exposure Assessment

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.377) for the combined residues of diflubenzuron and its metabolites, in or on rice grain, rice straw, citrus, artichokes, walnuts, mushrooms, cottonseed, soybeans, and associated livestock. For the dietary risk assessment, anticipated residue levels were calculated for livestock, citrus and mushroom commodities. Anticipated residue estimates for diflubenzuron were not calculated for other raw agricultural commodities. Percent crop treated (PCT) data were utilized where available.

Risk assessments were conducted by EPA to assess dietary exposures in food from diflubenzuron and its metabolites as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information to conduct a routine chronic dietary exposure analysis for diflubenzuron based on likely maximum PCT as follows: 1% rangeland grass, 3% cottonseed, 8% grapefruit, 3.1% mushrooms, 2% oranges, 4% tangerines, 1% soybean, and 5% cattle bolus. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer–based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which diflubenzuron and its metabolites may be applied in a particular area.

i. *Acute exposure.* A risk assessment for acute dietary exposure (1 day) was not conducted. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 mg/kg of diflubenzuron.

ii. *Chronic exposure.* The RfD used for the chronic dietary analysis for diflubenzuron is 0.02 mg/kg bwt/day. The chronic Dietary Exposure Evaluation Model (DEEM) analysis used mean estimates of consumption (3-day average). Anticipated residues and PCT information for select commodities were used. Since EPA determined to reduce the 10X FQPA Safety factor to 1X, the cPAD and the cRfD are the same. The results of the analyses indicate that the chronic dietary risks from food associated with the existing and proposed uses of diflubenzuron and its metabolites do not exceed EPA's level of concern for the U.S. population or any population subgroup.

Cancer risk from consumption of PCA and related metabolites. The Agency has determined that there are three possible sources for dietary exposure to PCA and related compounds (CPU and PCAA) from food: residues in plants/fungi (mushrooms), residues in animal commodities (milk and liver) and *in vivo* conversion of diflubenzuron.

2. *From drinking water.* The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI–GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOC) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses.

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to diflubenzuron in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q* to obtain the maximum allowable chronic exposure to diflubenzuron in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

EPA has calculated DWLOCs for chronic (non-cancer) dietary exposure to diflubenzuron in surface and ground water for the U.S. population and children (1-6 yrs). They are 700 and 200 parts per billion (ppb), respectively. For chronic (cancer) exposure to CPU in surface and ground water, the DWLOC is 0.30 ppb for the U.S. population.

Tier II PRZM-EXAM modeling using the index reservoir (IR) scenario and the percent crop area adjustment factor for the use of diflubenzuron on cotton and citrus was modeled. The concentration of diflubenzuron in drinking water in a Mississippi cotton index reservoir scenario adjusted for a percent crop area factor of 0.49 is not expected to exceed 1.66 µg/L for the 1 in 10-year annual peak (acute) concentration, 0.12 µg/L for the 1 in 10-year annual mean (chronic) concentration, and 0.06 µg/L for the 36-year average concentration. The concentration of CPU in drinking water from the same application on cotton is not expected to exceed 0.23 µg/L for the 36-year average concentration.

Based on the PRZM–EXAMS and SCI–GROW models, the EECs of diflubenzuron for chronic exposure are estimated to be 0.06 ppb for surface water and 0.0023 ppb for ground water.

3. *From non-dietary exposure*. Diflubenzuron is a restricted use pesticide and therefore not available for use by homeowners. However, non-agricultural uses of diflubenzuron may expose people in residential locations. Based on the low dermal absorption rate (0.5%), and the extremely low dermal and inhalation toxicity, exposure through these uses is expected to be insignificant.

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

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

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

1. *Acute risk*. There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxic endpoint identified.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to diflubenzuron from food will utilize <1% of the cPAD for the U.S. population, for infants <1 year old, and children 1-6 years old. There are no residential uses for diflubenzuron that result in chronic residential exposure. In addition, despite the potential for chronic dietary exposure to diflubenzuron in drinking water, after calculating the DWLOCs and comparing them to conservative model EECs of diflubenzuron in surface water 0.06 ppb and ground water 0.0023 ppb. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population*. For the U.S. population, cancer risk resulting from food exposure is 4.5×10^{-7}. The estimated 36-year average concentration (0.23 ppb) of CPU in surface water does not exceed EPA's level of concern (DWLOC) for CPU in drinking water (0.30 ppb) as a contribution to chronic (cancer) aggregate exposure. EPA has calculated that the cancer risk resulting from 0.23 ppb of CPU in drinking water is 4.2×10^{-7}. The aggregate cancer risk is thus 8.7×10^{-7} (4.5×10^{-7} for food + 4.2×10^{-7} for water).

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

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

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

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Developmental toxicity studies* —i. *Rats*. In the developmental study in rats, the maternal (systemic) NOAEL was 1,000.0 mg/kg/day highest dose tested (HDT). The developmental (fetal) NOAEL was 1,000.0 mg/kg/day, (HDT).

ii. *Rabbits*. In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 1,000.0 mg/kg/day, HDT. The developmental (pup) NOAEL was 1,000.0 mg/kg/day, HDT.

iii. *Reproductive toxicity study*. In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOAEL was < 36 and < 42 mg/kg/day male and female, respectively. Lowest dose tested (LDT) based on hematological effects at all dose levels tested. The reproductive (pup) NOAEL was 427.0 mg/kg/day, based on decreases in the F–1 pup weight at the LOAEL of 2,454.0 mg/kg/day HDT.

iv. *Conclusion*. The toxicological data base for evaluating prenatal and postnatal toxicity for diflubenzuron is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above, there does not appear to be increased sensitivity to diflubenzuron for prenatal or postnatal effects. Based on the above, EPA concludes that reliable data support use of a 100-fold margin of exposure/uncertainty factor, rather than the 1,000-fold margin/factor, to protect infants and children.

3. *Acute risk*. There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxicological endpoint identified which could be attributable to a single dietary exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

4. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diflubenzuron from food will utilize < 1 % of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diflubenzuron in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for the analysis of diflubenzuron and its metabolites in rice grain (0.01 ppm), rice straw (0.01 ppm) and water (0.001 ppm). Three enforcement methods for diflubenzuron are published in PAM, Vol. II as Methods I, II, and III. Method II is a GC/ECD method that can separately determine residues of diflubenzuron, CPU, and PCA in eggs, milk, and animal tissues. All three methods have undergone successful Agency validations and are acceptable for enforcement purposes.

B. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for residues of diflubenzuron on rangeland grass. A compatibility issue is not relevant to the tolerance.

V. Conclusion

Therefore, the tolerance is established for combined residues of diflubenzuron and its metabolites, in or on rangeland grass at 6.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301019 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301019, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.377 is amended by revising paragraph (a)(2), and in the table in paragraph (c) removing the entry for ''Grass, range''.

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

(2) Tolerances are established for the combined residues of the insecticide diflubenzuron (*N*–[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) and its metabolites 4-chlorophenylurea and 4-chloroaniline in or on the following food commodities:

Commodity	Parts per million
Grass, rangeland	6.0

* * * * *

[FR Doc. 00–19794 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–208]

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; to establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and to apply the framework to pending petitions for designation as eligible telecommunications carriers.

DATES: Effective September 5, 2000 except for §§ 54.401(d), 54.403(a)(2), 54.403(a)(3), 54.403(a)(4)(ii), 54.405(b), 54.409(c), 54.411(d), and 54.415(c), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Twelfth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–45 released on June 30, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we adopt measures to: (1) Promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; (2) establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Telecom Act; and (3) apply the framework to pending petitions for designation as eligible telecommunications carriers filed by Cellco Partnership d/b/a Bell Atlantic Mobile, Inc., Western Wireless Corporation, Smith Bagley, Inc., and the Cheyenne River Sioux Tribe Telephone Authority.

2. An important goal of the Telecommunications Act of 1996 is to preserve and advance universal service. The 1996 Act provides that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-]cost areas, should have access to telecommunications and information services. * * *'' In the Further Notice of Proposed Rulemaking (*FNPRM*), 64 FR 52738 (September 30, 1999), of this proceeding, we sought to identify the impediments to increased telecommunications deployment and subscribership in unserved and underserved regions of our Nation, including tribal lands and insular areas, and proposed particular changes to our universal service rules to overcome these impediments. Although approximately 94 percent of all households in the United States have telephone service today, penetration levels among particular areas and populations are significantly below the national average. For example, only 76.7 percent of rural households earning less than $5,000 have a telephone, and only 47 percent of Indian tribal households on reservations and other tribal lands have a telephone. These statistics demonstrate, most notably, that existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.

3. Central to the issues addressed in the *FNPRM*, is the notion that basic telecommunications services are a fundamental necessity in modern society. As our society increasingly relies on telecommunications technology for employment and access to public services, such telecommunications services have become a practical necessity. The absence of telecommunications services within a home places its occupants at a disadvantage when seeking to contact, or be contacted by, employers and potential employers. The inability to contact police, fire departments, and medical service providers in an emergency situation may have, and in some areas routinely does have, life-threatening consequences. In geographically remote areas, access to telecommunications services can minimize health and safety risks associated with geographic isolation by providing people access to critical information and services they may need. Basic telecommunications services also may provide a source of access to more advanced services. For example, voice telephone is currently the most common means of household access to the Internet, and the same copper loop used to provide ordinary voice telephone service also may be used for broadband services. Thus, as use of advanced services among the general population increases, those without basic telecommunications services may find themselves falling further behind in a number of ways. In its *Falling Through the Net* report, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) found that, while ''[o]verall * * * the number of Americans connected to the nation's information infrastructure is soaring,'' the benefits of even basic telecommunications services have not reached certain segments of our population.

4. This Order represents the culmination of an ongoing examination of the issues involved in providing access to telephone service for Indians on reservations. This process began when the Commission convened two meetings in April and July of 1998, which brought Indian tribal leaders and senior representatives from other federal agencies to the Commission to meet with FCC Commissioners and Commission staff. The Commission then organized formal field hearings in January 1999 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, and in March 1999 at the Gila River Indian Community in Chandler, Arizona, at which Indian tribal leaders, telecommunications service providers, local public officials, and consumer advocates testified on numerous issues, including subscribership levels and the cost of delivering telecommunications services to Indians on tribal lands, as well as jurisdictional and sovereignty issues associated with the provision of telecommunications services on tribal lands. Based on information and analysis provided during these proceedings, the Commission initiated two rulemakings: one proposing changes to our universal service rules to promote deployment of telecommunications infrastructure and subscribership on tribal lands, and the other proposing changes to our wireless service rules to encourage the deployment of wireless service on tribal lands.

5. In this Order, we take the first in a series of steps to address the causes of low subscribership within certain segments of our population. The extent to which telephone penetration levels

fall below the national average on tribal lands underscores the need for immediate Commission action to promote the deployment of telecommunications facilities in tribal areas and to provide the support necessary to increase subscribership in these areas. We adopt measures at this time to promote telecommunications deployment and subscribership for the benefit of those living on federally-recognized American Indian and Alaska Native tribal lands, based on the fact that American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country. Toward this end, we adopt amendments to our universal service rules and provide additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable. By enhancing tribal communities' access to telecommunications services, the measures we adopt are consistent with our obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase their access to education, commerce, government, and public services. Furthermore, by helping to bridge the physical distances between low-income consumers on tribal lands and the emergency, medical, employment, and other services that they may need, our actions ensure a standard of livability for tribal communities. To ensure their effectiveness in addressing the low subscribership levels on tribal lands, we intend to monitor the impact of the enhanced federal support measures and to adjust the measures as appropriate.

6. In response to the requests of Indian tribal leaders, we have adopted a statement of policy that recognizes the principles of tribal sovereignty and self-government inherent in the relationships between federally-recognized Indian tribes and the federal government. In conjunction with our efforts to adopt policies that further tribal sovereignty and tribal self-determination, we note the Commission's upcoming Indian Telecom Training Initiative, in which the Commission will bring together experts on telecommunications law and technologies to provide information to tribal leaders and other interested parties to promote telecommunications deployment and subscribership on tribal lands.

7. In this Order, we also offer guidance on those circumstances in which the Commission will exercise its authority to designate eligible telecommunications carriers under section 214(e)(6) of the Telecom Act. We conclude that, consistent with the Act and the legislative history of section 214(e) of the Telecom Act, state commissions have the primary responsibility for the designation of eligible telecommunications carriers under section 214(e)(2) of the Telecom Act. We direct carriers seeking designation as an eligible telecommunications carrier for service provided on non-tribal lands to first consult with the state commission, even if the carrier asserts that the state commission lacks jurisdiction. We will act on a section 214(e)(6) of the Telecom Act designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction.

8. We recognize, however, that a determination as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a legally complex and fact-specific inquiry, informed by principles of tribal sovereignty, treaties, federal Indian law, and state law. Such jurisdictional ambiguities may unnecessarily delay the designation of carriers on tribal lands. In light of the unique federal trust relationship between the federal government and Indian tribes and the low subscribership levels on tribal lands, we establish a framework designed to streamline the eligibility designation of carriers providing service on tribal lands. Under this framework, carriers seeking a designation of eligibility for service provided on tribal lands may petition the Commission for designation under section 214(e)(6) of the Telecom Act. The Commission will proceed to a determination on the merits of such a petition if the Commission determines that the carrier is not subject to the jurisdiction of a state commission. We apply the framework adopted in this Order to several pending requests for eligible telecommunications carrier designation on tribal and non-tribal lands.

9. We also recognize that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We therefore commit to resolve requests for designation for the provision of service on non-tribal lands that are properly before us pursuant to section 214(e)(6) of the Telecom Act within six months of the date of filing. Similarly, we commit to resolve the merits of a request for designation for the provision of service on tribal lands within six months of our determination that the carrier is not subject to the jurisdiction of a state commission. We encourage state commissions to act accordingly, and resolve designation requests filed pursuant to section 214(e)(2) of the Telecom Act within six months.

II. Low-Income Initiatives To Improve Access to Telecommunications Services and Subscribership on Tribal Lands

A. Definitions of ''Indian Tribe'' and ''Tribal Lands''

10. For purposes of this Order, we define the terms ''Indian tribe,'' ''reservation,'' and ''near reservation'' as those terms are defined in Subpart A of the regulations promulgated by the United States Department of the Interior's Bureau of Indian Affairs (BIA). In light of our decision to adopt rules to benefit low-income individuals living on Indian tribal lands, we use, for purposes of this Order, the definition of ''Indian tribe'' contained in section 20.1(p) of the BIA regulations. That definition includes ''any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary [of the Interior] to Indians because of their status as Indians.'' Although there are minor variations between this definition and the statutory definition of ''Indian tribe'' in section 479a(2) and cited in the *FNPRM,* the characteristic common to both definitions that is relevant for our purposes is that both refer to the list of entities compiled and published by the Secretary of the Interior.

11. For purposes of identifying the geographic areas within which the rule amendments set forth will apply, we define the term ''tribal lands'' to include the BIA definitions of ''reservation'' and ''near reservation'' contained in sections 20.1(v) and 20.1(r) of the BIA

regulations, respectively. The term ''reservation'' means ''any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.'' ''Near reservation'' means those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior's Commissioner of Indian Affairs, and whose designations are published in the **Federal Register**.

12. We define the term ''tribal lands'' to include the BIA definitions of ''reservation'' and ''near reservation'' because these definitions appear to encompass the geographic areas in which the Commission may adopt, consistent with principles of Indian sovereignty and the special trust relationship, rule changes to benefit members of federally-recognized Indian tribes. In particular, we agree with commenters who argue that Alaska Native Statistical Areas and other lands conveyed pursuant to the Alaska Native Claims Settlement Act, although not Indian reservations, should be included within the definition of tribal lands insofar as these lands are federally-recognized lands that are inhabited by Alaska Native tribes. The BIA definition of ''near reservation'' includes lands adjacent or contiguous to reservations that generally have been considered tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. Again, we conclude that such lands properly should be included within our definition insofar as they are Indian lands on which principles of Indian sovereignty and the special trust relationship apply. To exclude the ''near reservation'' lands designated by the Department of the Interior or lands on which tribal members in Alaska live, in our view, would unfairly penalize tribal members who live in tribal communities, but for historic or other reasons, do not live on an Indian reservation.

13. We believe that using the BIA regulations to define and identify the geographic areas to which our rule amendments will apply offers significant advantages in the ease of its administration. Specifically, the BIA definitions of ''reservation'' and ''near reservation'' provide a widely used and readily verifiable standard by which tribes may establish and carriers may verify the eligibility of individuals who qualify for the targeted assistance made available by this Order. We note that the classification ''on or near a reservation'' is used by BIA in administration of its financial assistance and social services programs for Indian tribes. If BIA or Congress should modify these definitions in the future, we intend such modifications to apply in equal measure to the classifications adopted in this Order without further action on our part. We believe that this action is consistent with our goal of using a widely used and readily verifiable standard for defining these terms.

B. Bases for Commission Action To Increase Subscribership on Tribal Lands

(1) Authority To Take Action To Improve Access to Telecommunications Services and Subscribership on Tribal Lands

14. Section 254(b) of the Telecom Act sets forth the principles that guide the Commission in establishing policies for the preservation and advancement of universal service. Included among these is the principle that ''quality services should be available at just, reasonable, and affordable rates.'' Our authority to take action to remedy the disproportionately lower levels of infrastructure deployment and subscribership prevalent among tribal communities derives from sections 1, 4(i), 201, 205, as well as 254 of the Telecom Act. As discussed, the record before us suggests that the disproportionately lower-than-average subscribership levels on tribal lands are largely due to the lack of access to and/or affordability of telecommunications services in these areas (as compared with cultural or individual preferences that cause individuals to choose not to subscribe). Along with depressed economic conditions and low per capita incomes, commenters have identified the following factors as the primary impediments to subscribership on tribal lands: (1) The cost of basic service in certain areas (as high as $38 per month in some areas); (2) the cost of intrastate toll service (limited local calling areas); (3) inadequate telecommunications infrastructure and the cost of line extensions and facilities deployment in remote, sparsely populated areas; and (4) the lack of competitive service providers offering alternative technologies. We note that no tribal representative in this proceeding has suggested that cultural or personal preference accounts for low subscribership levels within or among particular tribes. Based on the substantial Indian tribal participation in this proceeding and in the Commission's proceedings in WT Docket No. 99–266 and BO Docket No. 99–11, we do not have any evidence to conclude that cultural or personal factors generally explain low subscribership levels on tribal lands.

15. We conclude that the unavailability or unaffordability of telecommunications service on tribal lands is at odds with our statutory goal of ensuring access to such services to ''[c]onsumers in all regions of the Nation, including low-income consumers.'' In addition, the lack of access to affordable telecommunications services on tribal lands is inconsistent with our statutory directive ''to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient Nationwide * * * wire and radio communication service, with adequate facilities at reasonable charges.'' In the *Universal Service Order*, 62 FR 32862 (June 17, 1997) the Commission stated that, where ''necessary and appropriate,'' the Commission, working with an affected state or U.S. territory or possession, will open an inquiry to address instances of low or declining subscribership levels and take such action as is necessary to fulfill the requirements of section 254 of the Telecom Act.

16. Our authority to alter our rules in ways targeted to benefit tribal communities also must be informed by the principles of federal Indian law that arise from the unique trust relationship between the federal government and Indian tribes. That relationship has been characterized as ''unlike that of any other two people in existence,'' and ''marked by peculiar and cardinal distinctions which exist no where else.'' The Supreme Court has repeatedly ''recognized the distinctive obligation of trust incumbent upon the [Federal] Government'' in its dealings with Indian tribes. Moreover, Congress and the courts have recognized the federal government's responsibility to promote self-government among tribal communities as an important facet of the federal trust relationship. In *Morton* v. *Mancari*, for example, the Supreme Court upheld a federal regulation establishing a hiring preference for members of Indian tribes as consistent with the goal of promoting Indian self-government. In that case, the Court noted that ''literally every piece of legislation dealing with Indian tribes and reservations * * * singles out for special treatment a constituency of tribal Indians living on or near reservations.''

17. By enhancing tribal communities' access to telecommunications services, the measures we adopt today are consistent with our federal trust

responsibility to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase tribal communities' access to education, commerce, government, and public services. Furthermore, by helping to bridge physical distances between low-income individuals living on tribal lands and the emergency, medical, employment, and other services that they may need, our actions further our federal trust responsibility to ensure a standard of livability for members of Indian tribes on tribal lands.

(2) Subscribership Levels on Tribal Lands

18. Section 254(i) of the Telecom Act requires that the Commission and the states ensure that universal service is available at rates that are just, reasonable, and affordable. In the *Universal Service Order*, the Commission adopted the finding of the Joint Board that subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates. The Commission found that subscribership levels alone, however, do not reveal whether consumers are spending a disproportionate amount of income on telecommunications services or whether paying the rates charged for services imposes a hardship for those who subscribe. The Commission concurred in the recommendation of the Joint Board that a determination of affordability take into consideration both rate levels and non-rate factors, such as consumer income levels, that can be used to assess the financial burden subscribing to universal service places on consumers. The Commission also adopted the Joint Board's finding that the scope of a local calling area ''directly and significantly impacts affordability'' of universal service.

19. Consistent with our statutory goal of preserving and advancing universal service and of ensuring that consumers in all regions of the Nation have access to the services supported by federal universal service support mechanisms, we modify our universal service rules, as set forth, to increase telecommunications infrastructure deployment and subscribership on tribal lands. We take action at this time primarily for the benefit of low-income individuals living on tribal lands, as that term is defined, because of the critically low telephone subscribership levels that are reported in these areas. Specifically, statistics demonstrate that, although approximately 94 percent of all Americans have a telephone, only 47 percent of Indians on reservations and other tribal lands have a telephone. Similarly, an analysis of 1990 Census data found that Indians represent 89 percent of the Nation's population in the one hundred zip codes with the lowest subscribership levels. More recent studies of subscribership levels for individual tribes suggest that subscribership levels for many tribes remain significantly below the national average.

20. Consistent with recent research that demonstrates that telephone penetration correlates directly with income, federal statistics reveal that tribal communities are among the poorest populations in the United States. For example, according to 1990 data published by the Bureau of the Census, the per capita income of Native Americans living on tribal lands was only $4,478, as compared with the $14,420 per capita income in the United States as a whole. At the time of the 1990 Census data collection, almost 51 percent of American Indians residing on reservations and trust lands had incomes below the poverty level, compared to 13 percent of United States residents nationwide with incomes below this level. Unemployment levels for a sample of 48 tribes averaged 42 percent as compared to the national unemployment figure of 4.5 percent. The record before us suggests that there is a correlation between low subscribership levels and low incomes on tribal lands. Indeed, the majority of commenters identify low incomes or impoverishment as the key reason for low subscribership levels on tribal lands.

21. Based on our review of these statistics and the record before us, and consistent with the unique trust relationship between the federal government and members of Indian tribes, we conclude that specific action is needed to address the impediments to subscribership on tribal lands and to ensure affordable access to telecommunications services in these areas. Specifically, the significantly lower-than-average incomes and subscribership levels of members of federally-recognized Indian tribes warrant our immediate action to increase subscribership and improve access to telecommunications on tribal lands.

22. We conclude that the potential benefits to tribal members will only increase by extending to non-Indians living on tribal lands, as well as Indians, the measures we adopt Of this Order. First, we believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. Implicit in our decision to extend the availability of enhanced federal support to all low-income individuals living on tribal lands, is our recognition of the likelihood that non-Indian, low-income households on tribal lands may face the same or similar economic and geographic barriers as those faced by low-income Indian households.

23. Second, we believe that increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community will result in greater incentives for eligible telecommunications carriers to serve in those areas. We anticipate that the availability of enhanced federal support for all low-income individuals living on tribal lands will maximize the number of subscribers in such a community who can afford service and, therefore, make it a more attractive community for carrier investment and deployment of telecommunications infrastructure. As the number of potential subscribers grows in tribal communities, carriers may achieve greater economies of scale and scope when deploying facilities and providing service within a particular community.

24. Finally, we believe that, by extending the availability of enhanced federal support to all low-income individuals residing on tribal lands, carriers will avoid the administrative burden associated with distinguishing between low-income individuals who are members of federally-recognized tribes living on tribal lands and all other low-income individuals living on tribal lands. By reducing the possible administrative burdens associated with implementation of the enhanced federal support, we intend to eliminate a potential disincentive to providing service on tribal lands.

25. At this time, we do not adopt commenters' suggestions to apply the actions taken in this Order more generally to all high-cost areas and all insular areas. Although the record demonstrates that subscribership levels are below the national average in low-income, rural areas and in certain insular areas, the significant degree to which subscribership levels fall below the national average among tribal communities underscores the need for immediate Commission intervention for

the benefit of this population. The record before us does not permit a determination that the factors causing low subscribership on tribal lands are the same factors causing low subscribership among other populations. Indeed, the presence of certain additional factors on tribal lands that may not be present in non-tribal areas, and which appear to create disincentives for carriers to provide service in these areas, suggests that the identical strategy adopted in this Order to boost subscribership levels on tribal lands may not be appropriate for increasing subscribership in other areas. Specifically, the following combination of factors may increase the cost of entry and reduce the profitability of providing service on tribal lands: (1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands.

26. We are concerned that to devise a remedy addressing all low subscribership issues for all unserved or underserved populations simultaneously might unnecessarily delay action on behalf of those who are least served, *i.e.*, tribal communities. We do not believe that we should delay action to benefit those who, based on national statistics and the record before us, comprise the most underserved segment of our population. We will, however, continue to examine and address the causes of low subscribership in other areas and among other populations within the United States and, in conjunction with the release of the 2000 Census data, we will take action as appropriate at that time to address low subscribership among such other populations.

27. Several incumbent local exchange carriers serving tribal communities indicate that subscribership levels among tribal communities within their service territories are higher than the nationwide average penetration rate for Indians on reservations and other tribal lands. These comments do not lead us to alter our conclusion that Commission action is warranted to improve subscribership levels for low-income individuals on tribal lands. As an initial matter, we recognize that penetration levels for particular tribal communities may exceed the 47 percent national average for Indians on tribal lands, just as certain tribes may be below the national average of 47 percent. This fact, however, is not inconsistent with our decision to adopt measures to benefit tribal communities generally because we are targeting our actions to low-income individuals on tribal lands, who we anticipate will have the lowest subscribership levels in these areas. Specifically, because research indicates that there is a correlation between income and subscribership levels, we anticipate that our actions will benefit tribal communities whose subscribership levels, as a function of low average per capita incomes, are closer to, or less than, the 47 percent national average for Indians on reservations.

28. Although we recognize the achievements of rural carriers serving tribal lands in improving subscribership levels in these areas, the fact that carriers employ various methodologies when measuring subscribership levels within their service territories limits the utility of particular statistics beyond the specific service territories. For example, statistics that measure the number or percentage of homes passed within a carrier's total service territory on a reservation do not reveal the number or percentage of households that, notwithstanding the fact that facilities are present, do not subscribe because they cannot afford telephone service. Even where subscribership statistics measure the number or percentage of households within a carrier's territory that have telephone service, those statistics provide no measure of reservation households outside of the carrier's service territory that have access to facilities or take service. Therefore, we conclude that nationwide and regional statistics that measure actual subscribership throughout tribal areas provide a more complete picture than do statistics that measure only the number of homes passed within particular service territories.

C. Enhanced Federal Lifeline and Expanded Link Up Support for Qualifying Low-Income Consumers Living on Tribal Lands

a. Enhanced Lifeline Support for Qualifying Low-Income Consumers Living on Tribal Lands

29. In this Order, we create a fourth tier of federal Lifeline support available to eligible telecommunications carriers serving qualifying low-income individuals living on tribal lands. This fourth tier of federal Lifeline support will consist of up to an additional $25 per month, per primary residential connection for each qualifying low-income individual living on tribal lands. This amount, in conjunction with the first-tier baseline (ranging from $3.50 to $4.35 after July 1, 2000) and $1.75 second-tier ''non-matching'' federal support amounts, will entitle each qualifying low-income consumer on tribal lands to a reduction in its basic local service bill of up to $31.10 per month. In taking this action, we follow the example of states such as New York and require all qualifying low-income individuals on tribal lands to pay a minimum monthly Lifeline rate of $1. As explained further, this enhanced Lifeline support should substantially reduce the Lifeline rate (*i.e.*, the monthly basic service rate) for all qualifying low-income consumers on tribal lands.

30. Consistent with the requirement of § 54.403(a) of our rules, we condition the receipt of this increased federal Lifeline support on carriers passing through the entire fourth-tier support amount to each qualifying low-income individual living on tribal lands by an equivalent reduction in the subscriber's monthly bill for local service. Specifically, we require each eligible telecommunications carrier to certify that it (1) will pass through the fourth-tier federal support amount to its qualifying low-income subscribers, and (2) has received the necessary approval of any non-federal regulatory authority authorized to regulate such carrier's rates that may be required to implement the required rate reduction. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with the universal service fund Administrator, the Universal Service Administrative Company (USAC), by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

31. Our primary goal, in taking this action, is to reduce the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service. In view of (1) the extraordinarily low average per capita and household incomes in tribal areas,

(2) the excessive toll charges that many subscribers incur as a result of limited local calling areas on tribal lands, (3) the disproportionately low subscribership levels in tribal areas, and (4) the apparent limited awareness of, and participation in, the existing Lifeline program, we conclude that a substantial additional amount of support is needed to have an impact on subscribership. Our conclusion to provide up to an additional $25 for all qualifying low-income individuals living on tribal lands is consistent with the actions of state commissions that have instituted substantial rate reductions for their low-income residents. In each of these cases, substantial additional state funds have been made available to promote subscribership among qualifying low-income consumers in those jurisdictions. Our determination is informed by the experience of these jurisdictions and the increased subscribership levels achieved following their implementation of substantial Lifeline rate reductions. For example, in the four years (1992–1996) immediately following the District of Columbia Public Service Commission's (D.C. Commission) adoption of a $1 Lifeline rate for low-income residents 65 years of age and older and a $3 Lifeline rate for low-income residents under 65 years of age, the District of Columbia's overall subscribership levels increased by more than 4 percent, as compared with a nationwide increase of only 0.1 percent for the same time period. Similarly, while only 8,850 low-income individuals previously lacking telephone service initiated service in New York in the three years preceding the New York Public State Service Commission's adoption of a $1 Lifeline rate, 171,536 low-income individuals initiated service in the three years following adoption of the $1 Lifeline rate, an increase in new Lifeline subscribers of almost 2000 percent.

32. In adopting its $1 Lifeline program for low-income citizens in the District of Columbia, the D.C. Commission determined that a substantial rate reduction, along with the removal of other regulatory restrictions, was needed to stimulate interest among the low-income population generally, given its history of low subscription and in light of the potential importance of phone service, particularly to elderly residents, as a ''Lifeline.'' Subscribership levels on tribal lands, the multitude of obstacles to increasing subscribership on tribal lands, and the critical health and safety function of a telephone to persons in extremely remote locations suggest that tribal populations represent a similarly ''at risk'' population. Just as the D.C. Commission determined that an aggressive regulatory approach was needed to raise the visibility of Lifeline and stimulate interest on the part of residents there, we believe that a similarly aggressive, multi-faceted approach is needed to address the problem of low subscribership on tribal lands.

33. In combination with the ''non-matching'' federal first-tier Lifeline support of up to $4.35 and second-tier support of $1.75 per month per Lifeline customer, the additional $25 in enhanced federal Lifeline support for qualifying low-income individuals living on tribal lands would reduce the cost of the most expensive basic service rates presented on the record (*e.g.*, $38 per month in areas of Alaska and $35 per month on the Wind River Reservation), to less than $10 per month. The record before us indicates that basic local service rates for subscribers living on or near reservations range from $5 to $38 per month, with most subscribers receiving rates of less than $20 per month. Thus, with the enhanced Lifeline support, low-income individuals on tribal lands whose local service rates are $32.10 or less per month would pay a monthly local service rate of $1. The enhanced support also would apply to any monthly mileage or zonal charges imposed as a condition for receiving basic local service. The enhanced support would not apply to state or federal taxes, state or federal universal service fees, or surcharges for 911 service that may appear as line items on a subscriber's bill for local service. By substantially reducing the monthly service costs for all qualifying low-income individuals on tribal lands, we find that the additional targeted Lifeline support provided here should eliminate or diminish the effect of unaffordability for those low-income individuals for whom it may be difficult to maintain telephone service even where facilities are present.

34. By creating this enhanced Lifeline support, we have attempted to reduce to $1 per month the basic service rate for the majority of income-eligible individuals residing on tribal lands. There are, however, some isolated instances where local telephone rates are high enough that, even with the enhanced Lifeline support, monthly service rates will be greater than $1. In addition, there are a myriad of charges, which vary from state to state, that also affect customers' bills, such as taxes, surcharges, and mileage charges. So, while we have taken significant steps toward reducing the monthly local service rates for low-income individuals on tribal lands with this program, we cannot assure each eligible customer that his or her local service bill will be $1 per month.

35. We have ample evidence that customer confusion and lack of awareness of Lifeline discounts have contributed to low subscribership levels on tribal lands. We encourage states to consider ways in which local charges may be simplified, particularly for low-income customers eligible to receive this enhanced Lifeline support, so as to make the Lifeline discounts easier to promote and explain to qualifying customers. We encourage the Joint Board to consider this issue in its review of Lifeline service for all low-income consumers.

36. In determining the appropriate level of enhanced Lifeline support for qualifying low-income individuals on tribal lands, we recognize that low-income individuals on tribal lands may spend a significantly greater percentage of their household income on local and toll services than do most other Americans as a result of the substantial toll charges they incur to place calls within their communities of interest. Based on data compiled by the Bureau of Labor Statistics, we observe that expenditures for residential local and toll telephone services comprise approximately two percent of the average U.S. household's annual expenditures. Assuming average local service charges of approximately $20 per month and toll charges of as much as $126 per month, a tribal member may spend as much as $1,752 per year on local and long distance telephone service. Assuming an average household income of $12,459 per year, a tribal household could spend approximately 14 percent of its annual income on telephone service. Given that an annual household income of $12,459 is unlikely to result in any savings, we assume that all or most of this amount is dedicated to household expenditures.

37. Even if we were to use the lowest local service charge on the record of $5 per month and assume intrastate toll charges of only $42 per month (or one-third of the $126 toll charge figure cited), total telephone services, excluding taxes and other charges, would cost $47 per month, or $564 per year. A tribal household earning $12,459 per year would spend, in this example, approximately 5 percent of its annual income on telephone service. Thus, in comparison to the two percent of household expenditures dedicated to telecommunications services in the average U.S. household, it appears that

tribal members on average commit a substantially greater percentage of household resources to pay for the same services.

38. Finally, we are mindful that a low-income individual currently receiving and paying for service without enhanced support will, upon adoption of these rules, receive a discounted rate for the same service, when that individual arguably could continue to pay the current rate without any enhancement. Nonetheless, we believe that our decision is consistent with our responsibility to ensure that our actions do not expand the federal universal service support mechanisms beyond that required to achieve our statutory mandate to preserve and advance universal service. As we noted in the *Universal Service Order*, however, the fact that an individual is connected to the network does not, in itself, reveal whether that individual is spending a disproportionate amount of income on telecommunications services. We have carefully examined the facts before us and structured the enhanced Lifeline support in a manner that is precisely targeted to provide qualifying low-income individuals with access to telecommunications services and to increase subscribership on tribal lands. Given that: (1) tribal members appear to spend a significantly higher proportion of their incomes on telecommunications services than do other Americans; (2) low-income tribal members' services may be more likely to be disconnected; (3) beneficiaries of enhanced support must be income eligible; and (4) qualifying individuals can use only as much support as is needed to cover the cost of the individuals' basic service rate less $1, we are persuaded that the level of support provided here does not exceed that required to preserve and advance universal service.

39. We also believe that our adoption of enhanced Lifeline support will encourage: (1) Eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities; (2) new entrants offering alternative technologies to seek eligible telecommunications carrier status to serve tribal lands; and (3) tribes, eligible telecommunications carriers, and states to address impediments to increased penetration that are caused by limited local calling areas. We discuss each of these in greater detail.

40. *Infrastructure Development.* By providing carriers with a predictable and secure revenue source, the enhanced Lifeline support just discussed, in conjunction with the expanded support that we provide under the Link Up program, is designed to create incentives for eligible telecommunications carriers to deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable. We note that, unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, the additional support may enhance the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas. Similarly, it may encourage the deployment of such infrastructure by helping carriers to achieve economies of scale by aggregating demand for, and use of, a common telecommunications infrastructure by qualifying low-income individuals living on tribal lands.

41. The enhanced Lifeline and Link Up support adopted here also may help to foster principles of tribal sovereignty and tribal self-determination in two respects. First, the availability of enhanced federal support may provide additional incentives for tribes that wish to establish tribally-owned carriers to do so by diminishing the financial risk associated with providing service to low-income customers on tribal lands. Second, to the extent that tribal leaders can aggregate service requests of large numbers of qualifying individuals eligible for enhanced support, they may have more control in choosing the carriers serving their communities and increased bargaining power in their negotiations with carriers seeking to provide universal service on tribal lands.

42. To the extent that the cost to extend facilities, due to the geographic remoteness of a location or other geographic characteristics, is extraordinarily high, we recognize that the level of support provided here, in combination with existing levels of universal service high-cost support, may not always be sufficient to attract the necessary facilities investment. Accordingly, although we anticipate that the measures adopted in this Order will address a significant number of the obstacles to subscribership on tribal lands identified on the record before us, we anticipate that additional regulatory steps may be necessary to encourage the deployment of facilities in areas where the cost of deployment is extraordinarily high. We will address these issues, in consultation with the Joint Board, when we consider reform of the rural high cost mechanism, and implementation of section 214(e)(3) of the Telecom Act. For this reason, we do not adopt additional measures at this time to address the problem of inadequate facilities deployment in the most geographically remote tribal areas.

43. *Competitive Service Providers.* By providing additional federal support targeted to low-income individuals on tribal lands, without regard to the specific technology used to provide the supported telecommunications services, we recognize that different technologies may offer solutions to address low subscribership levels on tribal lands. For example, commenters have suggested that wireless service may represent a cost-effective alternative to wireline service in sparsely populated, remote locations where the cost of line extensions is prohibitively expensive. Moreover, as we discuss further, a wireless eligible telecommunications carrier service offering that features an expanded local calling area along with a predetermined number of calls or minutes of calling within a tribal member's community of interest, may represent a solution to the problem of limited local calling areas and excessive toll charges in tribal areas. The enhanced Lifeline support adopted in this Order is competitively neutral because any carrier, including a wireless carrier, that receives designation as an eligible telecommunications carrier and is permitted by tribal authorities to serve on tribal lands may provide enhanced Lifeline service to qualifying low-income individuals on tribal lands.

44. *Limited Local Calling Areas.* As noted, because the boundaries of local calling areas for wireline carriers are established by the states, we recognize that we do not have the authority to address the problem of limited local calling areas directly. We find, however, that the enhanced Lifeline support may help to alleviate the financial burden of the excessive toll charges that low-income individuals on tribal lands incur when their local calling area does not encompass their community of interest. First, the availability of enhanced Lifeline support, by reducing local service rates by as much as $25 per month, effectively ''frees up'' money formerly dedicated to local service charges that a subscriber now may apply to the subscriber's toll charges. Second, the enhanced Lifeline support may spur

competitive entry by non-wireline carriers whose calling plans offer an expanded local calling area. Finally, our decision to increase the level of Lifeline support to reduce basic local service rates for qualified, low-income individuals on tribal lands may encourage states to expand local calling areas for subscribers whose local calling area does not encompass their community of interest. Specifically, in instances where the entire federal Lifeline support amount (up to $31.10 where no state matching funds are provided) is not needed to offset a subscriber's local service rate because the rate is less than this amount, the additional remaining support may provide states with incentives to examine and, where appropriate, expand local calling areas on tribal lands. By reducing the financial burden associated with excessive toll charges and by reducing the number of calls subject to toll charges, we conclude that the actions we take today will help low-income individuals on tribal lands to maintain their access to telephone service.

45. We decline at this time to adopt other proposals included in the *FNPRM* for offsetting the cost of intrastate toll service, based on our expectation that the measures adopted in this Order, although not providing support directly for intrastate toll charges, nevertheless will help to alleviate some of the burden associated with high intrastate toll charges on tribal lands. Because we find that the provision of federal support to offset the cost of intrastate toll service would expand upon the definition of supported services in section 254(c) of the Telecom Act, and would raise issues of competitive neutrality to the extent that interexchange carriers would not be eligible to receive such enhanced Lifeline support, we do not adopt our proposal to support intrastate toll service. We ask the Joint Board, in connection with its upcoming review of the definition of supported services, to issue a recommendation as to whether the Commission should include intrastate or interstate toll services or expanded area service within the list of supported services on tribal lands or in other areas. Finally, in recognition of the states' traditional jurisdiction and expertise in determining the appropriate size and scope of local calling areas, we concur in the view expressed by NTIA and other parties that counsel against our direct involvement in this area.

b. Expanded Link Up

46. In this Order, we provide up to $100 of federal support under the Link Up program to reduce the initial connection charges and line extension charges of qualifying low-income individuals on tribal lands. Thus, in addition to the currently available Link Up support amount, *i.e.*, half of the first $60 of a qualifying subscriber's initial connection charges up to a maximum of $30, we will provide up to an additional $70 of federal Link Up support to cover 100 percent of the remaining charges associated with initiating service between $60 and $130, for a total maximum support amount of $100 per qualifying low-income subscriber. Adoption of this measure will provide up to $100 in federal Link Up support to qualifying low-income individuals on tribal lands with initial connection or line extension costs of $130 or more. Based on information and comment on the record pertaining to the costs associated with initiating service in many tribal areas, we conclude that the existing $30 maximum level of Link Up support is, in many cases, far short of the support amount needed to offset such charges. A recent study of American Indian and Alaska Native tribal communities on tribal lands found that average household telephone installation charges for responding tribes was $78. We note that all parties who commented on the appropriate amount by which to increase the level of Link Up support recommend an increase in the maximum level of support to $100 and that no party opposes this amount or proposes an alternative amount.

47. As proposed in the *FNPRM*, we also expand the types of charges covered by the Link Up program to include any standard charges imposed on qualifying low-income individuals on tribal lands as a condition of initiating service, including both line extension and initial connection charges, up to the $100 maximum. Although the Link Up program traditionally has operated only to reduce qualifying consumers' initial connection or initial installation charges (*e.g.*, switch activation fees), we conclude that the expanded Link Up support also should apply to reduce facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service to a qualifying low-income individual on tribal lands. We take this action in recognition of the fact that many low-income individuals on tribal lands face as a result of their remote locations certain supplementary charges for the installation of new lines and the initiation of service, in addition to the typical switch activation fees. For example, on Pueblo Picuris, in New Mexico, qualifying low-income consumers are charged an initial connection charge of approximately $130 per consumer and other consumers are charged approximately $160 per consumer, $113 of which represents a zonal charge to cover the cost of expanding the capacity of existing facilities located near that community. To the extent that parties have identified line extension and construction costs as obstacles to subscribership on tribal lands, this measure is designed to increase subscribership among qualifying low-income individuals by minimizing certain of these up-front costs. In addition, we conclude that several of the justifications supporting our adoption of enhanced Lifeline support also support our adoption of expanded Link Up support. Specifically, by adopting the expanded Link Up support, we intend to create incentives for (1) eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities; and (2) new entrants offering alternative technologies to seek eligible telecommunications carrier status to serve tribal lands.

48. We note that the expanded Link Up support for qualifying low-income individuals living on tribal lands is competitively neutral in that it will apply to any eligible telecommunications carrier's standard charges for initiating service to qualifying consumers on tribal lands. For example, the expanded Link Up support may be used to offset the charge associated with ''activating service'' for an eligible telecommunications carrier that offers satellite telephone service. We further note, however, that the expanded Link Up support cannot be applied to customer premises equipment, *i.e.*, equipment that falls on the customer side of the network interface device boundary between customer and network facilities. We adopt this limitation in light of the fact that the federal universal service support mechanisms generally support only the cost of facilities falling on the network side of the demarcation point and because the Commission's definition of supported services does not include customer premises equipment or inside wiring. Expanded Link Up support would be available for qualifying consumers on tribal lands to offset charges for facilities that are necessary to enable a non-wireline eligible telecommunications carrier to provide service to the demarcation point. For example, if the provision of

a fixed wireless or satellite service required the installation of a receiver on the roof of a subscriber's premises to bring service to a demarcation point, *i.e.*, a network interface device, expanded Link Up support could be used to offset the cost of installing such facilities. To the extent that a non-wireline carrier can isolate costs associated with the portion of a handset that receives wireless signals, we conclude that those costs would be covered as costs on the network side of the network interface device.

49. With respect to GTE's concern that the use of expanded Link Up support to cover line extension costs may not provide sufficient funding, we note that, as discussed, where the cost to extend facilities to a low-income individual's residence is extraordinarily high, additional regulatory action may be necessary to encourage the deployment of facilities in such areas. To the extent that extraordinarily high costs pose a barrier to service in certain tribal areas, we will examine those issues in a future order implementing section 214(e)(3) of the Telecom Act and in connection with our consideration of the Joint Board's recommendations regarding high-cost universal service reform for rural carriers. We likewise are not dissuaded by GTE's concern that the expanded Link Up support will encourage inefficient investment in telecommunications infrastructure. We do not anticipate that the expanded Link Up support will encourage inefficient investment in telecommunications infrastructure because: (1) Support for line extension or other construction costs is capped at $100 per qualifying low-income individual on tribal lands; (2) the line extension or other construction costs in many tribal areas will exceed the maximum amount covered under the expanded Link Up support; and (3) carriers therefore may have to absorb certain costs in excess of the maximum expanded Link Up support amount in order to induce low-income individuals to initiate service,. Moreover, to the extent that a competitive eligible telecommunications carrier offering an alternative to wireline technology can extend service to a remote tribal area at a substantially lower cost than a wireline carrier, we believe that it is a more economically efficient use of federal universal service funds to create incentives, in the first instance, for the lower-cost provider to provide the service.

50. Our decision to apply the expanded Link Up support exclusively to low-income individuals living on tribal lands at this time and further examine whether to extend this approach to other unserved populations, is consistent with Bell Atlantic's suggestion that we adopt a means-tested approach to funding line extensions and, before adopting such an approach, resolve whether it should be applied to other unserved areas. With respect to Bell Atlantic's further suggestion that we resolve, prior to taking action, how much of an increase in expanded Link Up support is needed to have a significant impact on penetration, we note that the actions we take are necessarily based on our best estimates of how much support is needed to impact subscribership levels. We intend that the measures we adopt in this Order and their impact on subscribership levels will be subject to ongoing examination and possible refinement as may be appropriate.

c. Implementation Issues Associated With Rule Changes To Provide Enhanced Lifeline Support and Expanded Link Up Support to Low-Income Consumers on Tribal Lands

51. We anticipate that carriers may require additional time, beyond the effective date of this Order, to implement the tariff and billing system changes that may be necessary for eligible telecommunications carriers to offer the enhanced Lifeline and expanded Link Up services we adopt in this Order. Accordingly, we have determined to extend until October 1, 2000 the date by which eligible telecommunications carriers must comply with the new rule § 54.403(a)(4) and § 54.411(a)(3) adopted in this Order. An eligible telecommunications carrier serving tribal lands must make available, upon request by a qualifying low-income individual living on tribal lands, the enhanced Lifeline and Link Up services adopted in this Order by no later than October 1, 2000. Although we encourage eligible telecommunications carriers to implement the necessary changes and offer the expanded Lifeline and Link Up services prior to this date where possible, we believe that this date gives carriers sufficient time to comply with these rule amendments. Because we find significant public interest in not delaying the benefits of these rules beyond that required to enable carriers to comply with them without undue burden, we decline to extend the deadline for their implementation beyond October 1, 2000.

52. In order to receive reimbursement during the calendar year 2000 for enhanced Lifeline and expanded Link Up services provided during the fourth quarter 2000, an eligible telecommunications carrier must submit to USAC by no later than September 1, 2000, a letter from a corporate officer of the carrier containing the following information and certifications: (1) An estimate of (a) the number of eligible low-income subscribers in each of the carrier's study areas that the carrier projects will receive non-enhanced federal Lifeline or Link Up discounts in the fourth quarter of 2000 (*i.e.*, number of eligible subscribers on non-tribal lands), and (b) the number of eligible low-income subscribers in each of the carrier's study areas that the carrier projects will receive enhanced Lifeline or expanded Link Up discounts in the fourth quarter of 2000 as a result of actions taken in this Order (*i.e.*, number of eligible subscribers on tribal lands); (2) a statement of the corporate officer that the estimates provided are based on the good-faith estimate of the corporate officer; (3) the carrier's monthly undiscounted service rates for subscribers eligible to receive enhanced Lifeline support; (4) the monthly amount of additional support for each low-income subscriber who the carrier projects will be eligible for enhanced Lifeline support; (5) the number of low-income individuals on tribal lands for whom the carrier expects to initiate service in the fourth quarter of 2000 and the number of other low-income individuals for whom the carrier expects to initiate service in the fourth quarter of 2000; (6) the amount charged to initiate service for low-income subscribers on tribal lands and the amount charged to initiate service for other low-income subscribers; (7) an estimate of total federal Lifeline and Link Up support that the carrier anticipates it will require in the fourth quarter of 2000; (8) a certification that the carrier will pass through all federal Lifeline support amounts to its qualifying low-income subscribers; (9) a certification that the carrier has received the necessary approval of any non-federal regulatory authority (*e.g.*, a state commission or tribal regulatory authority) that is authorized to regulate such carrier's rates that may be necessary to implement the required rate reduction; and (10) a certification that the carrier is publicizing the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for these services.

53. We emphasize that all eligible telecommunications carriers, including those that do not submit to USAC by September 1, 2000 the letter described, are required to make available the Lifeline and Link Up discounts adopted in this Order to all qualifying low-

income consumers not later than October 1, 2000. We also remind all eligible telecommunications carriers that, as a condition for receiving federal Lifeline or Link Up support payments from USAC, they must submit to USAC at regular intervals an FCC Form 497. We direct the Common Carrier Bureau and USAC to revise the FCC Form 497 Lifeline Worksheet as necessary to implement the decisions and rule changes adopted in this Order. We delegate to the Common Carrier Bureau the authority to modify the FCC Form 497, along with any other forms that may be required to implement the decisions in this Order.

d. Expanded Lifeline and Link Up Qualification Criteria for Low-Income Consumers on Tribal Lands

54. We amend § 54.409(b) of our rules to enable qualifying low-income individuals living on tribal lands within a state that *does not* provide intrastate matching funds under the Lifeline program (either for the benefit of the state's population generally or tribal members specifically), to qualify for Lifeline and Linkup support by certifying their participation in certain alternative means-tested assistance programs. Specifically, we expand the federal default qualification criteria for eligibility for Lifeline and Link Up assistance, as set forth in § 54.409(b), to permit low-income individuals living on tribal lands to establish their income eligibility by certifying their participation in one of the following federal assistance programs: (1) BIA general assistance; (2) Temporary Assistance for Needy Families (TANF) tribally-administered block grant program; (3) Head Start Programs (under income qualifying eligibility provision only); or (4) National School Lunch Program (free meals program only). Given that the household income thresholds for these newly added programs range from 100–130 percent of the federal poverty level or incorporate state-determined poverty thresholds, we conclude these income thresholds are consistent with those associated with the programs included in our current federal default list.

55. We take this action based on evidence on the record before us that the existing federal qualification criteria governing eligibility under the Commission's Lifeline and Link Up programs, to the extent that these criteria do not include low-income programs specifically targeted to Indians, serve as a barrier to participation in the Lifeline and Link Up programs by low-income members of Indian tribes. A low-income tribal member effectively may be excluded from participation in Lifeline and Link Up in instances where that individual receives assistance or benefits under a program other than one of the programs listed in § 54.409(b) of our rules. For example, a low-income tribal member who receives cash assistance benefits under the BIA general assistance program, but receives no assistance or benefits under any of the means-tested programs listed in § 54.409(b) of the Commission's rules, would not be eligible today to receive Lifeline and Link Up support by virtue of the individual's non-participation in any of the low-income programs listed under § 54.409(b). Accordingly, we have expanded the list of programs contained in § 54.409 to include means-tested programs in which, according to commenters, low-income tribal members are more likely to participate and, therefore, represent more suitable income proxies for low-income tribal members.

56. We also make available the expanded eligibility criteria enumerated to all low-income individuals living on tribal lands. This action is consistent with our rationale discussed for extending the benefits of the enhanced Lifeline and expanded Link Up support to all qualifying low-income individuals on tribal lands, as opposed to limiting these benefits solely to qualifying low-income tribal members on tribal lands. We believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. We also anticipate that reducing barriers to participation in the Commission's Lifeline and Link Up programs for all low-income individuals residing on tribal lands will help to increase the number of subscribers in a tribal community who can afford service and, thereby, provide greater incentive for carriers to invest and deploy telecommunications infrastructure on tribal lands. In addition, making the identical set of eligibility criteria available to all low-income individuals on tribal lands should make it administratively less burdensome for an eligible telecommunications carrier serving tribal lands to provide Lifeline and Link Up services in those areas. In particular, we believe that it will be less burdensome for a carrier to verify the income eligibility of all potential Lifeline and Link Up subscribers in a tribal area using the same set of eligibility criteria.

57. We decline to expand our federal default qualification criteria to include participation in services provided by the Indian Health Service of the U.S. Department of Health and Human Services given that such services are available to Indian tribal members generally, rather than exclusively to low-income tribal members, and therefore are inappropriate qualification criteria for our purposes. In addition to proposing the addition of certain of the means-tested programs that we adopt here, one commenter suggests that we include the Low Income Home Energy Assistance Program (LIHEAP), Aid to Families with Dependent Children (AFDC), and Tribal Work Experience Program (TWEP). We note that LIHEAP is included currently in the federal default qualification criteria listed in § 54.409(b) of our rules. In light of our understanding that TANF has superseded the AFDC program, we do not include the AFDC program, but we do include the tribally-administered TANF block grant program. In addition, we do not include TWEP insofar as it appears that participation in BIA general assistance is a prerequisite to participation in TWEP and, given that our expanded default qualification criteria now include participation in the BIA general assistance program, TWEP participants need only certify their participation in the BIA general assistance program.

58. At this time, we also do not adopt a qualification procedure by which low-income individuals on tribal lands could establish their income eligibility by self-certifying that their income is below a particular level, such as that set by the Federal Poverty Guidelines, as one commenter has suggested. Because we believe, however, that this approach may reach more low-income consumers, including low-income tribal members, than the current method of conditioning eligibility on participation in particular low-income assistance programs, we will further examine, in consultation with the Joint Board, possible revisions to § 54.409 of the Commission's rules to provide for self-certification based solely on income level.

59. For qualifying low-income individuals who live on tribal lands in states that *do* provide intrastate matching funds under the Lifeline program and therefore are subject to state-created eligibility criteria, we adopt the suggestion of the Wisconsin Public Service Commission and revise our eligibility guidelines under § 54.409(a). Specifically, in addition to establishing qualification criteria under § 54.409(a) that are based ''solely on income or factors directly related to income,'' we conclude that a state containing any tribal lands also must

ensure that its qualification criteria are reasonably designed to apply to low-income tribal populations within that state. We conclude that this modification to § 54.409(a) is preferable to an alternative approach under which we would require states to adopt the identical expanded qualification criteria as those adopted for purposes of the federal default qualification criteria. Our decision today will give a state whose eligibility criteria inadvertently exclude low-income tribal populations impetus to take corrective action, while giving the state flexibility to adopt eligibility criteria best-suited to the tribal populations within that state. Consistent with the Joint Board's goal of increasing low-income subscribership and ensuring that the availability of Lifeline and Link Up is not limited to particular populations, we conclude that this approach will help to ensure that all qualifying residents on tribal lands will receive the intended benefits of the federal Lifeline and Link Up programs.

60. We will permit, however, a low-income individual who lives on tribal lands and who is excluded from participation in the Lifeline and Link Up programs because the individual is not enrolled in any of the programs listed in a state's qualification criteria to qualify for *federal* Lifeline and Link Up support by certifying his or her eligibility under one of the means-tested programs listed in § 54.409, as revised herein. We conclude that this action is necessary to hasten the process of bringing telecommunications services to unserved and underserved tribal lands and in recognition of the time needed for states to revise their qualification criteria where those criteria limit participation in Lifeline and Link Up to individuals who receive benefits under one or more low-income assistance programs in which low-income tribal members typically do not participate. For example, in a state where Lifeline and Link Up eligibility hinges on enrollment in the Medicaid program, a low-income tribal member who receives health services through the Indian Health Services and does not participate in Medicaid would not be eligible for Lifeline and Link Up support (state or federal) in that state by virtue of that state's qualification criteria. This measure recognizes the unique barriers facing low-income tribal members living on tribal lands who may have been excluded inadvertently from participation in Lifeline and Link Up as a result of a state's qualification criteria. This action is consistent with the Commission's statement in the *Universal Service Order* that, where a state provides matching funds under the Lifeline program, the state's qualification criteria should apply. Conversely, if a low-income individual living on tribal lands is excluded from participation in the Lifeline and Link Up programs because that individual participates in none of the programs used as income proxies in a state's qualification criteria and such individual agrees to forgo state matching funds, then we find that the justification for applying state qualification criteria in that circumstance no longer applies.

D. Requiring Eligible Telecommunications Carriers To Publicize the Availability of Lifeline and Link Up Support

61. In codifying section 214(e)(1)(B) of the Telecom Act, Congress recognized that merely providing a service is not enough to ensure that the needed support is received. Rather, it imposed an obligation to advertise the availability of the supported services and the charges for those services. There is evidence in the record that the lack of information concerning the availability of Lifeline and Link Up services contributes to low penetration rates. We are concerned that eligible telecommunications carriers are not advertising the availability of Lifeline and Link Up services or, if they are, that such efforts are not reasonably designed to reach those likely to qualify for the service. Based on the apparent lack of awareness of the availability of Lifeline and Link Up services in many rural, low-income communities and to remove any confusion concerning eligible telecommunications carriers' obligation to publicize the availability of these services, we conclude that this obligation should be codified in our rules.

62. We recognize, as pointed out by United Utilities, Inc. (UUI), the limitations of traditional advertising media in promoting awareness of low-income support mechanisms within particular low-income populations. Specifically, UUI, a Native-owned eligible telecommunications carrier serving ''predominantly Alaskan native villages,'' describes how it achieved significant increases in both penetration rates and Lifeline subscribership through an intensive outreach effort in 26 native villages. As part of its outreach effort, UUI waived ''service order and hook-up fees,'' identified and contacted each household that did not have service, and often spoke in its customers' Native language to inform them of the Lifeline program and toll blocking. According to UUI, as a result of this effort, the household penetration level in these 26 villages increased by 4.9 percent, and Lifeline subscribership increased from 395 to 1,263 subscribers. In its comments, UUI states that:

> [R]egional advertising media generate very limited results, as does the placing locally of posters. Placing ads in regional publications and placing posters can be ineffective when carriers do not make special efforts, as did UUI, to contact low income households in person, to speak to them in their own language, and to adequately explain the Lifeline program and toll blocking options. UUI would take the position that a lack of information does * * * contribute to the significantly low penetration rates on tribal lands.

We commend these efforts and encourage other carriers to undertake similar efforts to comply with the rule amendments that we adopt in this Order.

63. We amend § 54.405 and § 54.411 of our rules to require eligible telecommunications carriers to publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. We emphasize that these rule amendments shall apply to all eligible telecommunications carriers and not merely to those serving tribal lands. We take this action based on evidence in the record that the lack of awareness of the Lifeline and Link Up programs contributes to low penetration rates and to eliminate any confusion concerning eligible telecommunications carriers' obligation to publicize the availability of these services.

64. We recognize that a method that is reasonably designed to reach qualifying low-income subscribers in one location may not be effective in reaching qualifying low-income subscribers in another location. For that reason, we do not prescribe in this Order specific, uniform methods by which eligible telecommunications carriers must publicize the availability of Lifeline and Link Up support. We do, however, require an eligible telecommunications carrier to identify communities with the lowest subscribership levels within its service territory and make appropriate efforts to reach qualifying individuals within those communities. For example, we would expect a carrier to take into consideration the cultural and linguistic characteristics of low-income communities within its service territory as well as the efficacy of particular methods in reaching the greatest number of qualifying low-income individuals within those communities. In addition, we require an eligible telecommunications carrier to provide

to qualifying low-income individuals, through whatever public awareness method it selects, consumer information on the availability of toll blocking and toll limitation services for the purpose of enabling the subscriber to control the amount of toll charges that he or she may incur.

65. If we determine that eligible telecommunications carriers are not adopting methods reasonably designed to reach qualifying low-income individuals, additional action may be needed to increase public awareness among such individuals. To that end, we may address in a Further Notice of Proposed Rulemaking more specific methods by which eligible telecommunications carriers must publicize the availability of Lifeline and Link Up services. Finally, we note that the Commission's upcoming Indian telecommunications training initiative will be devoted, in part, to familiarizing carriers and tribal representatives with the Lifeline and Link Up programs generally, and the changes made to those programs by this Order, in particular.

E. Lifeline Jurisdictional Issues

66. *State Approval Requirement for Second-Tier Support.* We modify § 54.403(a) of our rules to make second-tier federal Lifeline support available to an eligible telecommunications carrier that is not subject to state rate regulation on the condition that the carrier certifies that it: (1) Will pass through the second-tier $1.75 federal support amount to its qualifying low-income subscribers, and (2) has received the necessary approval of any non-federal regulatory authority that is authorized to regulate such carrier's rates that may be required to implement the required rate reduction (*e.g.,* a tribal regulatory authority). To the extent that an eligible telecommunications carrier is not subject to rate regulation by any non-federal regulatory authority, then the carrier need only certify for this purpose that it: (1) will pass through the second-tier $1.75 federal support amount to its qualifying low-income subscribers, and (2) is not subject to rate regulation by any non-federal regulatory authority. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with USAC by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

67. By eliminating the need for eligible telecommunications carriers not subject to state rate regulation to obtain state action or seek a Commission waiver in order to receive second-tier federal Lifeline support, this revision to § 54.403(a) of our rules ensures that no category of carriers is subjected to more burdensome administrative requirements than are imposed on all other eligible telecommunications carriers seeking second-tier federal Lifeline support. We conclude that this amendment maintains appropriate deference to tribal regulatory authorities because second-tier support will not be disbursed where a tribal regulatory authority that regulates the rates of an eligible telecommunications carrier does not permit an equivalent reduction in consumers' bills. In addition, by requiring eligible telecommunications carriers to certify that they are not subject to state rate regulation before we make available second-tier federal Lifeline support, this result is consistent with our overall deference to the states in areas of traditional state ratemaking.

68. *Third-Tier Lifeline Support.* In light of our determination to provide enhanced federal Lifeline support of up to $25 for low-income individuals living on tribal lands through the creation of a fourth tier of the Lifeline program, we do not adopt our proposal in the *FNPRM* to provide the third tier of federal Lifeline support to carriers serving tribal lands where no intrastate matching funds are provided. In granting a temporary waiver of the matching requirement for third-tier federal Lifeline support in the *Gila River Order,* the Bureau was aware that, absent a waiver, a tribal carrier not subject to the jurisdiction of a state commission, such as Gila River Telecommunications, Inc., could receive only first-tier Lifeline support in the amount of $3.50 per qualifying low-income subscriber. Central to the Bureau's determination to grant a temporary waiver of the second-tier state approval requirement and the third-tier state matching requirement, was the recognition that, in light of the ''low penetration and income levels on reservations,'' providing tribal carriers with only $3.50 per qualifying low-income subscriber was inconsistent with the ''Commission's policy of fostering access to the public telephone network for those most in need.''

69. We note that, because we modify the state approval requirement of § 54.403(a) for the provision of second-tier Lifeline support and adopt enhanced Lifeline support for qualifying low-income individuals, eligible telecommunications carriers will be entitled to receive nonmatching federal support of up to $31.10 per month, per qualifying low-income subscriber. We conclude that it is not necessary to waive the third-tier state matching requirement because we anticipate the enhanced Lifeline amount of $31.10 per month per qualifying low income subscriber will constitute a sufficient level of support, even on tribal lands where no intrastate support is generated. We further believe that the enhanced Lifeline will increase qualifying low-income individuals' access to the public telephone network more effectively than would our proposal in the *FNPRM* to waive the third-tier matching requirement, which would yield a maximum additional level of support of only $1.75 per qualifying subscriber. Given that all parties who commented on this issue supported our proposal to waive the third-tier state matching requirement in § 54.403(a) as a means to direct additional federal Lifeline support to low-income individuals on tribal lands, we conclude that our decision to accomplish this result through the creation of a fourth tier of the Lifeline program, in lieu of waiving the third-tier state matching requirement, is not inconsistent with the comments addressing this issue.

70. We revise § 54.403(a), however, to permit a carrier that is not subject to state rate regulation to satisfy the third-tier intrastate matching requirement of § 54.403(a) by generating its own matching funds, independently of the actions of the state in which it operates. Although we recognize that many tribes and tribal carriers may not have adequate resources to generate the matching funds necessary to receive third-tier federal support, we find that the level of nonmatching federal Lifeline support that will be available for qualifying low-income individuals on tribal lands provides an adequate level of support. If a tribe or a carrier, including a wireless carrier, that is not subject to state rate regulation nevertheless wishes to provide matching funds in order to receive third-tier federal Lifeline support and reduce local rates further, we do not want to preclude such a result. Accordingly, we modify § 54.403(a) of our rules to provide third-tier federal Lifeline support, up to a maximum of $1.75 per qualifying low-income customer as calculated in § 54.403(a), to an eligible telecommunications carrier that certifies that it: (1) Is not subject to state rate regulation, and (2) will pass through the total amount of third-tier support (intrastate and federal) to its qualifying low-income subscribers by an

equivalent reduction in those subscribers' monthly bill for local telephone service. As discussed, an eligible telecommunications carrier seeking to receive reimbursement during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000 must make these certifications in a letter filed with USAC by September 1, 2000. All carriers seeking reimbursement for enhanced Lifeline or Link Up services must make these certifications in the FCC Form 497 (as revised).

71. By maintaining the matching requirement of § 54.403(a) as a condition for receiving third-tier federal Lifeline support, we leave undisturbed a primary goal underlying the Commission's adoption of third-tier support, namely, the creation of an incentive for states (or tribal authorities, tribal carriers, or wireless carriers, as the case may be) to reduce local rates even further. In the *Universal Service Order,* the Commission determined that $5.25 represented a sufficient level of baseline federal Lifeline support. The Commission established the additional third tier of federal Lifeline support, which entitles an eligible telecommunications carrier to receive up to $1.75 of federal Lifeline support per qualifying low-income consumer in a state that generates support from the intrastate jurisdiction, in order to preserve states' incentive to reduce local rates beyond that achieved under the first and second tiers of Lifeline support, as deemed appropriate by the state. Accordingly, a carrier that is not subject to state rate regulation, but that certifies that it will pass through to its qualifying low-income subscribers a rate reduction equivalent to both the intrastate and federal third-tier support amounts, will be entitled to receive third-tier federal Lifeline support. For the foregoing reasons, however, we maintain the matching requirement of § 54.403(a) as a condition for receiving third-tier federal Lifeline support.

72. *Filing of Federal Lifeline Plan.* Finally, we observe that § 54.401(d) of the Commission's rules currently does not apply to an eligible telecommunications carrier that is not subject to the rate regulatory authority of a state commission. That section directs a state commission to file, or requires a state commission to direct an eligible telecommunications carrier to file, with USAC information demonstrating that the carrier's Lifeline plan meets the requirements of Subpart E of the Commission's rules. We amend § 54.401(d) to require eligible telecommunications carriers not subject to the rate regulatory authority of a state commission to file with USAC information demonstrating that the carrier's Lifeline plan meets the requirements of Subpart E of the Commission's rules.

III. Designating Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of The Telecom Act

A. Discussion

(1) Scope of Section 214(e)(6) of the Telecom Act

73. *State Commission Designation of Eligible Telecommunications Carriers.* In light of the statutory framework and legislative history, we conclude that Congress, in enacting section 214(e)(6) of the Telecom Act, did not intend to alter the basic framework of section 214(e) of the Telecom Act, which gives the state commissions the principal role in designating eligible telecommunications carriers under section 214(e)(2) of the Telecom Act. This interpretation of section 214(e) of the Telecom Act is consistent with the legislative history, which indicates that section 214(e)(6) of the Telecom Act is not intended to ''restrict or expand the existing jurisdiction of State commissions over any common carrier,'' but is intended to provide a means for the designation of a carrier over which a state commission lacks jurisdiction.

74. We conclude that section 214(e)(6) of the Telecom Act requires the Commission to conduct a designation proceeding in instances where the relevant state commission lacks, for whatever reason, the authority to perform the designation. We are guided by the statutory framework, legislative history, and the record before us, to conclude that the threshold question in determining whether the Commission may exercise its authority under section 214(e)(6) of the Telecom Act is whether the state commission lacks jurisdiction over the carrier, for any reason. We agree with commenters who suggest that the inquiry should include, but not be limited to, whether a state commission lacks jurisdiction over the particular service or geographic area. The determination as to whether a state commission lacks jurisdiction over a particular carrier is a fact-specific inquiry that may depend on interpretations of federal, state, and tribal law where appropriate.

75. *Jurisdiction Over Carriers Serving Tribal Lands.* We are not persuaded by claims that the exercise of our authority under section 214(e)(6) of the Telecom Act is limited to designations of eligibility sought by tribally-owned carriers serving tribal lands. We conclude that neither the language of section 214(e)(6) of the Telecom Act nor its legislative history provides any indication that it applies only to tribally-owned carriers serving tribal lands. Section 214(e)(6) of the Telecom Act applies to any carrier ''not subject to the jurisdiction of a state commission.'' Moreover, the legislative history supports this interpretation. In sum, we agree with those commenters who contend that the legislative history of section 214(e)(6) of the Telecom Act makes clear that, although the class of carriers to be covered by section 214(e)(6) of the Telecom Act was dominated by tribally-owned carriers, it was not restricted to them.

76. Nor do we find persuasive claims that the Commission generally has authority to make all eligible telecommunications carrier determinations over carriers providing telecommunications service on tribal lands. We do not believe that Congress intended the Commission to use section 214(e)(6) of the Telecom Act to usurp the role of a state commission that has jurisdiction over a carrier providing service on tribal lands. On the contrary, in adopting section 214(e)(6) of the Telecom Act, Congress recognized that some state commissions had asserted jurisdiction over tribal lands. Congress also acknowledged pending jurisdictional disputes between states and tribes and made clear that the adoption of section 214(e)(6) of the Telecom Act was not ''intended to impact litigation regarding jurisdiction between State and federally-recognized tribal entities.''

77. As discussed, the Commission's authority under section 214(e)(6) of the Telecom Act applies only when a carrier is not subject to the jurisdiction of a state commission. The determination as to whether a carrier providing service on tribal lands is subject to the jurisdiction of a state commission is a complicated and intensely fact-specific legal inquiry informed by principles of tribal sovereignty and requiring the interpretation of treaties, and federal Indian law and state law. Such determinations usually consider whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether the tribe has consented to state jurisdiction, either in treaties or otherwise. The inquiry as to whether a state commission has authority to regulate the provision of telecommunications service on tribal lands is a particularized one, and thus specific to each state and the facts and circumstances surrounding the provision of the service. As the U.S.

Supreme Court has stated, ''there is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members.''

78. *Jurisdiction Over Particular Services.* We further conclude that the technology used to provide the telecommunications service does not *per se* determine whether the state commission or this Commission has jurisdiction over the carrier for purposes of designating the carrier as eligible to receive federal universal service support. Specifically, we conclude that the provision of service by terrestrial wireless or satellite carrier does not *per se* place the carrier outside the parameters of the state commission designation authority under section 214(e)(2) of the Telecom Act. We believe that if Congress had intended to exempt particular services from the state commission designation process, it would have expressly done so in section 214(e) of the Telecom Act. We therefore agree with NTIA that there is nothing in the statute or the legislative history to support the notion that, by enacting section 214(e)(6) of the Telecom Act, Congress intended to remove from the state commissions the primary responsibility for designating wireless or satellite carriers as eligible telecommunications carriers.

79. We further conclude that state commission designation of a Commercial Mobile Radio Service (CMRS) provider pursuant to section 214(e)(2) of the Telecom Act does not constitute entry regulation in violation of section 332(c)(3) of the Telecom Act. Section 332(c)(3) of the Telecom Act bars state and local rate and entry regulation of CMRS providers, but allows the states to regulate ''other terms and conditions of service.'' Section 332(c)(3) of the Telecom Act prohibits direct state regulation of entry by CMRS providers (*e.g.,* a regulation that requires the CMRS provider to obtain a certificate of public convenience and necessity from the state prior to providing service), but a regulation does not necessarily run afoul of section 332(c)(3) of the Telecom Act solely because it may make it more difficult for some carriers to offer service. We conclude that the prohibition on ''entry'' regulation in section 332(c)(3) of the Telecom Act does not prohibit states from designating CMRS providers as eligible telecommunications carriers because such designation relates to a carrier's right to receive federal universal service support, rather than a carrier's legal right to do business in a state. We need not decide for present purposes whether, or under what conditions, a particular state's eligible telecommunications carrier designation process as applied to a CMRS provider might constitute impermissible entry regulation, rather than permissible regulation of terms and conditions of service. Moreover, this conclusion does not affect our ability to determine whether a state commission's designation process or denial of eligibility may constitute a barrier to entry under section 253 of the Telecom Act.

80. We note that several states have already issued orders addressing designation requests from wireless carriers. We encourage states to move forward expeditiously to resolve pending requests in a pro-competitive manner designed to preserve and advance universal service.

(2) Section 214(e)(6) of the Telecom Act Designation Process for Carriers Serving Non-Tribal Lands

81. As discussed, the threshold question for determining whether the Commission may exercise its authority to designate a carrier as an eligible telecommunications carrier under section 214(e)(6) of the Telecom Act is whether the state commission lacks jurisdiction over the carrier, for any reason. Section 214(e) of the Telecom Act does not, however, define the circumstances under which a state commission may lack jurisdiction, nor does it address whether such jurisdictional determinations should be made by the state commission or this Commission. We conclude that carriers seeking designation from this Commission under section 214(e)(6) of the Telecom Act for service provided on non-tribal lands must first consult with the relevant state regulatory commission on the issue of whether the state commission has jurisdiction to designate the carrier, even if the carrier asserts that the state commission lacks jurisdiction over the carrier. In so doing, we note that jurisdictional challenges relating to the authority of the state commission to designate certain carriers or classes of carriers on non-tribal lands derive almost exclusively from interpretations of state law.

82. While a carrier may believe state law to preclude the state commission from exercising jurisdiction over the carrier for purposes of designation under section 214(e)(2) of the Telecom Act, we conclude, as a matter of federal-state comity, that the carrier should first consult with the state commission to give the state commission an opportunity to interpret state law. We conclude that state commissions should be allowed a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers. Only in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) of the Telecom Act designation requests from carriers serving non-tribal lands. We conclude that an ''affirmative statement'' of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier. Each carrier should consult with the state commission to receive such a notification, rather than relying on notifications that may have been provided to similarly situated carriers.

83. We are concerned, however, that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We believe it is unreasonable to expect prospective entrants to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether they are eligible to receive support. If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas. As the Commission has previously concluded, competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services. We are therefore concerned that indefinite delays in the designation process will thwart the intent of Congress, in section 254 of the Telecom Act, to promote competition and universal service to high-cost areas. Accordingly, we commit to resolve, within six months of the date filed at the Commission, all designation requests for non-tribal lands that are properly before us pursuant to section 214(e)(6) of the Telecom Act. We also strongly encourage state commissions to resolve designation requests filed under section 214(e)(2) of the Telecom Act in the same time frame.

(3) Section 214(e)(6) of the Telecom Act Designation Process for Carriers Serving Tribal Lands

84. In this section, we establish a framework designed to streamline the

process for eligibility designation of carriers providing service on tribal lands. As discussed in greater detail, we conclude that carriers seeking eligibility designations for service provided on tribal lands may petition this Commission under section 214(e)(6) of the Telecom Act for a determination of whether the carrier is subject to the state commission's jurisdiction and, in instances where the state lacks jurisdiction, a decision on the merits of the designation request. Under this framework, a carrier seeking an eligibility designation for service provided on tribal lands will avoid any costs and delays associated with resolving the threshold jurisdictional determination in a state designation proceeding and possible court appeal of that state jurisdictional decision. Moreover, this framework will provide a safe harbor for carriers unwilling to have the jurisdictional question resolved by a state commission. This streamlined designation process for carriers serving tribal lands is intended to facilitate the expeditious resolution of such requests so as to increase the availability of affordable telecommunications services to tribal lands, while preserving the state commissions' jurisdiction consistent with federal, tribal, and state law. We believe that this process will balance carefully the principles of tribal sovereignty and the demonstrated need for access to affordable telecommunications services on tribal lands, against the appropriate exercise of state jurisdiction over carriers operating on such lands.

85. As discussed, we conclude that section 214(e)(6) of the Telecom Act directs the Commission to perform the eligibility designation in instances where the carrier is not subject to the jurisdiction of a state commission. Neither section 214(e)(2) of the Telecom Act nor section 214(e)(6) of the Telecom Act, however, address how such jurisdictional determinations should be made or by which commission. In the absence of specific guidance in the statute as to how such jurisdictional determinations should be made, we conclude that this Commission may resolve the threshold question of whether a carrier seeking eligibility designation for service provided on tribal lands is subject to the jurisdiction of the state commission. This conclusion is consistent with the execution of our duty to preserve and advance universal service under section 254 of the Telecom Act, principles of tribal sovereignty, and the unique federal trust relationship between Indians tribes and the federal government.

86. We recognize that a determination as to whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a legally complex inquiry extending beyond interpretations of state law to principles of tribal sovereignty, federal Indian law, and treaties. Evaluating the extent to which a state commission has jurisdiction over activities conducted on tribal lands, whether by members or non-members of a tribe, will involve questions of whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether a tribe has consented to state jurisdiction in treaties or otherwise. Thus, we find that such jurisdictional determinations, which will involve an analysis of principles of tribal sovereignty, federal Indian law, treaties, and state law, may be appropriately performed by this Commission.

87. The jurisdictional ambiguities associated with the question of whether a state may designate a carrier serving tribal lands may unnecessarily delay the provision of affordable services in high-cost areas. We intend this framework to facilitate the designation of carriers eligible to receive federal universal service support for service provided on tribal lands by permitting such carriers to seek resolution of the jurisdictional issue directly from this Commission. Absent this framework, the designation of such carriers as eligible to receive federal universal service support may be otherwise unnecessarily delayed pending resolution of the jurisdictional question, or potentially prevented entirely in those instances where the tribal authority will not support the carrier's submission to state commission jurisdiction.

88. Moreover, in establishing this framework for the designation of eligible telecommunications carriers serving tribal lands, we are guided by our recognition of, and respect for, principles of tribal sovereignty and self-determination. As described in the Commission's *Indian Policy Statement*, we acknowledge the principles of tribal sovereignty and self-government and the unique trust relationship between the Indian tribes and the federal government. We are mindful that the federal trust doctrine imposes on federal agencies a fiduciary duty to conduct their authority in matters affecting Indian tribes in a manner that protects the interest of the tribes. We are also mindful that federal rules and policies should therefore be interpreted in a manner that comports with tribal sovereignty and the federal policy of empowering tribal independence.

89. In light of our obligation to preserve and advance universal service under section 254 of the Telecom Act, principles of tribal sovereignty and self-determination, and our unique federal trust responsibility, we adopt the following framework for resolution of designation requests under section 214(e)(6) of the Telecom Act for carriers serving tribal lands. We conclude that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service provided on tribal lands may petition the Commission for designation under section 214(e)(6) of the Telecom Act, without first seeking designation from the appropriate state commission. The petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission's jurisdiction, and bears the burden of proving that assertion. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. The Commission will release, and publish in the **Federal Register**, a public notice establishing a pleading cycle for comments on the petition. The Commission will also send the public notice announcing the comment and reply dates to the affected state commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.

90. Based on the evidence presented in the record, the Commission shall make a determination as to whether the carrier has sufficiently demonstrated that it is not subject to the state commission's jurisdiction. In the event the Commission determines that the state commission lacks jurisdiction to make the designation and the petition is properly before the Commission under section 214(e)(6) of the Telecom Act, the Commission will decide the merits of the request within six months of release of an order resolving the jurisdictional issue. If the carrier fails to meet its burden of proof that it is not subject to the state commission's jurisdiction, the Commission will dismiss the request and direct the carrier to seek designation from the appropriate state commission. In such cases, we urge state commissions to act within a similar time frame (*i.e.*, six months) to resolve such requests as expeditiously as possible.

91. We emphasize that a carrier seeking a section 214(e)(6) of the Telecom Act designation for service provided on tribal lands must bear the

burden of demonstrating that it is not subject to the state commission's jurisdiction. As discussed, we reject the contention that section 214(e)(6) of the Telecom Act provides the Commission with the blanket authority to make all eligible telecommunications carrier designations over carriers providing service on tribal lands. In so doing, we recognize that the issue of whether a state commission may exercise jurisdiction over a carrier providing service on tribal lands is a particularized inquiry guided by principles of tribal sovereignty, federal Indian law, and treaties, as well as state law. Therefore, carriers seeking an eligibility designation from this Commission for the provision of service on tribal lands should provide fact-specific support demonstrating that the carrier is not subject to the state commission's jurisdiction for the provision of service on tribal lands. Such support should include any relevant case law, statutes, and treaties. We emphasize that this is a strict burden and that generalized assertions regarding the state commission's lack of jurisdiction will not suffice to confer jurisdiction on this Commission under section 214(e)(6) of the Telecom Act. We would also find informative any statements and analyses the tribal authority might provide regarding the petitioner's request for designation and the state commission's exercise of jurisdiction. For example, carriers may include with their petitions a letter from the appropriate tribal authority addressing the jurisdictional question or the merits of the designation request.

92. We decline to place on the affected state commission the burden of proving that it has jurisdiction over a particular carrier. To do so would suggest that state commission bear the burden of overcoming a general presumption that states do not have jurisdiction over carriers providing service on tribal lands. Such a presumption is inconsistent with our determination that the issue of whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a particularized inquiry, and thus specific to each state and the facts and circumstances surrounding the provision of the service.

93. We strongly encourage the participation of the affected state commissions and tribal authorities in this process. The determination of whether a particular carrier is subject to the state commission's jurisdiction for service provided on tribal lands is one that will be greatly informed by the participation of the tribes and state commission or other state officials. Based on our experience to date with section 214(e)(6) of the Telecom Act, we believe that there will be some state commissions that will not object to the Commission's designation of carriers serving tribal lands as eligible to receive federal universal service support. We look forward to working with the state commissions, tribal authorities, and members of industry to resolve these jurisdictional questions, and ultimately the designation requests, in an expeditious manner. To that end, we seek comment in a Further Notice of Proposed Rulemaking on additional measures that may be implemented to further facilitate the designation process for the provision of service on tribal lands.

94. We emphasize, however, that this process is limited in several respects. First, a carrier may avail itself of this process only to seek a designation of eligibility to receive federal universal service support for service provided on *tribal lands.* Petitioners seeking an eligibility designation under section 214(e)(6) of the Telecom Act for service provided on tribal lands must accurately describe the specific geographic areas they wish to serve, and must demonstrate that such areas satisfy the definition of tribal lands we adopt in this Order. As discussed, the federal government has a unique trust responsibility with respect to members of federally-recognized tribes. In addition, the determination of jurisdiction over a carrier serving tribal lands is an inquiry that will extend beyond questions of state law, and will be informed by principles of tribal sovereignty, federal law, and treaties. Thus, it is appropriate and reasonable that the Commission, in executing its statutory obligation to preserve and advance universal service, should determine whether a carrier seeking an eligibility designation for services provided on tribal lands is subject to the state commission's jurisdiction.

95. Second, a carrier may only avail itself of this process when it has not initiated a designation proceeding before the affected state commission. In order to avoid the potential for ''forum-shopping'' and the costs and confusion caused by a duplication of efforts between this Commission and state commissions, we will not make a jurisdictional determination under section 214(e)(6) of the Telecom Act if the affected state commission has initiated a proceeding in response to a designation request under section 214(e)(2) of the Telecom Act. Nothing we adopt today affects the ability of a state commission to make an eligible telecommunications carrier designation for a carrier serving tribal lands, where jurisdiction may otherwise be in dispute among the parties.

96. Finally, any determination made by this Commission pursuant to section 214(e)(6) of the Telecom Act relates only to a carrier's eligibility to receive *federal* universal service support for the provision of service on tribal lands. We emphasize that the Commission's determination of whether a particular carrier is subject to the state commission's jurisdiction for service provided on tribal lands is limited to the state commission's ability to designate the carrier as eligible to receive federal universal service support.

B. Pending Requests for Designation Pursuant to Section 214(e)(6) of the Telecom Act

(1) Cellco Petition for Designation as an Eligible Telecommunications Carrier for Maryland and Delaware

97. *Discussion.* Consistent with the Maryland Commission's request and our conclusions concerning the role state commissions play in the designation of carriers under section 214(e) of the Telecom Act, we dismiss without prejudice Cellco's request for designation of eligible telecommunications carrier status for service provided in Maryland. Although we do not reach the merits of the Cellco request for designation in Delaware in this Order, we conclude that the Delaware Commission's comments in this proceeding provide a sufficient basis for the exercise of our jurisdiction to consider the merits of the request for designation under section 214(e)(6) of the Telecom Act. We will discuss each of the requests in greater detail.

98. *Maryland Request.* At the request of the Maryland Commission, we dismiss Cellco's request for designation as an eligible telecommunications carrier in Maryland. In a letter to the Commission on April 18, 2000, the Maryland Commission stated its intent to assert jurisdiction over CMRS providers, including Cellco, for purposes of making eligible telecommunications carrier designations in Maryland. We are not persuaded by Cellco's statement that it has ''informally confirmed with the professional staffs of the Maryland and Delaware commissions that these statutory exclusions are complete exclusions from the commissions' jurisdiction.'' We emphasize that carriers seeking a designation from this Commission for service provided on non-tribal lands must provide to us an affirmative statement from the state commission or a court of competent

jurisdiction that the carrier is not subject to the state commission's jurisdiction for purposes of eligible carrier designation.

99. We decline Cellco's invitation that we should interpret the relevant state law to conclude that it is not subject to the state commission's jurisdiction. We note that, while Cellco has cited provisions of applicable state law in both Delaware and Maryland to support its contention that the state regulatory commission has no designation authority over wireless carriers, we believe that, as a matter of federal-state comity, such interpretations are better performed by the affected state commissions. As this case demonstrates, in the absence of explicit state guidance in the form of an affirmative statement from the state commission or a court of competent jurisdiction regarding the interpretation of its state law, premature intervention by the Commission may lead to confusion and duplication of efforts with the state commission, and an improper exercise of our jurisdiction under section 214(e)(6) of the Telecom Act.

100. Should Cellco challenge the Maryland Commission's exercise of authority under section 214(e)(2) of the Telecom Act, resolution of the jurisdictional issue may be obtained either through the state commission proceeding or in a judicial proceeding. Should the state commission or courts ultimately determine that Cellco is not subject to the state commission's jurisdiction for purposes of the eligibility designation, the Commission will assume the designation responsibility under section 214(e)(6) of the Telecom Act upon request. We reiterate our expectation that state commissions will act as expeditiously as possible on requests for designation. Should Cellco submit to the Maryland Commission a request for designation under section 214(e)(2) of the Telecom Act, we strongly encourage the Maryland Commission to resolve this request within six months of the filing date.

101. *Delaware Request.* With regard to Cellco's request for designation as an eligible telecommunications carrier for service provided in Delaware, we conclude that the statements contained in comments filed by the Delaware Commission are sufficient to warrant our assertion of jurisdiction under section 214(e)(6) of the Telecom Act. In its comments, the Delaware Commission confirms that the Delaware General Assembly has, for almost two decades, withheld from the Delaware Commission jurisdiction over cellular service or other mobile radio services. Specifically, the Delaware Commission cites to Delaware law stating that it ''shall have no jurisdiction over the operation of telephone service provided by cellular technology or by domestic public land mobile radio service or over the rates to be charged for such service or over property, property rights, equipment or facilities employed in such service.'' According to the Delaware Commission, it has consistently taken the position that it has not been granted regulatory jurisdiction over any aspect of telephone service provided by mobile, and now fixed, cellular wireless technology. The Delaware Commission states that it does not currently exercise any form of supervisory jurisdiction over wireless CMRS providers, including Cellco, and acknowledges that this Commission, not the Delaware Commission, ''must be the entity to * * * supervise and enforce the proper application of such support by Cellco.''

102. Consistent with the framework adopted in this Order, we conclude that we have jurisdiction to consider Cellco's request for designation as an eligible telecommunications carrier for services provided in Delaware. As a result, we will address Cellco's Delaware request for designation as an eligible telecommunications carrier within six months from the release date of this Order.

(2) Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for Wyoming

103. *Discussion.* Consistent with the framework adopted in this Order, we conclude that we have the authority under section 214(e)(6) of the Telecom Act to consider this petition. We commend the Wyoming Commission for its resolution of the threshold jurisdictional question, and encourage other state commissions to resolve such issues as expeditiously as possible. As with the Cellco Delaware request, we will promptly decide the merits of Western Wireless' request for designation in Wyoming within six months from the release date of this Order.

(3) Western Wireless Petition To Be Designated as an Eligible Telecommunications Carrier for the Crow Reservation in Montana

104. *Discussion.* Consistent with the framework we adopt in this Order, we will resolve the threshold question of whether Western Wireless is subject to the jurisdiction of the Montana Commission for purposes of determining eligibility for federal support for services provided on the Crow Reservation. As discussed, we have concluded that section 214(e)(6) of the Telecom Act does not provide the Commission with the *per se* authority to designate carriers based solely on the provision of service on tribal lands. As noted, determinations as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a fact-specific inquiry informed by principles of tribal sovereignty, treaties, state law, and federal Indian law. Consistent with the discussion, we conclude that Western Wireless should bear the burden of demonstrating that it is not subject to the jurisdiction of the Montana Commission for purposes of an eligibility designation for services provided on the Crow Reservation.

105. Consistent with the framework we establish and to permit Western Wireless a full and fair opportunity to present a case consistent with the guidance we give in this Order, we will reopen the record in this proceeding to allow Western Wireless an opportunity to supplement its claim that the Montana Commission lacks jurisdiction to make the designation for service provided on the Crow Reservation. Western Wireless shall notify the Commission in writing within 15 days of release of this Order whether it wishes to supplement the record consistent with the determinations in this Order. If Western Wireless chooses to supplement the record, it shall do so within 30 days of the date it notifies the Commission of its intent to do so. It shall also provide copies of the supplemental filing to the Montana Commission at the time of its filing with the Commission. In any event, the Commission will release, and publish in the **Federal Register**, a public notice announcing that the Montana Commission, and any other interested party, shall have 30 days to respond to Western Wireless' original petition and/or supplemental filing. To ensure that the Montana Commission receives prompt notification of the 30-day period, the Commission shall also send to the Montana Commission, by overnight express mail, the public notice announcing the comment cycle deadline. Should the Commission determine, on the basis of the record developed, that the Montana Commission does not have authority to perform the eligibility designation for Western Wireless' service provided on the Crow Reservation, the Commission will exercise its authority under section 214(e)(6) of the Telecom Act to decide the merits of the request within six

months after release of an order resolving the jurisdictional issue.

(4) Smith Bagley Petition To Be Designated as an Eligible Telecommunications Carrier in Arizona and New Mexico

106. *Discussion.* Consistent with the framework we adopt in this Order for the designation of carriers serving tribal lands, we dismiss without prejudice Smith Bagley's section 214(e)(6) of the Telecom Act request for designation as an eligible telecommunications carrier for tribal lands in Arizona and New Mexico. Both the Arizona and New Mexico Commissions are currently considering section 214(e)(2) of the Telecom Act requests for designation filed by Smith Bagley prior to the date of their filing with this Commission. As we concluded, in order to avoid the possibility of forum-shopping and the costs and confusion caused by a duplication of efforts between this Commission and state commissions, we decline to address a designation request under section 214(e)(6) of the Telecom Act if a request for eligible telecommunications carrier designation is pending at the state commission.

107. Accordingly, we dismiss without prejudice Smith Bagley's request for designation under section 214(e)(6) of the Telecom Act to permit the Arizona and New Mexico Commissions to complete their proceedings on the merits of Smith Bagley's pending requests. We request, however, that both state commissions act expeditiously in consideration of Smith Bagley's designation requests. We note that those requests have now been pending for over one year. As we have discussed, we are concerned that unreasonable delays in acting upon designation requests will hinder the availability of affordable telecommunications services in high-cost areas. We therefore strongly encourage the Arizona and New Mexico Commissions to resolve Smith Bagley's pending requests for designation as soon as possible.

(5) Cheyenne River Sioux Tribe Telephone Authority Petition for Designation as an Eligible Telecommunications Carrier

108. *Discussion.* In accordance with our conclusion that section 214(e)(6) of the Telecom Act requires the Commission to designate an eligible telecommunications carrier only when the state lacks jurisdiction under section 214(e)(2) of the Telecom Act, we dismiss Cheyenne Telephone Authority's petition without prejudice. We find no reason before us to disturb the South Dakota Commission's designation of the Cheyenne Telephone Authority as an eligible telecommunications carrier. In addition, we note that this conclusion is consistent with our prior statement that, ''[a]ny carrier that is able to be or has already been designated as an eligible telecommunications carrier by a state commission is not required to receive such designation from the Commission.''

109. In reaching this conclusion we note that, as with the case of the Cheyenne Telephone Authority, many tribes may have ongoing jurisdictional disputes with state commissions. We are hopeful that our decision not to disturb the finding of the state commission in this instance will encourage state commissions and tribes to move forward with the designation process for determining eligibility for federal universal service support despite disagreements relating to the state's exercise of jurisdiction over carriers providing service on tribal lands. We believe that to disturb a state commission's prior determination that a particular carrier is eligible for federal universal service support would have the unintended effect of forcing the tribal authority to choose between delaying its designation request pending a lengthy resolution of disputed jurisdictional issues or conceding jurisdiction to the state commission for other purposes in order to be eligible for federal universal service support.

IV. Procedural Matters

A. Paperwork Reduction Act

110. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

B. Final Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *FNPRM*. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

(1) Need for and Objectives of this Report and Order and the Rules Adopted Herein

112. The Commission issues this Twelfth Report and Order (Order) as a part of its implementation of the Act's mandate that ''[c]onsumers in all regions of the Nation * * * have access to telecommunications and information services * * *.'' This Order implements that mandate by enhancing Lifeline and LinkUp support for low-income individuals living on tribal lands, as defined herein. This Order also outlines the process the Commission will follow in designating telecommunications carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. Our objective is to fulfill section 254 of the Telecom Act's mandate that ''all regions of the Nation * * * have access to telecommunications'' with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.

(2) Summary of Significant Issues Raised by Public Comments in Response to the IRFA

113. We received no comments directly in response to the IRFA in this proceeding. Some comments generally addressed small business issues, but these issues are not a part of this present Order.

(3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply

114. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the new rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. And finally, ''small governmental jurisdiction'' generally

means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. In this Order, the Commission stated that the new rules will affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules adopted in this Order.

115. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

116. The most reliable source of information regarding the total numbers of common carriers and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

117. We have included small incumbent LECs in this present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

118. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules in this Order.

119. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in this Order.

120. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the decisions and rule changes adopted in this Order.

121. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater

precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in this Order.

122. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rules adopted in this Order.

123. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

124. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a ''small entity'' in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Order.

125. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in this Order.

126. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

127. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, 62 FR 1004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area

Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

128. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

129. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

130. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

131. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

132. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules in this Order includes these eight entities.

133. *Multipoint Distribution Systems (MDS).* The Commission has defined ''small entity'' for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

134. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules in this Order.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

135. In this Order, we adopt revisions to Part 54 that enhance universal service support for low-income individuals living on tribal lands, that remove certain administrative burdens that have prevented carriers not subject to state rate regulation, such as many tribal carriers, from providing certain tiers of Lifeline service to qualifying low-income consumers, and that clarify how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers.

136. With respect to our rules enhancing Lifeline and Link-Up assistance on tribal lands, carriers will be required to ascertain applicant eligibility for these forms of low-income universal service support. Ascertainment of applicant eligibility will entail determining whether a particular applicant is (1) a low-income applicant, under the criteria for income eligibility set forth; and (2) living on or near a reservation. This Order also clarifies and elaborates on carrier obligations to publicize the availability of Lifeline and Link-Up assistance, although no new carrier obligations are imposed. Furthermore, this Order changes the requirements placed upon carriers for the provision of second-tier and third-tier Lifeline support. A carrier not subject to state rate regulation may now obtain second-tier Lifeline support provided it certifies to the Administrator that it will pass through the full amount of any second-tier support it receives to qualifying low income subscribers, and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction. Such a carrier also may now obtain third-tier Lifeline support provided that the carrier or a tribe provides the local matching funds necessary to receive third-tier federal Lifeline support. Finally, because carriers are required to make low-income assistance available to qualifying customers, the rules and

decisions in this Order expanding the level and types of support available to any carrier's customers will require that carrier to make such expanded support available to its qualifying customers.

137. Our clarification of how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers will impose no additional reporting, recordkeeping, or other compliance requirements on carriers seeking eligible telecommunications carrier designation for the provision of service on tribal lands, but instead should diminish some carriers' legal costs by setting forth guidelines for carriers seeking such designation from the Commission. A state government, however, seeking to preserve a claim of its jurisdiction over any carrier seeking such designation from the Commission, will have to indicate to the Commission its jurisdictional claim in order for the Commission to refrain from entertaining such a designation proceeding until the state makes a final determination on its jurisdiction over that carrier.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

138. With respect to our rules enhancing Lifeline and LinkUp assistance on tribal lands, we emphasize that most of the information carriers will be required to examine in order to determine applicant eligibility are already collected pursuant to other federal programs for Indians and for low-income individuals, and are readily available. For example, BIA maintains and regularly publishes in the **Federal Register** lists of those areas in the Nation which fall under BIA's definition of ''reservation'' or are considered ''near reservation.'' Moreover, carriers are already required to determine applicants' income eligibility under the existing Lifeline and LinkUp support mechanisms; this Order modifies those eligibility criteria merely by providing certain additional means-tested programs that low-income individuals living on tribal lands may use to establish their income eligibility. In order to apply these new eligibility criteria, carriers will not be required to make *de novo* evaluations of subscriber eligibility. Rather, carriers will only need to consult the decisions regarding particular applicants' low-income status already made by other government entities. Thus, the inquiry carriers will have to make to determine whether an applicant for the low-income support adopted in this Order meets the income eligibility requirement should not be substantially different from the inquiry carriers must already make for the Commission's existing low-income support mechanisms. Furthermore, our clarification of carrier obligations to publicize the availability of Lifeline and Link-Up assistance does not expand existing obligations or create additional ones; rather, this Order clarifies existing obligations under section 214(e) of the Telecom Act and our previous Orders. Additionally, the certifications required by our new rules for second and third tier Lifeline support impose at most a minimal burden on carriers seeking to obtain such support. Finally, to the extent the rules and decisions adopted in this Order require carriers to change their operations in order to deliver expanded support to qualifying customers, for example by changing their billing systems, we have some indication that the costs of making such modifications, if any, are minimal. Furthermore, to the extent the rules and decisions adopted in this Order entail any such costs, they also provide substantial financial benefits, by providing carriers with guaranteed revenue streams in place of billings subject to the risks of non-collection. We conclude that, in general, the compliance requirements entailed by the low-income support mechanisms adopted in this Order are not of a scope or magnitude substantially different from the compliance requirements entailed by our existing low-income support mechanisms.

139. With respect to our clarification of how the Commission will proceed under section 214(e) of the Telecom Act in the designation of eligible telecommunications carriers we conclude that the cost to a state government of filing with the Commission a statement asserting jurisdiction over any carrier seeking such designation for the provision of service to tribal lands, in order for the Commission to refrain from acting on the designation petition until the state makes a final determination regarding its jurisdiction over that carrier, will be minimal. Furthermore, because such filings would be made by the authorized state government body, rather than a local governing authority, it is doubtful that any government authority making such a filing with the Commission would be considered a small entity.

(6) Report to Congress

140. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

C. Effective Date of Final Rules

141. Pursuant to 5 U.S.C. 553(d), the rules and rule changes adopted herein shall take effect thirty (30) days after their publication in the **Federal Register**.

V. Ordering Clauses

142. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, this Report and Order, Memorandum Opinion and Order is adopted. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

143. It is further ordered that part 54 of the Commission's rules, is amended, effective thirty (30) days after the publication of this Report and Order, Memorandum Opinion and Order in the **Federal Register**.

144. It is further ordered that Cellco's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice to the extent that it seeks designation for service in Maryland.

145. It is further ordered that Smith Bagley's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice.

146. It is further ordered that the record in Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier on the Crow Reservation shall be reopened as discussed herein.

147. It is further ordered that Cheyenne River Sioux Tribe Telephone Authority's Petition for Designation as an Eligible Telecommunications Carrier is dismissed without prejudice.

148. It is further ordered that authority is delagated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Order.

149. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory

Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.400 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(a) *Qualifying low-income consumer.* A ''qualifying low-income consumer'' is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.

* * * * *

(e) *Eligible resident of Tribal lands.* An ''eligible resident of Tribal lands'' is a ''qualifying low-income consumer,'' as defined in paragraph (a) of this section, living on or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v).

3. Amend § 54.401 by revising paragraph (d) to read as follows:

§ 54.401 Lifeline defined.

* * * * *

(d) The state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Eligible telecommunications carriers not subject to state commission jurisdiction also shall make such a filing with the Administrator. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.

4. Amend § 54.403 by revising paragraphs (a)(2) and (a)(3), adding a new paragraph (a)(4), and revising paragraph (b) to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

* * * * *

(2) *Tier Two.* Additional federal Lifeline support in the amount of $1.75 per month will be made available to the eligible telecommunications carrier providing Lifeline service to the qualifying low-income consumer, if that carrier certifies to the Administrator that it will pass through the full amount of Tier-Two support to its qualifying, low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(3) *Tier Three.* Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month in federal support, will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the carrier certifies to the Administrator that it will pass through the full amount of Tier-Three support to its qualifying low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(4) *Tier Four.* Additional federal Lifeline support of up to $25 per month will be made available to a eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), to the extent that:

(i) This amount does not bring the basic local residential rate (including any mileage, zonal, or other non-discretionary charges associated with basic residential service) below $1 per month per qualifying low-income subscribers; and

(ii) The eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tier-Four amount to qualifying eligible residents of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) For a qualifying low-income consumer who is not an eligible resident of Tribal lands, as defined in § 54.400(e), the federal Lifeline support amount shall not exceed $3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or § 69.152(d) and (q) of this chapter, whichever is applicable. For an eligible resident of Tribal lands, the federal Lifeline support amount shall not exceed $28.50 plus that same End User Common Line charge. Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

5. Revise § 54.405 to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers shall:

(a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers, and

(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

6. Amend § 54.409 by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service in a state that mandates state Lifeline support, a consumer must meet the eligibility criteria established by the state commission for such support. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income. A state containing geographic areas included in the definition of ''reservation'' and ''near reservation,'' as defined in 25 CFR 20.1(r) and 20.1(v), must ensure that its qualification criteria are reasonably designed to apply to low-income individuals living in such areas.

(b) To qualify to receive Lifeline service in a state that does not mandate state Lifeline support, a consumer must participate in one of the following federal assistance programs: Medicaid;

food stamps; Supplemental Security Income; federal public housing assistance; and Low-Income Home Energy Assistance Program. In a state that does not mandate state Lifeline support, each eligible telecommunications carrier providing Lifeline service to a qualifying, low-income consumer must obtain that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs listed in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

(c) Notwithstanding paragraphs (a) and (b) of this section, an individual living on a reservation or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v), shall qualify to receive Tiers One, Two, and Four Lifeline service if the individual participates in one of the following federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those meeting its income qualifying standard); or National School Lunch Program's free lunch program. Such qualifying low-income consumer shall also qualify for Tier-Three Lifeline support, if the carrier offering the Lifeline service is not subject to the regulation of the state and provides carrier-matching funds, as described in § 54.403(a)(3). To receive Lifeline support under this paragraph for the eligible resident of Tribal lands, the eligible telecommunications carrier offering the Lifeline service to such consumer must obtain the consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the programs mentioned in this paragraph or paragraph (b) of this section, and lives on or near a reservation, as defined in 25 CFR 20.1(r)and 20.1(v). In addition to identifying in that document the program or programs from which that consumer receives benefits, an eligible resident of Tribal lands also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

7. Amend § 54.411 by adding new paragraphs (a)(3) and (d) and revising paragraph (b) to read as follows:

§ 54.411 Link Up program defined.

(a) * * *

(3) For an eligible resident of Tribal lands, a reduction of up to $70, in addition to the reduction in paragraph (a)(1) of this section, to cover 100 percent of the charges between $60 and $130 assessed for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands. For purposes of this paragraph, charges assessed for commencing telecommunications services shall include any charges that the carrier customarily assesses to connect subscribers to the network, including facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service. The reduction shall not apply to charges assessed for facilities or equipment that fall on the customer side of demarcation point, as defined in § 68.3 of this chapter.

(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraphs (a)(1) and (a)(2) of this section. An eligible resident of Tribal lands may participate in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *

(d) An eligible telecommunications carrier shall publicize the availability of Link Up support in a manner reasonably designed to reach those likely to qualify for the support.

8. Revise § 54.415 to read as follows:

§ 54.415 Consumer qualification for Link Up.

(a) In a state that mandates state Lifeline support, the consumer qualification criteria for Link Up shall be the same as the criteria that the state established for Lifeline qualification in accord with § 54.409(a).

(b) In a state that does not mandate state Lifeline support, the consumer qualification criteria for Link Up shall be the criteria set forth in § 54.409(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, an eligible resident of Tribal lands, as defined in § 54.400(e), shall qualify to receive Link Up support.

§ 54.417 [Removed]

9. Remove § 54.417.

[FR Doc. 00–19611 Filed 8–2–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 073100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for arrowtooth flounder in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of arrowtooth flounder in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907 596 7228

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

The 2000 TAC of arrowtooth flounder for the Western Regulatory Area was established as 5,000 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for arrowtooth flounder in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for arrowtooth flounder in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of arrowtooth flounder for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 31, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19715 Filed 8–1–00; 10:19 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 073100B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific cod in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2000 total allowable catch (TAC) of Pacific cod in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2000, until 2400 hrs, A.l.t., December 31, 2000.

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

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

The amount of the 2000 TAC of Pacific cod in the Western Regulatory Area of the GOA was established as 20,625 metric tons by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) and subsequent reserve release (65 FR 20919, April 19, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2000 TAC for Pacific cod in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific cod in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 2000 TAC for Pacific cod by vessels catching Pacific cod in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 2000 TAC for Pacific cod in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 31, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19714 Filed 8–1–00; 10:19 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 151
Friday, August 4, 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

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 98–030–2]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 98–030–1. We will consider all comments that we receive by August 21, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–030–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–030–1.

You may also file comments on this docket electronically, and review comments filed electronically, at the World Wide Web site http://comments.aphis.usda.gov.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For general program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737–1236; (301) 734–6799. For technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2000, we published in the **Federal Register** (65 FR 34113–34125, Docket No. 98–030–1) a proposal to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment would provide protection against fruit flies and the mango seed weevil. This proposal would provide an alternative to the currently approved treatments (various fumigation, cold, and heat treatments, and systems approaches employing techniques such as greenhouse growing) against fruit flies and the mango seed weevil in fruits and vegetables.

Comments on the proposed rule were required to be received on or before July 25, 2000. Several commenters have requested that we extend the comment period on Docket No. 98–030–1 to allow additional time for members of the public to review the proposed rule and to submit comments. While we believe that the original comment period allowed sufficient time for public review, there was a temporary malfunction in the E-Comments Web application (http://comments.aphis.usda.gov) established to receive electronically submitted comments on this proposed rule. This prevented the application from accepting comments over a period of approximately 10 days. To compensate for this disruption of service, we are reopening and extending the comment period on Docket No. 98–030–1 until August 21, 2000. This action will allow interested persons additional time to prepare and submit comments.

Done at Washington, DC, this 27th day of July 2000 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19724 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97–121–1]

RIN 0579–AA94

Animal Welfare; Inspection, Licensing, and Procurement of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals. We believe these actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 97–121–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 97–121–1.

Comments sent to the above location that specifically pertain to the information collection requirements of this action should also be sent to the locations specified in the section of this document under the heading ''Paperwork Reduction Act.''

You may read any comments that we receive on this docket in our reading room. The reading room is located in

room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Part 1 defines various terms used in part 2. Part 2 (referred to below as the regulations) generally provides administrative requirements and sets forth institutional responsibilities of regulated persons under the Act. These administrative requirements and institutional responsibilities include the requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping.

We are proposing to amend the regulations to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals. Each of these changes is discussed in detail in this document.

Exemptions From Licensing Requirements

We are proposing to amend § 2.1 of the regulations to clarify our licensing requirements. This section requires a person to have a license to operate as a dealer, exhibitor, or operator of an auction sale. In § 2.1, paragraph (a)(3) provides exceptions to this requirement. One exception, in § 2.1(a)(3)(iii), is that any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and cats for pets or exhibition does not have to obtain a license. The dogs and cats must have been born and raised on the premises, and the person must not otherwise be required to obtain a license.

The intent of § 2.1(a)(3)(iii) of the regulations is to exempt these de minimis operations. However, some individuals have contended that they are not required to have a license even when they keep more than three breeding female dogs and/or cats on the same premises as long as no single member of the household owns more than three. When several members of the same household (or other persons acting in concert) are each maintaining three female breeding dogs or cats on the same premises, the activities are no longer de minimis. To clarify the regulations, we are proposing to amend § 2.1(a)(3)(iii) to exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats on his or her premises, if no more than three breeding female dogs and/or cats are maintained on the premises, regardless of ownership; and who sells only the offspring of these dogs and/or cats, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.

We are also proposing to amend § 2.1(a)(3)(iii) to include in the exemption from licensing persons who maintain three or fewer breeding female small exotic or wild mammals on a single premises. Recently, we have begun to regulate the handling, care, and treatment of small exotic or wild mammals commonly known as pocket pets. Pocket pets include hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, and other small mammalian species. We do not believe that the risk associated with the maintenance of three or fewer breeding female small exotic or wild mammals on a single premises warrants our inspection of the premises or requires the issuance of a license.

Currently, § 2.1(a)(3)(iv) of the regulations exempts from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes or to any research facility. The dogs and/or cats must have been born and raised on the person's premises, and the person must not otherwise be required to obtain a license. We are proposing to add that this exemption will apply only if fewer than 25 dogs and/or cats are sold per year from the premises or by members of the same household or other persons acting in concert, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes would continue to require a license.

Voluntary Licenses

We are proposing to remove § 2.1(b) from the regulations. In § 2.1, paragraph (b) provides that a person who is exempt from licensing under § 2.1(a)(3)(iv) may apply for a voluntary license. Our records show that the option for obtaining a voluntary license has rarely been exercised and that there are currently no voluntary licensees. We do not believe that it is necessary or appropriate to continue to offer this service because the unnecessary inspections divert resources from other areas. We are also proposing to remove the provisions in § 2.1(e)(1) of the regulations for renewal of a voluntary license. Because we are proposing to remove paragraph (b) of § 2.1, we are also proposing to redesignate paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively. In conjunction with these changes, § 2.1(a)(1) would be revised to provide that any person ''operating or intending to operate'' as a dealer, exhibitor, or operator of an auction sale must have a valid license.

Payment of Fees

In § 2.1, paragraphs (d)(2), (e)(1), and (e)(2) (redesignated as (c)(2), (d)(1), and (d)(2) in this proposal) provide that a license will not be issued until payment has cleared normal banking procedures. We are proposing to remove this provision. The U.S. Department of Agriculture (the Department) cannot control the speed at which payments will clear a financial institution and does not want to needlessly hold the issuance of a license. If payment is received as required in the regulations, we believe the Animal Care (AC) regional office should proceed with the issuance of the license if the applicant and the premises are in compliance with the regulations and standards. This would not only be more convenient for the applicant but would relieve the regional offices of the need to track each check to learn when it has cleared. If a check is returned unpaid by the financial institution, the license would be terminated in accordance with § 2.5(a)(4). The fee for a returned check

would also be increased from $15 to $20, which is consistent with the fee for returned checks in other agency programs.

In § 2.1, paragraphs (d)(2) and (e)(1) (redesignated as (c)(2) and (d)(1) in this proposal) require payment of license fees, but do not state when the license fee is due to avoid the termination of a license. Section 2.5 specifies that the license fee is due on or before the date of expiration of the license. To help facilitate the renewal of licenses and to encourage prompt payment of the applicable license fees, we are proposing to add this due date to § 2.1, in redesignated paragraphs (c)(2) and (d)(1).

Also, we are proposing to amend §§ 2.1(d)(2), 2.1(e)(1), 2.5(b), and 2.6(a) to require that fees be submitted to the appropriate AC regional office instead of the AC Regional Director (§ 2.1(d)(2) and (e)(1) are redesignated in this proposal as (c)(2) and (d)(1)). We are proposing this change because we believe that it is more appropriate to address the fees to an office rather than an official within the office.

Regulations and Standards Supplied to License Renewal Applicants

We are proposing to amend § 2.2 of the regulations, which concerns acknowledgment of regulations and standards by applicants for licenses and renewal of licenses. Currently, § 2.2(b) states that APHIS will supply a copy of the applicable regulations and standards to an applicant for license renewal with each request for a license renewal. Paragraph (b) also provides that, before a license will be renewed, the applicant for license renewal must acknowledge receipt of the regulations and standards and certify by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards.

We have found that most licensees do not need a new copy of the regulations and standards each year. The current text of the regulations and standards is readily available on the Internet (for example, through the APHIS home page at www.usda.aphis.gov) and copies are available from Animal Care inspectors. If we discontinue the practice of sending additional copies to licensees at the time of application for renewal, we could significantly reduce our costs for printing and postage without adversely affecting the program. Also, the applicant's signature on the application form certifies that the applicant is in compliance with the regulations and standards and will continue to comply with them.

Therefore, we are proposing to remove the provision in § 2.2(b) that APHIS will supply a copy of the regulations and standards with each request for a license renewal.

APHIS would continue to supply a copy of the regulations and standards to: (1) Initial license applicants as provided in § 2.2(a); (2) carriers, intermediate handlers, and exhibitors as provided in § 2.26; and (3) research facilities as provided in § 2.30(b). Of course, copies will continue to be provided upon request.

Prelicense Inspections

We are proposing to amend § 2.3 of the regulations, which requires applicants for licenses and renewal of licenses to demonstrate compliance with the regulations and standards.

In accordance with § 2.3(b), an applicant for an initial license must demonstrate during a prelicense inspection that he or she is in compliance with the regulations and standards. If the applicant's premises, animals, facilities, vehicles, equipment, other premises, or records do not meet the regulations and standards, APHIS will advise the applicant of the deficiencies and the corrective measures that must be addressed to comply with the regulations and standards prior to the issuance of a license. APHIS will perform up to two additional prelicense inspections, based on the schedule of the inspecting official, to verify whether the applicant is in compliance. If the applicant fails the third inspection, he or she forfeits the application fee and cannot reapply for a license for 6 months following the third inspection.

This proposed rule would provide that an applicant who fails the first inspection would be responsible for requesting the second inspection, and, if necessary, a third inspection, within 90 days from the date of the initial inspection. It is necessary that there be a time limit on the application process so that applications are not permanently pending and applicants are encouraged to proceed in a timely manner. We have found that many applicants demonstrate compliance with the regulations and standards at the initial prelicense inspection and that a third prelicense inspection is uncommon. The vast majority of applicants either successfully complete the licensing process within 90 days from their initial inspection or change their plans and drop their applications.

Notification of Expiration of a License

We are proposing to amend the regulations in § 2.5, regarding duration and termination of license.

Currently, § 2.5(b) provides that APHIS will notify a licensee by certified mail at least 60 days prior to the expiration date of the license. We do not believe that the use of certified mail is necessary. AC regional offices would still send notification to licensees prior to the expiration date of their licenses.

In addition, § 2.5(b) currently provides that a license will terminate on its anniversary date if an applicant fails to comply with the annual reporting requirements or fails to pay the required license fees prior to the expiration date of the license. However, in many cases, the expiration date and anniversary date of a license are not the same. This has led to confusion among licensees and administrative difficulties in AC regional offices. Therefore, we are proposing to remove the reference in § 2.5(b) to an anniversary date. Instead, we propose that a license will terminate on its expiration date if an applicant fails to comply with the annual reporting requirements, or if the appropriate AC regional office has not received the required fee for license renewal on or before the expiration date of the license.

Application and Annual License Fees

We are proposing to amend the regulations at § 2.6, which set out annual license fees. Currently, the regulations at § 2.1 require a $10 application fee for a license, license renewal, or changed class of license. Section 2.6 requires the payment of an annual license fee. A separate check or money order is required for each fee.

Upon review of the process for collecting fees for license renewals, we found that handling two forms of payment per applicant or licensee burdens the administrative resources in AC regional offices. It would seem to be equally inconvenient for licensees. To decrease the number of checks handled by the AC regional offices, we are proposing to combine the $10 application fee for license renewals (or for change of license class) with the annual license fee. This change would mean that persons already licensed would need to submit only one check or money order annually.

We are not proposing to combine the $10 application fee for an initial license with the annual license fee. At times, individuals apply for a license but never further pursue obtaining a license. If we required new applicants to submit the $10 application fee combined with the

appropriate annual license fee, we would have to refund the annual license fee if the individual decided not to pursue obtaining a license. This would cause the agency an undue amount of paperwork and employee hours. Therefore, we would continue to require initial license applicants to submit two checks or forms of payment.

To reflect the combination of the $10 application fee for license renewals or change of license class with the annual license fee, we would amend tables 1 and 2 in § 2.6(c) to show a $10 increase in license fees for persons already licensed. We would also remove references to application fees in §§ 2.1, 2.5, and 2.6 where the references apply to persons seeking a license renewal or change of license class.

Denial of Initial License Application

We are proposing to amend § 2.11 of the regulations, concerning denial of an initial license application. The current regulations provide that a license will not be issued to any applicant who: (1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6; (2) is not in compliance with any of the regulations or standards in subchapter A; (3) has had a license revoked or whose license is suspended; (4) has been fined, sentenced to jail or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application; or (5) has made false or fraudulent statements, or provided any false or fraudulent records to the Department.

We have found that these restrictions do not cover all of the circumstances that make an applicant unsuitable for a license. Specifically, the regulations do not provide for the denial of a license if an applicant has violated Federal, State, or local laws or regulations, other than those described above.

For example, the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371–3378), among other things, provides authority to the Secretary of the Interior to ensure the humane treatment of wildlife shipped to the United States and designate wildlife species that are considered injurious to humans and prohibit their importation into the United States. Based on the current regulations, if a license applicant has violated the Lacey Act, he or she would still be eligible for a license issued by the Department.

An applicant who has violated local or State laws pertaining to animal cruelty or welfare may not be eligible for a State license as a dealer. However, based on the current regulations, if the applicant has not been fined, sentenced to jail, or pled nolo contendere, the applicant could still be eligible for a license issued by the Department.

We believe that persons who have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, negligence, transportation, ownership, neglect, or animal welfare would be unfit for a license under our regulations. Therefore, we propose to remove the provisions in § 2.11(a)(4) and (a)(5) and provide instead that a license will not be issued if the applicant pled nolo contendere or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or at any time if the Administrator determines that the circumstances render the applicant unfit to be licensed. Also, a license would not be issued if the applicant is or would be operating in violation or circumvention of any Federal, State, or local laws. Further, a license could be denied if the applicant has pled nolo contendere or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, has made false or fraudulent statements or provided false or fraudulent records to any government agency including the Department, or if the applicant is otherwise unfit to be licensed, and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

Also, we are proposing to amend § 2.11(b). In § 2.11, paragraph (b) provides that an applicant whose license application has been denied may request a hearing for the purpose of showing why his or her application should not be denied. The license denial is in effect until a final decision is issued. If the license denial is upheld, the applicant may reapply for a license 1 year from the date of the final order that denied the application. We are proposing to provide that an applicant may reapply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise. In some cases, an order requiring an applicant to wait beyond a 1-year period before reapplying for a license may be appropriate. In fact, based on the circumstances leading to the denial of an application, an applicant may be found to be unsuitable for holding a license at any time. In other cases it may be appropriate to allow an applicant to reapply in a shorter period of time or when a specific defect has been corrected.

Also, we are proposing to add a new § 2.11(d) to the regulations to encompass circumstances that are not included in the changes to § 2.11(a) proposed previously in this document. New § 2.11(d) would provide that a license will not be issued under circumstances that the Administrator determines could circumvent any order suspending, revoking, terminating, or denying a license under the Act. For the same reasons, we are also proposing to revise § 2.10(a), regarding licensees whose licenses have been suspended or revoked, to provide that a license will not be renewed during the period of suspension.

Termination of a License

We are proposing to add a new § 2.12 to the regulations to prescribe conditions that could result in APHIS terminating a license. Although § 2.5 refers to termination of license, the regulations do not list the circumstances that would result in the termination of a license. New § 2.12 would state that a license may be terminated for any of the same reasons that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice. A hearing would provide an opportunity for the applicant to present his or her case as to why the license should not be terminated.

Access to Premises Provided by a Responsible Adult

We are proposing to amend § 2.126 of the regulations, concerning access and inspection of records and property. Currently, § 2.126(a) requires that each dealer, exhibitor, intermediate handler, or carrier must, during business hours, allow APHIS officials: (1) To enter the place of business; (2) to examine the records required to be kept by the Act and the regulations in part 2; (3) to make copies of the records; (4) to inspect and photograph the facilities, property, and animals, as necessary to enforce the provisions of the Act and the regulations and the standards in subchapter A; and (5) to document, by the taking of photographs and other means, the conditions and areas of noncompliance. In § 2.126, paragraph (b) requires that facilities for proper examination of records and inspection of the property or animals must be provided to APHIS officials by the licensee.

APHIS conducts unannounced inspections of licensed facilities, and APHIS officials have encountered occasions when a licensee was not present or available upon their arrival. In a few of these cases, an adolescent was the only individual present to provide access to the premises.

However, during an inspection, APHIS officials must be able to ask questions and advise licensees of existing deficiencies and corrective measures that must be completed to come into compliance with the regulations and standards. APHIS officials must be able to convey this information to a responsible adult.

Therefore, we are proposing to revise paragraph (b) in § 2.126 to add a provision that a responsible adult shall be made available to accompany the officials during the inspection process.

Handling of Exotic or Wild Animals

We are proposing to amend § 2.131 of the regulations, regarding the handling of animals. Section 2.131 prescribes general requirements for the humane handling of animals during training and public exhibition. These requirements are intended to protect the animals and the public from harm.

Many exotic or wild animals used in exhibition are potentially dangerous, and all have special handling, veterinary care, and husbandry requirements. To properly maintain, handle, and train these animals, licensees should have adequate experience and knowledge of the species that they maintain on their premises. The current regulations require that a responsible and knowledgeable employee be present at all times during public contact and that dangerous animals be under the direct control and supervision of a knowledgeable and experienced handler during public exhibition. We are proposing to add a new requirement to § 2.131 that all licensees who maintain potentially dangerous animals must demonstrate adequate experience and knowledge of the species that they maintain. This requirement would appear in a new paragraph (a), and we would redesignate current paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively,

Procurement of Animals by Dealers

We are proposing to amend § 2.132 of the regulations, concerning procurement of random source dogs and cats, to provide clarification regarding the procurement of animals by Class B dealers. As set forth in § 2.132(a), Class B dealers may obtain live random source dogs and cats only from the following sources: Other dealers who are licensed under the Act and in accordance with the regulations in part 2; State, county, or city owned and operated animal pounds or shelters; and legal entities organized and operated under the laws of the State in which the entity is located as an animal pound or shelter.

Paragraph (b) specifies that a Class B dealer may not obtain live random source dogs and cats from individuals who have not bred and raised the animals on their own premises. This provision is unnecessary and potentially confusing because paragraph (a) already specifies the only permissible sources. Similarly, paragraph (c) is unnecessary. Paragraph (c) provides that nonrandom source dogs and cats may be obtained from persons who have bred and raised the animals on their own premises. It is not necessary to specify this because it is not otherwise prohibited. Accordingly, we propose to remove paragraphs (b) and (c) of § 2.132 and redesignate paragraphs (d) and (e) as (b) and (c).

In § 2.132, current paragraph (d), which would be redesignated as (b), provides that no person may obtain live random source dogs and cats by use of false pretenses, misrepresentation, or deception. We believe that this prohibition should not be restricted to random source dogs and cats. Accordingly, we are proposing to remove the term ''random source'' and add a reference to other animals. We are also proposing to make the same change in § 2.38(k)(2), relating to acquisitions by research facilities.

In § 2.132, current paragraph (e), which would be redesignated as (c), concerns the acquisition of dogs and cats from private or contract animal pounds and shelters. The reference to ''random source'' dogs and cats acquired from private or contract pounds and shelters is unnecessary because all dogs and cats acquired from a pound or shelter are necessarily random source animals. Accordingly, the reference to ''random source'' animals would be removed.

Also, we have found that some dealers have knowingly obtained animals from persons who are required to hold a valid and effective license and do not. Therefore, we are proposing to add a new paragraph (d) to § 2.132 to prohibit a Class B dealer or exhibitor from knowingly obtaining dogs, cats, and other animals from persons who are required to hold a current, valid, and unsuspended license and do not. The new paragraph would also require that, when dogs or cats are acquired from persons who are not licensed, a certification must be obtained from the person specifying that he or she is within one of the exemptions to the license requirements (*i.e.,* that the dogs or cats were born and raised on their premises and that, for animals for research purposes, they have sold fewer than 25 that year; or, for use as pets, that they maintain no more than three breeding females). We believe this would help prevent licensed dealers from supporting the operations of unlicensed dealers who are acting in violation of the Animal Welfare Act. We would also add a similar provision for acquisitions by research facilities in § 2.35.

Miscellaneous

We are proposing to update the definition of Administrator in § 1.1 to make it consistent with the definition found in other parts of 9 CFR, chapter I.

Section 2.4 currently provides that licensees or applicants for a license shall not ''interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties.'' This proscription should also extend to registrants as well as licensees and applicants. Accordingly, the provision would be added to § 2.25 for registrants in general and to § 2.30 for research facilities.

The regulations currently require dealers, exhibitors, operators of auction sales, brokers, and research facilities who acquire animals from persons who are not licensed to record the driver's license number of the person. As written, the regulations do not allow the acquisition of animals from persons without a driver's license. Nevertheless, from time to time, animals are acquired from persons who do not have a driver's license. These infrequent occurrences have not been addressed consistently and the requirement has sometimes been overlooked where it could not be met. In order to reduce the burden on both buyers and sellers of animals and to achieve the purpose of the recordkeeping requirement, we propose to add provisions allowing the use of officially issued and numbered photographic identification cards for nondrivers. This change would be made in §§ 2.35(b)(3), 2.75(a)(1)(iii), 2.75(b)(1)(iii), and 2.76(a)(4).

Some of the forms referenced in 9 CFR part 2 are identified with Veterinary Services (VS) form numbers. Most of the VS forms have been replaced by forms that are identified with an APHIS form number; therefore, we are proposing to remove the VS form numbers that appear in §§ 2.5, 2.35, 2.38, 2.75, 2.78, and 2.102.

Executive Order 12866 and 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.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities. This discussion also serves as our cost-benefit analysis.

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

This proposed rule would amend the Animal Welfare Act regulations in 9 CFR part 2 to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals.

Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are exempt from licensing are the entities that would be affected by this proposed rule. A Class A dealer breeds and raises animals to be sold for research, teaching, testing, experimentation, exhibition, or for use as a pet. A Class B dealer is a person, including a broker and operator of an auction sale, whose business includes the purchase and/or resale of any animal. A Class C exhibitor or registered exhibitor is a person, including an animal act, carnival, circus, and public and roadside zoo, who shows or displays animals to the public. Research facilities include schools, institutions, organizations, or persons who use live animals in research, tests, or experiments.

The Number of Breeding Females

The regulations exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and/or cats for pets or exhibition. This proposed rule would extend this exemption from licensing to any person who maintains a total of three or fewer breeding female small exotic or wild mammals and sells only the offspring of these small exotic or wild mammals for pets or exhibition. This proposed rule would also clarify that the exemption applies only if a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, and prairie dogs, are maintained on a single premises, regardless of who owns the animals.

Unlicensed individuals in this category primarily sell the offspring of their animals to pet stores and private citizens and their number and the quantity of their sales are unknown. However, we expect that any affected individuals would be considered small entities. The entities affected would either have to obtain a license if more than three breeding females are on a premises or decrease the number of breeding females on the premises to three or fewer. Entities who choose to obtain a license as a result of this proposed rule would have to pay the associated fees. The regulations require an application fee of $10 and an annual license fee.

Because APHIS has only recently begun to require licenses for breeders of small exotic or wild mammals, only a small number of breeders who have become licensed would no longer need those licenses. For that small number, there would be cost savings in the amount of the annual license fee that would no longer be required.

Dogs and Cats Sold Per Year From a Premises

The regulations exempt from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes if the dogs and cats were born and raised on the person's premises. This proposed rule would clarify that this exemption would apply only if fewer than 25 dogs and/or cats are sold per year from the premises, regardless of who owns the dogs or cats.

This change would potentially affect three groups of entities: (1) Persons who are currently exempt from licensing because they sell fewer than 25 dogs and/or cats for research, teaching, or testing purposes, or to any research facility; (2) licensed Class B dealers who acquire dogs and/or cats from persons exempt from licensing; and (3) the research and education industries.

In fiscal year 1997, approximately 325 persons who sold dogs and/or cats for research, teaching, or testing purposes, or to any research facility, were exempt from licensing because they sold fewer than 25 dogs and/or cats. It is unknown how many premises will be affected by the clarification that the exemption from licensing applies to the premises and not to individuals. However, if this proposed rule becomes effective, individuals on affected premises would have to obtain a license, reduce their business, or discontinue business. At this time, we do not have enough information to predict the choices individuals will make among these alternatives.

In fiscal year 1997, persons exempt from licensing because they sold fewer than 25 dogs and/or cats for research, teaching, or testing purposes, or to any research facility, provided an estimated 4,524 dogs and 1,202 cats to the research, testing, and teaching industries. [1] These exempt persons received an average of $50 for a dog and $25 for a cat. Based on these values, we estimate that the total revenue of the exempted individuals was $256,250.

Class B dealers would be the next group potentially affected by this proposed rule. Nearly all dogs and cats supplied for use in the research industry by persons exempt from licensing were sold to the research industry through Class B dealers. Class B dealers obtain dogs and cats for sale to registered research facilities from pounds, Class A dealers, other Class B dealers, and persons exempt from licensing. In 1997, there were 1,047 Class B dealers; however, we estimate that approximately 37 of them supplied dogs and cats for research purposes. These Class B dealers obtained 5,726 dogs and cats, which is approximately one-third of the dogs and cats they provided for research, from persons exempt from licensing. The effect of this proposed rule on Class B dealers would depend on the number of persons currently exempt from licensing who would apply for a license or reduce the number of animals they sell from their premises. If the clarification that the exemption applies to the premises, regardless of ownership, causes a significant decrease in the number of dogs and cats available from these individuals, Class B dealers could lose a primary source of dogs and cats and would have to depend on other sources (i.e., Class A dealers, pounds, or shelters) to obtain dogs and cats. Class B dealers most likely would not acquire animals from Class A dealers because of the higher cost. Class A dealers who sell directly to research facilities charge $300 to $500 per dog and slightly less per cat. Pounds and shelters may not be able to supply Class B dealers with the number of dogs and/or cats they need to

[1] In fiscal year 1997, a total of 75,429 dogs and 26,091 cats from all sources were used in registered research facilities. According to the National Association for Biomedical Research, less than one-half of these dogs and cats were random source. Dogs and cats supplied by individuals exempt from licensing are random source and are supplied to research almost exclusively through Class B dealers. In fiscal year 1997, Class B dealers supplied approximately 36 percent of random source dogs and 23 percent of random source cats used in research. Class B dealers obtained approximately one-third of their animals from exempt sources.

maintain their current levels of operation.

The effect of this proposed rule on research facilities will primarily depend on the rule's effect on Class B dealers. Of the 101,520 dogs and cats used in research in fiscal year 1997, less than one-half were random source. Class B dealers supplied approximately 36 percent of the random source dogs and 23 percent of the random source cats used in research. Approximately one-third of these animals were obtained by the Class B dealers from persons exempt from licensing. Laws in many areas make Class B dealers the only viable source of these animals. Any increase in costs for the dogs and cats obtained by Class B dealers would likely be passed on to the research facilities that purchase the animals.

Clarification of the Regulations and Changes to Administrative Procedures

This proposed rule would make a number of changes to clarify the regulations and correct deficiencies we have found in enforcing the regulations. We are also proposing amendments to a number of administrative procedures to make them more efficient. In addition, this proposed rule would require certification at the time of purchase or acquisition of certain animals. These changes would not have a significant economic effect on affected entities because the changes should not alter the day-to-day operations for entities that are currently in compliance with the Act.

Small Entities

The Regulatory Flexibility Act requires that we specifically consider the economic effects of the proposed rule on small entities. As stated previously, the entities likely to be affected by this proposed rule are Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are exempt from licensing.

The Small Business Administration (SBA) has established size criteria by Standard Industrial Classification (SIC) for determining which economic entities meet the definition of a small entity.

According to the SBA, Class A dealers with less than $0.5 million in annual receipts are considered small. According to the 1997 Census of Agriculture, there were 10,045 dog and cat establishments in the category of all other annual production, which included Class A dealers. These dog and cat establishments had an average of $101,624 in annual receipts in 1997, which is well below the standard for a small entity. Class B dealers are categorized in the SIC as part of wholesale trade, other nondurable goods. According to SBA standards, if an entity in this category employs fewer than 100 employees, the entity is considered small. According to the 1997 Economic Census, the average wholesaler in other nondurable goods had just over six employees, which is far below the standard to be considered a small entity. We believe that the majority of the 37 Class B dealers potentially affected by the rule changes may be considered small. There are over 2,000 exhibitors licensed by or registered with APHIS. Under the SBA standards, an animal exhibitor is considered small if the entity has less than $5 million in annual receipts. According to the 1997 Economic Census, the average circus (including animal acts and sideshows) had about $3.3 million in annual receipts, the average zoo and botanical garden had $3.6 million in annual receipts, and the average nature park had $0.5 million in annual receipts. In 1998, there were 1,227 active animal research facilities. The SBA standard for a small research or testing facility is one with less than $5 million in annual receipts, except for commercial physical and biological research, for which the standard is fewer than 500 employees. According to the 1997 Economic Census, the average noncommercial research and development entity in the life sciences had $3.3 million in annual receipts, the average testing laboratory had $1.2 million in annual receipts, and the average commercial research and development entity in the life sciences had just over 20 employees. Therefore, the average entity in each of these categories would be considered small.

We do not have enough information to conclude the number of entities that this proposed rule would affect, particularly the proposed changes pertaining to the number of breeding females maintained on the same premises, regardless of ownership, and the number of dogs and/or cats that can be sold from a premises, regardless of ownership. However, most, if not all, affected entities are likely to be considered small based on SBA size standards.

We are inviting comments concerning potential effects of this rule on small entities. In particular, we are interested in determining the number of individuals who would be affected by the proposed changes in exemptions from the licensing requirements, which would limit the exemptions to three breeding female dogs and/or cats on a single premises, regardless of ownership, or to the sale of fewer than 25 dogs and/or cats for research from a single premises, regardless of ownership.

An alternative to this proposed rule would be to make no change to the Animal Welfare regulations. After consideration, we rejected this alternative because we believe that the proposed changes to the requirements are necessary to help ensure compliance with the intent and content of the regulations and the Animal Welfare Act.

This proposed rule contains information collection requirements. The requirement related to requesting reinspection will take an estimated 0.083 hours per response and involve an estimated 350 respondents. The requirement related to certification will take an estimated 0.083 hours per response and involve an estimated 150 respondents. Therefore, the effect is expected to be minimal. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–121–1. Also, please send a copy of your comments to: (1) Docket No. 97–121–1, Regulatory

Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require applicants who do not pass the initial prelicensing inspection to request re-inspection, and, if necessary, a third inspection, within 90 days following the first inspection to demonstrate that the premises, animals, facilities, vehicles, equipment, other premises, and records are in compliance with the regulations and standards. We are also proposing to require dealers, exhibitors, and research facilities that acquire dogs or cats from individuals who are not licensed to obtain a certification from the seller that the animals were born and raised on their premises and that they are eligible for an exemption from the licensing requirements.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection requirement. We need these comments to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: The public reporting burden for applicants for the collection of information relating to requesting reinspection is estimated to average 0.083 hours per response. (The estimated annual number of respondents is 350.) The public reporting burden for dealers, exhibitors, and research facilities for the collection of information relating to certification of exemption from licensing is estimated to average 0.083 hours per response. (The estimated annual number of respondents is 150.)

Respondents: Applicants, dealers, exhibitors, and research facilities.

Estimated annual number of respondents: 500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 500.

Estimated total annual burden on respondents: 41 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR parts 1 and 2 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 1.1, the definition of *Administrator* would be revised to read as follows:

§ 1.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

PART 2—REGULATIONS

3. The authority citation for part 2 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

4. Section 2.1 would be amended as follows:

a. In paragraph (a)(1), the first sentence, by removing the word ''desiring'' and adding in its place the word ''intending''.

b. In paragraph (a)(2), the last sentence, by removing the reference to ''paragraph (d)'' and adding in its place a reference to ''paragraph (c)'.

c. By revising paragraphs (a)(3)(iii) and (a)(3)(iv).

d. By removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively, and by revising newly redesignated paragraphs (c) and (d).

§ 2.1 Requirements and application.

(a) * * *

(3) * * *

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership;

(iv) Any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

* * * * *

(c) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license, and, in the case of a license renewal, the annual license fee has been received by the appropriate

Animal Care regional office on or before the expiration date of the license.

(d)(1) A licensee who wishes a renewal must submit to the appropriate Animal Care regional office a completed application form and the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. The application form and the annual license fee must be received by the appropriate Animal Care regional office on or before the expiration date of the license. An applicant whose check is returned by the bank will be charged a fee of $20 for each returned check. A returned check will be deemed nonpayment of fee and will result in the denial of the license. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

(2) A license fee indicated in § 2.6 must also be paid if an applicant is applying for a changed class of license. The applicant may pay the fee by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

* * * * *

5. In § 2.2, paragraph (b) would be revised to read as follows:

§ 2.2 Acknowledgment of regulations and standards.

* * * * *

(b) *Application for license renewal.* APHIS will renew a license after the applicant certifies by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards. APHIS will supply a copy of the applicable regulations and standards to the applicant upon request.

6. In § 2.3, paragraph (b) would be revised to read as follows:

§ 2.3 Demonstration of compliance with standards and regulations.

* * * * *

(b) Each applicant for an initial license must be inspected by APHIS and demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection will have two additional chances to demonstrate his or her compliance with the regulations and standards through a second inspection by APHIS. The applicant must request the second inspection, and if applicable, the third inspection, within 90 days following the first inspection. If the applicant fails inspection or fails to request re-inspections within the 90-day period, he or she will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. Issuance of a license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises, and records are in compliance with all regulations and standards in this subchapter.

7. In § 2.5, paragraphs (a)(4) and (b) would be revised to read as follows:

§ 2.5 Duration of license and termination of license.

(a) * * *

(4) The annual license fee has not been paid to the appropriate Animal Care regional office as required; *provided, however,* that a grace period of 30 days is provided subject to the payment of a late payment fee of $25.00 and, if applicable, any fee for a check that has been returned unpaid. There will not be a refund of the annual license fee if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (APHIS Form 7003), as required by § 2.7 of this part, and pay the required annual license fee. The required annual license fee must be received in the appropriate Animal Care regional office on or before the expiration date of the license or the license will expire and automatically terminate. Failure to comply with the annual reporting requirements or pay the required annual license fee on or before the expiration date of the license will result in automatic termination of the license.

* * * * *

8. In § 2.6, paragraphs (a) and (c) would be revised to read as follows:

§ 2.6 Annual license fees.

(a) For an initial license, the applicant must submit a $10 application fee in addition to the initial license fee prescribed in this section. Licensees applying for license renewal or changed class of license must submit only the license fee prescribed in this section. The license fee for an initial license, license renewal, or changed class of license is determined from table 1 or 2 in paragraph (c) of this section. Paragraph (b) of this section indicates the method used to calculate the license fee. All initial license and changed class of license fees must be submitted to the appropriate Animal Care regional office, and, in the case of license renewals, all fees must be received by the appropriate Animal Care regional office on or before the expiration date of the license.

* * * * *

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS AND OPERATORS OF AN AUCTION SALE CLASS ''A'' AND ''B'' LICENSE

Over	But not over	Initial license fee	Annual or changed class of license fee
$0	$500	$30	$40
500	2,000	60	70
2,000	10,000	120	130
10,000	25,000	225	235
25,000	50,000	350	360
50,000	100,000	475	485
100,000	.....	750	760

TABLE 2.—EXHIBITORS—CLASS ''C'' LICENSE

Number of animals	Initial license fee	Annual or changed class of license fee
1 to 5	$30	$40
6 to 25	75	85
26 to 50	175	185
51 to 500	225	235
501 and up	300	310

* * * * *

9. In § 2.10, paragraph (a) would be amended by adding a new sentence at the end of the paragraph to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) * * * No license will be renewed during the period that it is suspended.

* * * * *

10. Section 2.11 would be amended as follows:

a. By revising paragraphs (a)(4) and (a)(5), and by adding a new paragraph (a)(6).

b. By revising paragraph (b).

c. By adding a new paragraph (d).

§ 2.11 Denial of initial license application.

(a) * * *

(4) Has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(5) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

* * * * *

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the Act.

11. A new § 2.12 would be added to read as follows:

§ 2.12 Termination of a license.

A license may be terminated for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

12. Section 2.25 would be amended by adding a new paragraph (c) to read as follows:

§ 2.25 Requirements and procedures.

* * * * *

(c) No registrant or person required to be registered shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

13. Section 2.30 would be amended by adding a new paragraph (d) to read as follows:

§ 2.30 Registration.

* * * * *

(d) No research facility shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

14. Section 2.35 would be amended as follows:

a. In paragraph (b), by removing the period at the end of paragraph (b)(7) and adding in its place a semicolon, and by adding a new paragraph (b)(8).

b. In paragraph (b)(3), by adding the words ''(or photographic identification card for nondrivers issued by a State)'' after the words ''driver's license number''.

c. In paragraph (d)(1), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001'' and removing the words ''/VS Form 18–5'' after ''APHIS Form 7005''.

d. In paragraph (d)(2), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001'' and removing the words ''/VS Form 18–6'' after ''APHIS Form 7006''.

§ 2.35 Recordkeeping requirements.

* * * * *

(b) * * *

(8) If dogs or cats are acquired from any person not licensed or registered under the Act and not a pound or shelter, the research facility must obtain a certification that the animals were born and raised on the person's premises and that the person has sold fewer than 25 dogs and/or cats that year.

* * * * *

15. Section 2.38 would be amended as follows:

a. In paragraph (h)(3), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001''.

b. In paragraph (i)(3), by removing the words ''/VS Form 18–9'' after the words ''APHIS Form 7009''.

c. By revising paragraph (k)(2).

§ 2.38 Miscellaneous.

* * * * *

(k) * * *

(2) No person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception.

* * * * *

§ 2.75 [Amended]

16. Section 2.75 would be amended as follows:

a. In paragraphs (a)(2) and (a)(2)(i), by removing the words ''/VS Form 18–5'' after ''APHIS Form 7005'' each time they appear and by removing the words ''/VS Form 18–6'' after ''APHIS Form 7006'' each time they appear.

b. In paragraph (a)(3), by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001''.

c. In paragraph (b)(2) by removing the words ''/VS Form 18–19'' after ''APHIS Form 7019'' and by removing the words ''/VS Form 18–20'' after ''APHIS Form 7020''.

d. In paragraphs (a)(1)(iii) and (b)(1)(iii) by adding the phrase ''(or photographic identification card for nondrivers issued by a State)'' immediately following the words ''driver's license''.

§ 2.76 [Amended]

17. In § 2.76, paragraph (a)(4) would be amended by adding the phrase ''(or photographic identification card for nondrivers issued by a State)'' immediately following the words ''driver's license''.

§ 2.78 [Amended]

18. In § 2.78, paragraph (d) would be amended by removing the words ''/VS Form 18–1'' after ''APHIS Form 7001''.

§ 2.102 [Amended]

19. In § 2.102, paragraph (a)(3) would be amended by removing the words ''/VS Form 18–9'' after ''APHIS Form 7009''.

20. In § 2.126, paragraph (b) would be revised to read as follows:

§ 2.126 Access and inspection of records and property.

* * * * *

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process.

21. In § 2.131, paragraphs (a), (b), (c), and (d) would be redesignated as paragraphs (b), (c), (d), and (e), respectively, and a new paragraph (a) would be added to read as follows:

§ 2.131 Handling of animals.

(a) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.

* * * * *

22. Section 2.132 would be amended as follows:

a. By revising the section heading.

b. By removing paragraphs (b) and (c), and redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising newly redesignated paragraph (b).

c. In newly designated paragraph (c)(3), by removing the words ''random source.''

d. By adding a new paragraph (d).

§ 2.132 Procurement of dogs, cats, and other animals; dealers.

* * * * *

(b) No person shall obtain live dogs, cats, or other animals by use of false pretenses, misrepresentation, or deception.

* * * * *

(d) No dealer or exhibitor shall knowingly obtain any dog, cat, or other animal from any person who is required to be licensed but who does not hold a current, valid, and unsuspended license. No dealer or exhibitor shall knowingly obtain any dog or cat from any person who is not licensed, other than a pound or shelter, without obtaining a certification that the animals were born and raised on that person's premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year, or, if the animals are for use as pets, that the person does not maintain more than three breeding female dogs and/or cats.

Done in Washington, DC, this 27th day of July 2000 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–19725 Filed 8–3–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43085; File No. S7–17–00]

RIN 3235–AH96

Firm Quote and Trade-Through Disclosure Rules for Options

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing to amend Rule 11Ac1–1 under the Securities Exchange Act of 1934 (''Exchange Act''), to require options exchanges and options market makers to publish firm quotes. The Commission also is proposing new Rule 11Ac1–7 under the Exchange Act to require a broker-dealer to disclose on its customer's confirmation statement when the customer's order for listed options was executed at a price inferior to a better published quote and what that better quote was, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission.

DATES: Comments should be submitted on or before September 18, 2000.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exhange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–17–00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*).

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Senior Special Counsel, at (202) 942–0075, Kelly Riley, Attorney, at (202) 942–0752, John Roeser, Attorney, at (202) 942–0762, Terri Evans, Special Counsel, at (202) 942–4162, and Heather Traeger, Attorney, at (202) 942–0763, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Recent increases in the multiple listing of options classes previously listed on a single exchange have intensified the competition among the option exchanges and the need to further integrate the options markets into the national market system. The marked increase in multiple trading is indicative of the dynamic environment in which the options markets currently operate. For example, in August 1999, only 32 percent of equity options classes were traded on more than one exchange. By the end of June 2000, the number of equity options classes that were multiply-traded had risen to 48 percent, a 50 percent increase.

While the growth in multiple trading has increased the competition between markets, it also has dramatically altered the environment in which options market participants conduct their trading. In particular, multiple trading raises new best execution challenges for broker-dealers.[1] When an option is listed on only one exchange, broker-dealers do not have to decide where to route an order, and consequently, satisfying their best execution obligations is less rigorous than when they must consider the relative merits of routing orders to two or more market centers. With as many as five options exchanges currently trading certain options classes, broker-dealers are increasingly required to regularly and rigorously evaluate the execution quality available at each options exchange.

Directly relevant to a broker's ability to obtain best execution for its customers is the ability to get the best price available. The considerable growth in the number of options classes traded on more than one exchange has significantly increased the likelihood that an order may be executed at a price that is inferior to a quoted price available on another exchange (''intermarket trade-through''). According to preliminary data analyzed by the Commission's Office of Economic Analysis during the week of June 26, 2000, 5% of all trades in the 50 most active multiply-listed equity options were executed at prices inferior to the best price quoted on a competing market. Currently, it is difficult to ensure that a customer order sent to one exchange will receive the best available price because of the absence of fair access and an efficient mechanism allowing a market participant at one exchange to reach a better price published by another exchange. As a result, better prices quoted on another exchange do not always receive price priority, and customer orders may receive inferior executions.

Because of its concerns about the increasing likelihood of intermarket trade-throughs in the options markets, the Commission, on October 19, 1999, issued an Order directing the options exchanges to act jointly to file a national market system plan within 90 days for linking the options markets.[2] On January 19, 2000, the options exchanges submitted three separate linkage plans,[3] a detailed summary of which was published for comment in the **Federal Register** on March 2, 2000.[4] The Commission received comments on the proposed linkage plans from 24 market participants.[5] A thorough review of the comment letters received on the proposed linkage plans has led the Commission to consider alternate ways in which to accomplish its goal of protecting price priority and minimizing intermarket trade-throughs of customer orders.[6]

In assessing the best way to encourage fair access and linkage among the options markets, the Commission has carefully evaluated not only the comment letters submitted by interested persons, but also the impact of the recent increases in multiple trading and the availability of new technologies. This review has raised concerns that mandating a single linkage system in which all of the options exchanges must participate may have inherent limitations. The linkage plans proposed by the options markets offer significant advantages by reducing barriers to access between the markets. Nonetheless, the Commission is reluctant to mandate one single form of linkage, which may fail to adapt over time to changes in the markets and may impede the entry of new participants with different business models.

Moreover, a mandatory linkage plan may not maintain up-to-date technology. For example, one commenter expressed concern that any linkage system technology would become obsolete before or soon after the system was implemented.[7] The Commission believes that the growth of electronic routing systems may enable the options exchanges to access one another's markets directly through agreed-upon methods, or indirectly through broker-dealers. As a result, there may well be a variety of equally effective, or indeed more effective, ways in which technology may be employed by the markets to encourage price priority and decrease the likelihood of intermarket trade-throughs in the options markets.

Consequently, the Commission's proposals today are purposely limited in scope. The Commission's proposals are intended to facilitate the ability of market participants to obtain the best price for customer orders without mandating a specific linkage. As described below, in conjunction with its approval of an options intermarket linkage plan (''Amex/CBOE/ISE plan''),[8] the Commission today is proposing a new rule and amendments to an existing rule designed to provide customers with

[1] In accepting orders and routing them to an exchange for execution, brokers act as agents for their customers and owe them a duty of best execution. A broker's duty of best execution is derived from common law agency principles and fiduciary obligations. It is incorporated both in self-regulatory organization's rules and, in the antifraud provisions of the federal securities laws through judicial and Commission decisions. This duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. As a result, broker-dealers must periodically assess the quality of competing markets. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[2] *See* Securities Exchange Act Release No. 42029, 64 FR 57674 (October 26, 1999) (''October 19, 1999 Order''). The October 19, 1999 Order directed the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply-traded options. The Commission's Order also requested the International Securities Exchange LLC (''ISE'') to participate with the options exchanges in the development of an intermarket linkage plan. The ISE was subsequently registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[3] Amex, CBOE, and ISE submitted identical plans and PCX and Phlx each submitted separate plans.

[4] *See* Securities Exchange Act Release No. 42456 (February 24, 2000), 65 FR 11402. At the same time, the full text of each of the plans was made available to interested persons on the Commission's website.

[5] A summary of comments received on the proposed linkage plans is available in the Commission's Public Reference Room (File No. 4–429).

[6] In its proposed release issued today on Disclosure of Order Routing and Execution Practices, the Commission states that it ''recognizes that fair and efficient linkages to market centers publishing quotes are important to encouraging priced competition and strengthening price priority * * * At the same time, the Commission believes that wherever possible, market-based incentives, not government imposed systems, should determine the connections between markets.'' *See* Securities Exchange Act Release No. 43084 (July 28, 2000).

[7] *See* letter to Jonathan G. Katz, Secretary, Commission, from Peter Hajas, Chief Executive Officer, Knight Financial Products LLC, dated April 3, 2000.

[8] *See* Securities Exchange Act Release No. 43086, (July 28, 2000).

more information with which to evaluate the quality of executions achieved by their brokers and to require market makers to be firm for their quotes. Together these rules would provide incentives for the markets and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, and would allow market participants to choose the form of mechanism employed.

In addition, some commenters have argued, in the context of the Commission's review of the linkage plans submitted by the exchanges, that the Commission's approval of a linkage plan should be viewed as an opportunity to mandate, among other things, the protection of customer limit orders and price/time priority.[9] The Commission concluded, however, in its Order approving the Amex/CBOE/ISE plan that it does not have sufficient information to satisfy itself that the potential benefits of a mandatory price/time priority requirement clearly justify the potential drawbacks, and that it would be premature at this time to mandate cross-market priority rules as elements of a linkage between the options markets.

A. Proposed Trade-Through Disclosure Rule

To begin, the Commission is proposing a new rule, Exchange Act Rule 11Ac1–7 (''Trade-Through Disclosure Rule''),[10] to require a broker-dealer to disclose to a customer when the customer's order to buy or sell a listed option was executed at a price inferior to the best quote published at the time of execution of the customer's order.

The proposed Trade-Through Disclosure Rule is intended to better inform customers about the implications of their brokers' execution decisions. If the fact of a trade-through was disclosed, along with the better available price, customers would have additional information with which to evaluate the quality of executions achieved by their brokers. The proposed new rule is not an absolute prohibition on trade-throughs. To the contrary, the Commission recognizes that, in certain circumstances, an execution at a price inferior to a quote displayed by another market may be consistent with an investor's particular investment strategy. For example, it is possible that a customer would prefer to receive an immediate execution at one price rather than pursue the opportunity to obtain a superior price. By requiring disclosure of executions at inferior prices when they occur, the rule is intended to ensure that the decision not to pursue publicly-displayed superior prices is rooted in the interests of customers, not intermediaries. Nonetheless, the Commission anticipates that an effective disclosure requirement would minimize the likelihood that a customer order does not receive an execution at the best available published quote.

In addition, as an incentive for markets to cooperate in developing effective means to access other markets to avoid trade-throughs, the Commission's proposal would except broker-dealers from the proposed disclosure requirements if they effect orders on options markets that participate in an intermarket linkage plan that has explicit provisions reasonably designed to limit trade-throughs. In such instances, the Commission expects that the value in requiring a broker-dealer to disclose the rare trade-through that may occur would be substantially reduced. The proposed Trade-Through Disclosure Rule would not, however, mandate that options exchanges participate in a specific linkage plan. Instead, the proposal contemplates that there ultimately may be multiple linkage plans approved by the Commission that contain provisions to effectively limit intermarket trade-throughs.

B. Proposed Amendments to the Quote Rule

The proposed Trade-Through Disclosure Rule would not be meaningful if the market publishing a better quote is not firm for a specified number of contracts at that quote. In particular, members of an exchange cannot develop effective means of access to displayed quotes of another exchange if those quotes are not firm. To that end, the Commission proposes to amend Exchange Act Rule 11Ac1–1 (''Quote Rule'')[11] to require options exchanges and options market makers to publish firm quotes.[12] As discussed in greater detail below, the proposed amendments to the Quote Rule include certain accommodations to reflect the fact that the Options Price Reporting Authority (''OPRA'') does not have the ability to disseminate quotes with size at this time. These accommodations require quotes to be firm for the size specified, but not displayed by, the options markets. The Commission also proposes, as an alternative, rule language that would allow options exchanges to be firm for their quotes in different sizes for orders from customer accounts than for orders from broker-dealer accounts. The Commission is proposing this alternative because options market makers may otherwise be inclined to limit their exposure to other professionals by widening their spreads or limiting their firm quote size, which would be to the detriment of public customers.

C. Approval of Linkage Plan

As noted above, the Commission today, in a separate release, approved the options market linkage plan proposed by the Amex, CBOE, and ISE, the Amex/CBOE/ISE plan.[13] This plan is an important step forward in linking the options markets and, if implemented, would eliminate many existing barriers to access between the participating markets and would provide members of those markets with better methods of access than exist today. Ultimately, it may prove to be the preferred means of linking the options exchanges. Nonetheless, the Commission's approval of the Amex/CBOE/ISE plan does not require those options exchanges that are not participants in the plan to become participants.[14] This approach is premised on the Commission's belief, discussed above, that there may be a number of means of achieving the Commission's goal of encouraging price priority and limiting intermarket trade-throughs of customer orders. The Commission's approval of the Amex/CBOE/ISE plan, coupled with the proposed new Trade-Through Disclosure Rule and amendments to the Quote Rule, is designed to encourage access to, and linkage among, the

[9] Price/time priority generally requires that if an exchange receives an order but was not the first exchange to display the best price, that exchange must route the order to the exchange that first displayed the best price.

[10] Proposed 17 CFR 240.11Ac1–7.

[11] 17 CFR 240.11Ac1–1.

[12] The Quote Rule has, to date, applied only to equity markets and market makers. *See* Securities Exchange Act Release No. 1445 (January 26, 1978), 43 FR 4342 (February 1, 1978), as amended in Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996); and 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[13] *See supra* note 8. The Commission's approval of the Amex/CBOE/ISE plan should not be construed as a rejection on the merits of either the Phlx or PCX submissions. Neither of those submissions could be approved as a national market system plan pursuant to Exchange Act Rule 11Aa3–2, 17 CFR 240.11Aa3–2, because neither plan was filed by two or more sponsors as required by the rule. In fact, the Commission would consider approving other national market system plans relating to intermarket linkage between the options markets submitted by two or more markets.

[14] The plan does, however, include express provisions pursuant to which other options exchanges may become participants by executing the plan, paying a fee applicable to new participants, and obtaining the Commission's approval of the plan as amended to reflect the new participant. *See* Amex/CBOE/ISE plan Sections 4(c) and 5(c)(ii).

competing options markets, without mandating the means to achieve this goal. The Commission is today soliciting comment on this flexible approach.

II. Background

Section 11A of the Exchange Act,[15] enacted as part of the Securities Act Amendments of 1975,[16] sets forth Congress' findings concerning the establishment of a national market system. Congress found, among other things, that it was in the public interest, and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of quote and transaction information, and the practicability of brokers executing investors' orders in the best market.[17] Congress asserted that linking all of the markets for qualified securities would ''foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.'' [18]

The national market system was intended by Congress to potentially encompass ''all segments of corporate securities including all types of common and preferred stocks, bonds, debentures, warrants, and options.'' [19] Congress included all types of securities because it believed that many of the goals of a national market system, such as the availability of information with respect to price, volume, and quotations, would be universally beneficial, although perhaps implemented through subsets of a national market system. [20]

Congress did, however, recognize the differences between the markets and granted the Commission broad powers to implement a national market system without forcing all securities markets into a single mold. [21] Accordingly, Congress granted the Commission the authority to implement the objectives of the 1975 Amendments,[22] while allowing the Commission to recognize and classify markets, firms, and securities in any manner appropriate or necessary in the public interest or for the protection of investors.[23]

Many of the national market system initiatives were implemented in the equities markets at a time when standardized options trading was relatively new.[24] Therefore, the Commission deferred applying many of the national market system initiatives to options to give options trading an opportunity to develop.

In October 1977, in response to allegations of wide-spread manipulation in the market for exchange-traded options, the Commission initiated an investigation and special study of the options markets.[25] In the Options Study, the Commission acknowledged that Congress had intended to include options in a national market system, and set forth a number of issues to be explored before the options markets could be fully integrated into the national market system.[26] Subsequently, the Commission approved a national market system plan that collects and disseminates consolidated quotes and trades for the options markets.[27] Today, the options markets continue to operate with limited market integration facilities. [28]

With the onset of widespread multiple trading in options, the Commission is increasingly concerned about customer orders that are sent to one exchange being executed at prices inferior to quotes published by another market. The Commission believes further action is necessary at this time to encourage the removal of barriers to access, and the use of efficient vehicles to reach, better prices on another market. At the same time, the Commission believes that wherever possible, market-based incentives, not government-imposed systems, should determine the connections between the markets. For this reason, the Commission is today proposing an alternative to a government-imposed single intermarket linkage that would remove certain barriers to access and create incentives for options market

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[15] 15 U.S.C. 78k–1.

[16] Pub. L. No. 94–29, 89 Stat. 97 (1975) (''1975 Amendments''). In the 1975 Amendments, Congress directed the Commission to oversee the development of a national market system. Congress granted the Commission broad, discretionary powers to oversee the development of a fully integrated national system for the processing and settlement of securities transactions. *See also infra* note 19.

[17] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[18] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[19] Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. 94–75, 94th Cong., 1st Sess. 7 (1975) (''Senate Report''). *See also* Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 2 (1975) (''Conference Report'').

[20] *Id.*

[21] *See* Senate Report. *See also* Conference Report. The Committee of Conference stated that the unique characteristics of securities other than common stocks may require different treatment in a national market system.

[22] The two primary objectives of the 1975 Amendments were (1) ''the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements,'' and (2) ''the centralization of all buying and selling interest so that each investor will have the opportunity for the best execution of his order, regardless of where in the system it originates.'' *See* Senate Report.

[23] Section 11A(a)(2) of the Exchange Act authorizes the Commission to designate, by rule, securities qualified for trading in the national market system. 15 U.S.C. 78k–1(a)(2).

[24] The trading of standardized options on securities exchanges began in 1973 with the organization of the CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc. 11 (February 13, 1973). Currently, Amex, CBOE, ISE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

[25] The result of the Commission's investigation was The Report of the Special Study of the Options Markets, issued on December 22, 1978 (''Options Study''). Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading).

[26] Options Study at 1029–1030. The Commission stated that it had ''not begun to consider whether standardized options are appropriate for inclusion as qualified securities or whether it would be more appropriate to design a 'subsystem' of a national market system to comprehend standardized options trading.'' The Options Study delineated the following as among the issues to be explored in the options market: (1) A comprehensive quotation system for the dissemination of firm quotes; (2) market linkage and order routing systems to enable the best execution of orders; (3) nationwide limit order protection to ensure that agency orders receive auction-type trading protections; and (4) off-board trading restrictions.

[27] Currently, the options exchanges report their respective quotes and trades of OPRA, which operates pursuant to a national market system plan, approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). Quote and trade reporting are integral components of a national market system. *See* Section 11A(a)(1)(C)(iii) of the Exchange Act. 15 U.S.C. 78k–1(a)(1)(C)(iii). *See also infra* Section III.B.1.

[28] The Commission has repeatedly called for increased national market system initiatives in the options markets. *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, ''The Effects of Multiple Trading on the Market for OTC Options'' (November 1986); Office of the Chief Economist, ''Potential Competition and Actual Competition in the Options Market'' (November 1986); and Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an intermarket linkage). In 1989, the Commission adopted Exchange Act Rule 19c–5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock options class because that options class is listed on another exchange. *See* Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989). In 1990, then Chairman Breeden requested that the options exchanges develop an intermarket linkage plan. *See* letter from Chairman Breeden to the Registered Options Exchange dated January 9, 1990.

participants to develop access arrangements with each other.

III. Discussion of Proposed Rulemaking

A. Proposed Trade-Through Disclosure Rule

1. Background

In the 1975 Amendments, Congress declared that, ''[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the practicability of brokers executing investor's orders in the best market * * * '' [29]. In accordance with these principles, the Commission determined that trade-throughs—that is, the execution of orders at prices inferior to prices offered on other markets—are ''inconsistent with the goals of a national market system.'' [30] Consequently, the Commission has consistently sought to protect orders displayed at a better price from being traded through at inferior prices by encouraging executions of customer orders at the best prices. Further, the Commission has repeatedly emphasized a broker-dealer's duty of best execution of customer orders, which includes seeking the best price reasonably available. In the equity markets, the Intermarket Trading System (''ITS'') Plan includes a trade-through rule protecting displayed bids and offers for ITS-eligible exchange-listed securities.[31] In conformance with the ITS Plan, each participating exchange and the National Association of Securities Dealers (''NASD'') has adopted rules that limit trade-throughs in exchange-listed securities.[32] In the options markets, the Commission has repeatedly encouraged the exchanges to implement mechanisms to limit trade-throughs from occurring.[33] For a variety of reasons over the years, however, none of these efforts has been wholly successful.

In 1980, at the time the Commission ended the voluntary moratorium on expansion of standardized options trading, it asked for comment on several approaches to more fully integrate the options markets into the national market system, including a market linkage system similar to ITS, requiring brokerage firms to route retail orders on an order-by-order basis to the market center showing the best quotation, and an order exposure system for options public limit orders.[34]

The Commission's adoption of Exchange Act Rule 19c–5 in 1989 [35] created the need for some mechanism to ensure that customers' orders for multiply-traded options could be executed at the best available price. Accordingly, in 1990, the CBOE, New York Stock Exchange (''NYSE''), [36] Amex, and PCX filed with the Commission a proposed Joint Industry Plan providing for the creation and operation of an Options Intermarket Communications Linkage (''Linkage Plan'').[37] The Commission sought comment on the Linkage Plan,[38] but neither the Linkage Plan nor its Model Trade-Through Rule was adopted, in part, because the options exchanges could not reach a consensus on several critical elements.

During the comment period on the Linkage Plan, an alternative plan was considered that involved the gradual phase-in of multiple trading, along with the adoption of exchange rules and operational enhancements linking the markets non-electronically (''Phase-In Plan'').[39] Specifically, the Phase-In Plan would have provided for the re-routing of orders received through automated systems to other execution facilities, in conjunction with a trade-or-fade rule.[40] Again, however, the exchanges did not agree to the Phase-In Plan and it was not adopted.

In 1994, the markets adopted trade-or-fade rules, which require a market maker to revise its quote if it is unwilling to trade at its published quote with an order sent to it by a market maker from another exchange.[41] The trade-or-fade rules do not provide efficient means of access between the markets. They also provide little incentive to try to reach a better quote in another market, because that quote need not be firm when reached. Thus, the trade-or-fade rules have done little to promote price priority or discourage intermarket trade-throughs.

To provide investors with better information on the quality of the executions they are receiving and to provide incentives to market participants to develop means of access to the competing markets, without mandating a single linkage mechanism, the Commission today is proposing the Trade-Through Disclosure Rule, described below.

2. Proposed Trade-Through Disclosure Rule

a. Proposed Disclosure Requirement. Generally, proposed Exchange Act Rule 11Ac1–7 would require a broker-dealer to disclose to a customer when the customer's order is executed at a price inferior to a better published quote on another exchange and what that better published quote was.[42] A broker would

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[29] *See* Section 11A(a)(1)(C)(iv) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(iv). In fact, as early as 1973, the Commission had indicated that the facilities of a national market system should provide a broker-dealer with the ability to ensure that ''his customer's order is executed in the best market available.'' SEC, Policy Statement on the Structure of a Central Market System, at 17 (March 29, 1973), reprinted in [1973] Sec. Reg. & L Rep. (BNA) No. 196 at D–1, D–4.

[30] *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26548 (June 27, 1985) (soliciting comment on issues relating to the designation of securities as national market system securities).

[31] *See* Securities Exchange Act Release No. 17703 (April 9, 1981), 22 S.E.C. Doc. 707.

[32] *See* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520 (April 17, 1981). The NASD submitted a proposed trade-through rule for exchange-listed stocks, which the Commission approved on May 6, 1982. *See* Securities Exchange Act Release No. 18714, 47 FR 20429 (May 12, 1982). On June 21, 1985, the Commission requested comment on, among other things, the extent to which securities listed on The Nasdaq Stock Market, Inc. (''Nasdaq'') should be subject to trade-through rules. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 (June 27, 1985). In addition, in recently adopting amendments to the ITS Plan to expand the linkage to all listed securities, the Commission concluded that the NASD should continue to consider modifications to its existing trade-through rule to cover non-ITS participants, but that such modifications were not a precondition to approval of the expanded linkage. *See* Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[33] *See* supra note 28.

[34] *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) (''Moratorium Termination Release'')

[35] 17 CFR 240.19c–5. *See* Securities Exchange Act Release No. 26870, *supra* note 28.

[36] The NYSE has since sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[37] The filing was amended on April 29, 1991, when the signatories to the Linkage Plan submitted a Model Option Trade-Through Rule as Exhibit A to the Linkage Plan. The Model Trade-Through Rule would have been incorporated into each of the options exchanges' rules. The Model Rule provided that, absent reasonable justification or excuse, a member in a participant market should avoid initiating a trade-through when purchasing or selling an options contract permitted to be transmitted through the proposed linkage.

[38] *See* Securities Exchange Act Release No. 30187 (January 14, 1992), 57 FR 2612 (January 22, 1992).

[39] The Phase-In Plan was put forth by the Securities Industry Association (''SIA'') and endorsed by the Committee on Options Proposals (''COOP''). *See* letters to Jonathan G. Katz, Secretary, SEC, from Thomas P. Hart, Chairman, SIA Options and Derivative Products Committee, dated March 10, 1992; and Michael Schwartz, Chairman, COOP, dated March 11, 1992.

[40] *Id. See also* letter from Richard C. Breeden, Chairman, SEC, to Aleger B. Chapman, Chairman & CEO, CBOE, dated June 30, 1992 (setting forth the Commission's understanding of the elements of the Phase-In Plan).

[41] *See* Securities Exchange Act Release Nos. 34431, 34432, 34444, 34434, and 34435 (July 22, 1994), 59 FR 38994 (August 1, 1994) (orders approving proposed rule changes filed by Amex, CBOE, NYSE, Phlx, and PCX, respectively). *See also* Amex Rule 958A, Commentary 01; CBOE Rule 8.51(b); PCX Rule 6.37(d); and Phlx Rule 1015(b).

[42] Proposed Exchange Act Rule 11Ac1–7(b)(1). The Commission believes that a broker-dealer should be allowed to rely on the market of

be required to make this disclosure on the customer's confirmation delivered pursuant to Exchange Act Rule 10b–10.[43] To satisfy this disclosure requirement, the Commission would expect such disclosure to be as prominent as the transaction price disclosed to the customer under Exchange Act Rule 10b–10.

A broker-dealer would not be required to provide such disclosure to its customer if it effects a transaction for a customer on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price.[44] Importantly, the proposed rule's disclosure requirement would not prohibit trade-throughs, but is intended to provide customers with important information about the quality of their executions. The Commission believes that the proposed rule would provide the individual customer with important information and facilitate an individual investor's ability to actively monitor whether his or her order routing firm is fulfilling its best execution obligations. It also would encourage broker-dealers to develop effective means of accessing better quotes published by other markets. The Commission notes, however, that the proposed Trade-Through Disclosure Rule would not replace the well-established duty that broker-dealers must provide best execution to their customers. To the contrary, broker-dealers remain obligated to seek the most favorable terms possible under the circumstances for their customers.[45]

The Commission solicits comment on whether there are any special considerations that should be taken into account in light of the fact that options trades are settled the day after the transaction.

b. Proposed Exception to Disclosure Requirement. As noted above, the proposed Trade-Through Disclosure Rule provides an exception from the customer disclosure requirements if the broker-dealer effects its customers' orders on an options exchange that participates in an effective national market system options linkage plan that includes provisions reasonably designed to limit intermarket trade-throughs. Preliminarily, the Commission believes that, at a minimum, to be reasonably designed to limit trade-throughs, a plan should contain provisions to: (1) Limit participants from trading through not only the quotes of other linkage plan participants, but also the markets of exchanges that are *not* participants in the plan; (2) require plan participants to actively surveil their markets for trades executed at prices inferior to those publicly quoted on other exchanges; and (3) make clear that the failure of a market with a better quote to complain within a specified period of time that its quote was traded-through may affect potential liability, but does not signify that a trade-through has not occurred.[46]

In addition, to comply with these standards, a participating exchange, generally, would have to adopt rules that would allow the exchange to sanction firms that repeatedly trade-through better prices of other exchanges, maintain policies and procedures that would limit the occurrence of trade-throughs, and maintain records that would identify trade-throughs and any review or remedial action taken by the exchange in response to such trade-throughs.

As stated above, to be reasonably designed to limit trade-throughs, the Commission preliminarily believes that a plan should limit trade-throughs of all markets displaying quotes in the consolidated quote system. The Commission recognizes that because of barriers to access and order routing obstacles, limiting trade-throughs of quotes on markets not participating in a linkage plan would be more difficult than limiting trade-throughs of quotes published by linked markets. The Commission seeks comment on potential approaches that could be employed in linkage plans to adequately limit trade-throughs of non-linked markets. The Commission also requests comment on whether instead of requiring the limitation of trade-throughs of non-linked markets, the exception from disclosure of trade-throughs should be limited only to trade-throughs of markets that participate in the linkage plan.

The Commission believes exchange linkage agreements are a straightforward method of removing barriers to access between exchanges. Because a linkage plan satisfying the proposed rule would provide for a mechanism to access superior quotes on another market and rules limiting such trade-throughs, the Commission believes there would be little value in requiring order routing firms to develop a disclosure process to deal with the unlikely event that there was a trade-through. Moreover, such an exception would provide an incentive for exchanges to enter into linkage agreements to limit trade-throughs, without mandating participation in a linkage or the method of linkage.

The Commission requests comment on the propriety of the proposed exception to the proposed Trade-Through Disclosure Rule for orders effected on exchanges that are participants in an effective national market system options linkage plan that includes provisions reasonably designed to limit customer orders from trading through better published prices. The Commission also seeks comment on what provisions such a linkage plan should be required to include and whether the minimum requirements identified by the Commission above are sufficient. Commenters are also invited to express their views as to whether an options exchange that is not a participant in an approved linkage plan should be required to provide to broker-dealers information about intermarket trade-throughs occurring on its market.

In response to the linkage plan proposals, several commenters suggested that the Commission require broker-dealers to route customers' orders on an order-by-order basis to the best quote.[47] The Commission does not currently believe that it is appropriate to mandate such a routing requirement, but would like commenters' views on whether it would be appropriate to except broker-dealers from the Commission's proposed disclosure requirements in new Rule 11Ac1–7[48] if broker-dealers systematically route customer orders on an order-by-order basis to the exchange with the best price at the time the order is routed.

c. Proposed Definition of Trade-Through. The proposed Trade-Through Disclosure Rule would define a trade-through as occurring when a customer

execution to notify the broker-dealer of when a trade-through has occurred and the best quote at that time.

[43] 17 CFR 240.10b–10. Exchange Act Rule 10b–10 requires information to be delivered in writing (including electronically) at or before completion of the transaction. It does not require that all information be included in a single document.

[44] Proposed Exchange Act Rule 11Ac1–7(b)(2).

[45] *See supra* note 1.

[46] The Commission, in a separate release, is approving a national market system options linkage plan that generally requires members of participating markets to avoid initiating trade-throughs. *See supra* note 8. The Commission notes, however, that if the proposed Trade-Through Disclosure Rule is adopted as proposed, the Amex/CBOE/ISE plan approved today would have to be amended before broker-dealers effecting transactions on exchanges participating in the plan would be excepted from the disclosure requirements of the proposed Trade-Through Disclosure Rule.

[47] *See e.g.,* letters to Jonathan G. Katz, Secretary, Commission, from Douglas J. Engmann, President and Chief Executive Officer, ABN–AMRO, dated March 24, 2000; and Thomas Petterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers, the Timber Hill Group, dated April 3, 2000 and April 10, 2000.

[48] Proposed Exchange Act Rule 11Ac1–7.

order for listed options is executed at a worse price than the best quote published pursuant to a national market system plan for reporting quotations in listed options at the time of execution.[49] The proposal identifies seven circumstances in which a trade executed at a price inferior to a published price on another market would nevertheless not be considered a trade-through for purposes of the rule.[50] These circumstances are, in large part, the same as those exceptions proposed by the options exchanges in each of their linkage plan proposals.

In particular, because a broker-dealer should not be required to disclose to its customer that its order was executed at a price inferior to a ''stale'' quote, a trade would not be considered a trade-through if it occurs while OPRA is experiencing queuing. In the past, the aggregate message traffic generated by the options exchanges has, at times, surpassed OPRA's systems capacity,[51] which could result in the dissemination of quotes that are no longer accurate or accessible. Similarly, the definition of trade-through would exclude a trade executed at a price inferior to a price published by another exchange that has determined, for example, that as a result of unusual market conditions, it is incapable of accurately collecting and disseminating quotes, and thus would not require disclosure in such circumstances.[52]

In addition, a trade would not be considered a trade-through under the proposed rule when it occurs at a price inferior to a quote published by another market conducting a trading rotation for that options class, or when a customer order is executed as part of a trading rotation in that options class. During a trading rotation, each options series or class may not be open on all markets at the same time and may not be accessible. Moreover, two options exchanges have automated openings where their respective systems determine a single opening price and then automatically cross customer orders.[53] As a result, orders that are on the book prior to the opening do not have a chance to interact with better quotes or orders published by other markets.

The Commission also is proposing that it not be considered to be a trade-through in the event that an exchange member attempts to access a better published quote for a customer order, but the market publishing the better quote fails to respond to the order routed to it within 30 seconds of receiving the order, or the market publishing the better price experiences systems malfunctions that result in inaccessible quotes. In either case, the broker-dealer has attempted to access the superior published quote and has been unsuccessful. The Commission is proposing these exceptions because it does not believe that there is any value in requiring a broker-dealer to repeatedly attempt to access a clearly inaccessible quote.

Finally, the Commission is proposing to exclude transactions executed as part of a complex trade from the proposed Trade-Through Disclosure Rule. A complex trade involves two or more transactions that are contingent on each other, such as a spread [54] or a straddle.[55] The Commission is proposing to exclude such trades from the requirements to disclose trade-throughs because it believes that customers using these complex-trading strategies understand that inherent in executing the component parts of such strategies is the possibility that they may not receive the best-published price for each component part of the trade.

The Commission seeks comment on the propriety of the proposed exceptions to the proposed Trade-Through Disclosure Rule, and on whether there are any other circumstances in which a trade executed at a price inferior to a price offered on another market should nevertheless not be considered a trade-through for purposes of the proposed rule.

The Commission also seeks comment on whether a trade-through disclosure requirement should apply to all trade-throughs, or only to trade-throughs of a material price or amount. This question is particularly important in a decimals trading environment, where quotes may be for a smaller size, and trade-throughs for smaller amounts, and with respect to large orders, where the quote size may be small in relation to the order. One possible response would be to allow broker-dealers to include the size of the quote as part of the disclosure, so investors can better assess whether the size of the quote traded-through is meaningful compared to the size of their orders. Another response would be to exempt large block orders from the disclosure requirement because of their size in relation to the quote, their special handling need, and the awareness by customers with block orders of the quality of executions they receive.

d. *Rejection of Absolute Prohibition on Trade-Throughs.* The Commission considered whether to mandate a flat prohibition on trading at an inferior price. The Commission, however, was concerned, in part, that mandating a flat prohibition on trading at an inferior price would preclude investors from choosing to trade at an inferior price for reasons of better speed, size, or liquidity. The proposed rule would, instead, require that inferior executions be disclosed to investors, who would then be better informed and therefore better able to determine whether the quality of executions they receive are satisfactory.

B. Proposed Amendments to the Quote Rule

1. Background

One of the first national market system initiatives implemented by the Commission in the equity markets was the Quote Rule, Exchange Act Rule 11Ac1–1.[56] The Quote Rule requires all national securities exchanges and associations to establish procedures for collecting from their members bids, offers, and quotation sizes with respect to reported securities, and for making such bids, offers, and sizes available to quotation vendors. It also requires that quotation information made available to vendors be ''firm,'' subject to certain exceptions.

The reliability and availability of quotation information are basic components of a national market system [57] and are needed so that broker-dealers are able to make best execution decisions for their customers' orders, and customers are able to make order

[49] Proposed Exchange Act Rule 11Ac1–7(b)(3).

[50] Proposed Exchange Act Rule 11Ac1–7(b)(4).

[51] *See, e.g.,* Securities Exchange Act Release No. 42849 (May 26, 2000), 65 FR 36180 (June 7, 2000) (approving a temporary capacity allocation plan). There are a number of events, such as the conversion to decimal pricing, that may result in an increase of peak message traffic, which could result in delayed quotes.

[52] 17 CFR 240.11Ac1–1(b)(3). Currently, each options exchange has rules that allow the exchange to suspend its firm quote requirements, for example, if a systems malfunction or other circumstance impairs the exchange's ability to disseminate or update market quotes in a timely and accurate manner. *See* Amex Rule 958A; CBOE Rule 8.51(a); PCX Rule 6.86(d); Phlx Rule 1015(a)(ix); and ISE Rule 804(d). The options exchanges may have to amend these rules to conform to the Quote Rule's exception for unusual market conditions. *See supra* note 70 and accompanying text.

[53] *See* CBOE Rule 6.2A and PCX Rule 6.64.

[54] A spread is an investment strategy that generally involves the simultaneous purchase or sale of options on the same underlying stock with different strike prices or expiration dates or both.

[55] A straddle is an investment strategy that generally involves the simultaneous purchase and sale of an equal number of calls and puts on the same underlying security with identical strike prices and expiration dates.

[56] *See supra* note 11.

[57] *See* Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (1976) (proposing Exchange Act Rule 11Ac1–1).

entry decisions. Quotation information has significant value to the marketplace as a whole because a quotation reflects the considered judgment of a market professional as to the various factors affecting the market, including current levels of buying and selling interest.[58] Both retail and institutional investors rely on quotation information to understand the market forces at work at any given time and to assist in the formulation of investment strategies.

By its terms, the Quote Rule currently does not apply to options. At the time the Quote Rule was adopted in 1978, standardized options had been listed and traded on the options exchanges for only a few years, and the Commission had imposed a moratorium that restricted the expansion of options trading.[59] However, while the Commission intentionally excluded options from the requirements of the Quote Rule at that time, the Commission always thought that firm quotes ultimately should be required in the options markets. In 1980, when the Commission lifted the moratorium on options listings, it also set forth its vision on the future of options multiple trading, including the feasibility of firm quotes.[60] Successful implementation of a linkage among the markets was thought to depend upon the quality and reliability of quotation information disseminated by each market center. At that time, however, the Commission believed that the imposition of a firm quote requirement was unworkable.[61]

In conjunction with the Commission's adoption in 1989 of Rule 19c–5 [62] on multiple trading of options, the Commission published a Staff concept release that discussed options market structure issues associated with multiple trading, and outlined suggestions for possible market structure enhancements. At that time, the release emphasized that the availability and reliability of comprehensive quotation information for options are important elements in considering the concerns traditionally associated with multiple trading.[63]

The release discussed whether the then-existing quote and trade reporting mechanism for options needed to be adapted for multiple trading by requiring that equity options quotes be firm. Market participants had, in the past, argued against a firm quote requirement in the options markets for a number of reasons.[64] These concerns, however, were recognized as largely moot due to the development of autoquote [65] and automatic execution [66] systems, which indicated that firm quotes were, at the very least, possible.[67]

Today, each options market requires its market makers to have firm quotes for some types of orders.[68] Therefore, the Commission believes that imposing a market-wide firm quote obligation on the options market participants should not be unduly burdensome. While the exchanges' firm quote rules and automatic execution systems provide their public customers with firm quote guarantees, these rules currently do not extend to other market participants. As described below, the Commission's proposal would modify the Quote Rule to require that options quotes be firm to both customers and other market participants.

The Commission is proposing a firm quote rule for options in conjunction with the proposed Trade-Through Disclosure Rule to ensure that the published quotes of options exchanges are accessible to orders from both customers and broker-dealers.[69] Currently, the options exchanges' quotes need not be firm for broker-dealer orders. Therefore, market markers on an exchange may not be able to trade with quotes on competing exchanges even when these market makers are representing customer orders. Yet market makers are expected to match the prices on competing exchanges or to trade with those quotes, before trading at an inferior price. The proposed Trade-Through Disclosure Rule is intended to reinforce efforts to honor the best-displayed price, and should encourage the development of improved methods to access better prices in other markets. A firm quote requirement for options is needed to ensure that these quotes will, in fact, be honored when orders are routed from other markets.

2. Proposed Amendments to the Quote Rule

The Quote Rule currently requires that the best bid, best offer, and size for each market quoting any security covered by the Quote Rule be collected and publicly disseminated.[70] These quotations must be firm, and a market maker, specialist, or other responsible broker or dealer generally is obligated to execute an order at a price at least as favorable as its published bid or offer up to the size of its published bid or offer.[71]

[58] *See* Securities Exchange Act Release No. 11288 (March 11, 1975), 40 FR 15015 (1975) (letter sent from the Commission to the registered national securities exchanges requesting that the exchanges eliminate rules that restrict their access to, or use of, quotation information that is provided by an exchange to a quotation vendor).

[59] *See supra* notes 24 and 25 and accompanying text.

[60] *See* Moratorium Termination Release, supra note 34.

[61] In 1980, quotes were updated manually; thus, the options exchanges argued that it would be virtually impossible for a market maker to update its quotes in a timely fashion each time the underlying stock price moved.

[62] *See* Securities Exchange Act Release No. 26870, supra note 28.

[63] *See* Securities Exchange Act Release No. 26871, *supra* note 28.

[64] One major concern of market participants was that due to the derivative nature of options, and the need to adjust quotes in numerous series in response to a single price change in the underlying security, it would be impossible, or at least impractical, to require options market makers to honor their disseminated quotes. Further, it was thought to be difficult for an exchange to identify which member of a trading crowd was responsible for a quote and to provide a mechanism for quotes to be modified or withdrawn.

[65] The autoquote systems enable options market professionals to update their quotes in numerous options series simultaneously.

[66] The automatic execution systems provide, in effect, firm quotes for public customer orders.

[67] *See* Securities Exchange Act Release No. 26871, *supra* note 28.

[68] *See generally* Amex Rule 958A (requiring a specialist to sell/buy at least 10 contracts at the offer/bid displayed when the order reaches the trading post); CBOE Rule 8.51 (requiring a trading crowd to sell/buy at least the RAES contract limit applicable to a particular options class at the offer/bid displayed when a customer order reaches the trading station); PCX Rule 6.86 (requiring a trading crowd to provide a depth of 20 contracts for all non-broker-dealer orders at the bid/offer disseminated at the time an order is announced at the trading post); Phlx Rule 1015 (requiring that public customer orders be filled at the best market for a minimum of 10 contracts); and ISE Rule 804 (requiring a market maker to enter the number of contracts it is willing to buy or sell at in its quote and prohibiting a market maker from entering a bid or offer for less than 10 contracts).

[69] Section 11A(c)(1) of the Exchange Act grants the Commission the authority to prescribe, among other matters, rules and regulations to assure accurate and reliable quotations ''with respect to any security other than an exempted security.'' 15 U.S.C. 78k–1(c)(1). The Commission believes that extending the requirements of the Quote Rule to listed options will further these interests.

[70] Exchange Act Rule 11Ac1–1(b) requires exchanges to establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers and sizes, and making such bids, offers, and sizes available to quotation vendors. 17 CFR 240.11Ac1–1(b). An exchange is relieved of its obligations to collect and disseminate quotation data if it determines pursuant to rules approved by the Commission that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting and disseminating quotation data and it notifies specified persons of that determination. 17 CFR 240.11Ac1–1(b)(3)(i). The Commission expects that each exchange would submit to the Commission for its approval proposed rule changes necessary to comply with the requirements of paragraph (b)(3) of Exchange Act Rule 11Ac1–1.

[71] This is referred to as the broker-dealer's ''firm quote'' obligation. The firm quote obligation under Exchange Act Rule 11Ac1–1(c) requires a responsible broker-dealer to: (i) communicate to its exchange, pursuant to procedures established by that exchange, its best bids, offers and quotation sizes for any subject security; and (ii) execute any

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In addition, the Quote Rule requires responsible broker-dealers to supply quotations to their exchange or association for dissemination to quotation vendors.[72] The Commission is proposing to expand the application of the Quote Rule to options traded on national securities exchanges.

a. *Proposed Amendments to Defined Terms.* Exchanges, associations, and responsible broker-dealers have obligations under the Quote Rule only with respect to subject securities. The Commission is proposing to expand application of the Quote Rule to include transactions in listed options by amending the definition of the term ''reported security.'' As proposed, the term ''reported security'' would be modified to include any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan[73] or an effective national market system plan for reporting transactions in listed options.[74] By proposing to broaden the definition of the term ''reported security'' to include listed options,[75] the proposal would also include listed options within the definitions of ''covered security,''[76] ''exchange-traded security,''[77] and ''subject security.''[78] Thus, options exchanges and market makers would be obligated to publish their quotes and, as importantly, be firm for those quotes.

In addition, the Commission is proposing to amend the definition of ''consolidated system'' under Rule 11Ac1–1(a)(5)[79] to include a transaction reporting system operating pursuant to an effective national market system plan. The effect of this proposed amendment is to make clear that listed options would only be ''subject securities'' with respect to an exchange or association if, during the most recent calendar quarter, the aggregate trading volume on such exchange or association is more than 1% of the aggregate trading volume as reported by OPRA.

b. Quotation Size. Under the Quote Rule, each responsible broker or dealer is required to communicate to its exchange quotation sizes for any subject security,[80] and exchanges are required to collect and make available to quotation vendors quotation sizes and aggregate quotation sizes for subject securities.[81] Broker-dealers responsible for the quote must be firm up to its published size.[82]

Because the options markets do not disseminate to quotation vendors the size associated with their bids and offers,[83] the Commission is proposing two alternative amendments to the Quote Rule so that, at this time, broker-dealers and options exchanges would not be required to publish on a quote-by-quote basis the size associated with each quotation in listed options. Exchanges would, however, be required to establish by rule and periodically publish the size for which its best bid or offer in each options series[84] that is listed on the exchange is firm. The Commission is proposing these exceptions to the Quote Rule because of the existing limitations of the options exchanges' systems and of the OPRA system. Instead, market participants would be furnished by the exchanges with information relating to the size associated with the quotes in a particular series, as they are today. While the proposal, as drafted, permits each exchange to determine the size associated with quotes on its market, the Commission seeks comment as to whether the Commission should establish a minimum number of contracts for which quotes must be firm.

Commenters should also address whether the Commission should mandate that size be disseminated with each quotation. Comment on this issue was solicited at the time the Commission published for comment linkage plans submitted by the options markets. In response, the majority of commenters that addressed this issue favored the development of a system to provide the dissemination of quotes with size.[85] Some of those commenters, however, stated that quotations with size should not be required as part of a linkage plan.[86] Two of these commenters noted the desirability of disseminating quotes with size, but questioned whether existing options quotation systems would be able to handle quotes with size in the near future.[87]

Under both alternatives being proposed, if the rules of the exchange do not require its members to communicate to it quotation sizes for listed options, a responsible broker or dealer that is a member of that exchange would be relieved of its obligations under the Quote Rule to communicate to such exchange its quotation sizes for any listed option that is a subject security. Instead, each responsible broker or dealer would satisfy its firm quote obligation by executing any order to buy or sell a listed option that is a subject

order to buy or sell a subject security presented to it by another broker-dealer at its published bid or offer in any amount up to its published quotation size, unless an exception applies. 17 CFR 240.11Ac1–1(c).

[72] *Id.*

[73] All national securities exchanges and national securities associations must file with the Commission a transaction reporting plan regarding transactions in listed equity and Nasdaq securities. *See* Exchange Act Rule 11Aa3–1(b)(1), 17 CFR 240.11Aa3–1(b)(1).

[74] Currently, the OPRA Plan is the only effective national market system plan that collects, processes, and makes available transaction reports for listed options.

[75] The Commission is proposing to define the term ''listed option'' in the Quote Rule by reference to Exchange Act Rule 15c3–1(c)(2)(x)(B)(*1*), which defines ''listed option'' as any option traded on a registered national securities exchange or automated facility of a registered national securities association. 17 CFR 240.15c3–1(c)(2)(x)(B)(1). *See* Proposed Exchange Act Rule 11Ac1–1(a)(27).

[76] The term ''covered security'' is defined as any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Exchange Act, 15 U.S.C. 78c(a)(51)(A)(ii). *See* Exchange Act Rule 11Ac1–1(a)(6), 17 CFR 240.11Ac1–1(a)(6).

[77] The term ''exchange-traded security'' is defined as any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange. *See* Exchange Act Rule 11Ac1–1(a)(10), 17 CFR 240.11Ac1–1(a)(10).

[78] Under the Quote Rule, the term ''subject security'' is defined to include any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system. *See* Exchange Act Rule 11Ac1–1(a)(25), 17 CFR 240.11Ac1–1(a)(25).

[79] 17 CFR 240.11Ac1–1(a)(5).

[80] *See supra* note 71.

[81] *See supra* note 70.

[82] Each responsible broker or dealer, subject to certain exceptions, must execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or offer in any amount up to its published quotation size. *See* Exchange Act Rule 11Ac1–1(c)(2), 17 CFR 240.11Ac1–1(c)(2). This obligation is subject to certain exceptions. *See* Exchange Act Rule 11Ac1–1(c)(3), 17 CFR 240.11Ac1–1(c)(3). In addition to the existing exceptions, the Commission is proposing to except responsible brokers or dealers from the firm quote requirements of proposed paragraph (d)(3)(i) if the order for the purchase or sale of a listed options is presented during a trading rotation in that listed option. Alternatives A and B, Proposed Exchange Act Rule 11Ac1–1(d)(3)(ii)(B).

[83] Currently, OPRA does not have the systems capability to collect and disseminate quotes with size. OPRA is, however, scheduled to have this capability by January 2001. Some options markets may, however, choose to continue not to disseminate quote size.

[84] The Commission is proposing to define the term ''option series'' in the Quote Rule. Under proposed Exchange Act Rule 11Ac1–1(a)(28), the term ''option series'' means contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

[85] Donahue Letter; Ianni Letter; Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; CBOE Letter; and Charles Schwab Letter.

[86] Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; and CBOE Letter.

[87] Susquehanna Letter and SIA Letter.

security, in an amount up to the size established by the exchange's rules.[88]

The two alternatives differ, however, in the flexibility that exchanges would have to establish the size for which its bid and offer is firm. Under proposed Alternative A, the size for which an exchange's best bid or offer is firm, as established by exchange rule, would have to be the same for orders received from customers as for orders received from broker-dealers.[89] Under proposed Alternative B, however, an exchange could establish different firm quote sizes for customer orders than for broker-dealer orders.[90]

The Commission is soliciting comment on the circumstances under which it is appropriate for exchanges to be permitted to establish rules that allow options market makers to be firm for broker-dealer orders in a size different than that for which they are firm for customer orders. In particular, should the Commission establish a minimum size for which options market makers' quotes must be firm for broker-dealer orders? The Commission would also like commenters views on whether the size for which options market makers' quotes are firm for customer orders should be the same, regardless of whether the orders are executed through an exchange's automatic execution system or otherwise.

c. Proposed Thirty Second Response Requirement. As discussed above, under the proposed Trade-Through Disclosure Rule, if a responsible broker or dealer fails to respond to an incoming order within the 30 seconds required pursuant to the Quote Rule, the routing broker or dealer may execute its customer's order at its own inferior quote and would not be required to disclose the unresponsive quote to its customer as a trade-through.[91] The Commission's 30-second proposal is based on the trade-through provisions of the Amex/CBOE/ISE plan, under which broker-dealers are excepted from trade-through liability when a receiving market fails to respond to an incoming linkage order within 30 seconds.[92]

As a complement to this provision, the Commission is proposing to require each responsible broker or dealer to respond to an order to buy or sell a listed option within 30 seconds by either: (i) Executing the entire order; or (ii) executing at least that portion of the order equal to the applicable firm quote size and revising its bid or offer.[93] A responsible broker's or dealer's applicable firm quote size would be its published quote size or, if a responsible broker or dealer has been relieved of the obligation to publish quote size, the minimum firm quote size established by its exchange's rules. If, as provided in Alternative B, an exchange is permitted to set different firm quote sizes for orders received from customers than for orders received from broker-dealers, a responsible broker's or dealer's applicable firm quote size could be different for customer orders than for broker-dealer orders.[94]

For example, if Market Maker A is not required to publish a quotation size but Market Maker A's exchange requires Market Maker A to be firm for customer orders up to 20 contracts, Market Maker A must respond within 30 seconds to a customer order for 30 contracts by filling the order for an amount equal to at least 20 contracts. If Market Maker A executes the entire order for 30 contracts, Market Maker A would not be obligated to move its quote. If Market Maker A executes only the part of the order representing its firm quote guarantee (*i.e.*, 20 contracts), Market Maker A would be required to move its quote to an inferior price.

The Commission preliminarily believes that it is appropriate to establish a time limit in which a broker-dealer that routes an order to another broker-dealer's quote must wait before being able to execute its customers' orders at its own inferior quote without being required to disclose the subsequent execution as a trade-through. If a market that is displaying a quote fails to respond to an incoming order that seeks execution at the displayed quote, the Commission believes it would be unreasonable to require a broker that executes its customer order at its own inferior quote to incur trade-through disclosure responsibility. Further, the Commission does not want to unduly delay the execution of orders by requiring a broker-dealer to wait an unreasonable amount of time for a response from an away market before it can execute the order without incurring disclosure responsibility. Thus, any time period that is established must balance the need for price priority against the need for efficient execution of orders.

Commenters should address the propriety of the proposed modification to the Quote Rule that would require a response within 30 seconds from a market that has published the best quote. Specifically, is it appropriate to have a specified time frame? If so, is 30 seconds appropriate, or is there another time frame, such as 15 seconds, or 45 seconds, that would be more appropriate?

IV. General Request for Comment

The Commission seeks comment on the proposals described in this release. In addition to the specific requests for comment throughout the release, the Commission asks commenters to address whether the proposed amendments to the Quote Rule and proposed Trade-Through Disclosure Rule would further the national market system goals set out in Section 11A of the Exchange Act,[95] and, in particular, the goals of assuring ''the practicability of brokers executing investors' orders in the best market.'' Commenters are also asked to address whether disclosure to customers about the execution of their orders at a price that trades through another market is an adequate substitute for requiring that all customers' orders receive trade-through protection by mandating a linkage among the options markets.

In addition, the Commission seeks comment on whether it should order the options exchanges to become participants in the Amex/CBOE/ISE plan or any other linkage plan.

Commenters may also wish to discuss whether there are any legal or policy reasons why the Commission should consider a different approach. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[96] the Commission is also requesting information regarding the potential impact of the proposed amendments and rules on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

V. Paperwork Reduction Act

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[97] and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 C.F.R. 1320.11. The Commission is proposing amendments

[88] Alternatives A and B, Proposed Exchange Act Rule 11Ac1–1(d)(2).

[89] Alternative A, Proposed Exchange Act Rule 11Ac1–1(d)(1).

[90] Alternative B, Proposed Exchange Act Rule 11Ac1–1(d)(1)(ii).

[91] Proposed Exchange Act Rule 11Ac1–7(b)(4)(vii).

[92] *See* Amex/CBOE/ISE plan Section 8(c)(iii)(B).

[93] Alternatives A and B, Proposed Exchange Act Rule 11Ac1–1(d)(3).

[94] Alternative B, Proposed Exchange Act Rule 11Ac1–1(d)(1)(ii).

[95] 15 U.S.C. 78k–1.

[96] Pub. L. No. 104–121, 110 Stat. 857.

[97] 44 U.S.C. 3501 *et seq.*

to the collection of information titled ''Rule 11Ac1–1, Dissemination of Quotations'' (OMB Control Number 3235–0461). The Commission is also proposing to create a new information collection entitled ''Rule 11Ac1–7, Trade-Through Disclosure 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.

A. Summary of Collection of Information

The proposed Trade-Through Disclosure Rule, proposed Exchange Act Rule 11Ac1–7, would require a broker-dealer to disclose to a customer when its order is executed at a price inferior to a better published price on another market, as well as the better price. However, a broker-dealer would not be required to provide such disclosure to its customer if it effects the customer's transaction on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price.

The Quote Rule, Rule 11Ac1–1, was adopted pursuant to Exchange Act Sections 2, 3, 5, 6, 9, 10, 11A, 15, 15A, 17, and 23. The proposed amendment to Exchange Act Rule 11Ac1–1 would require markets to establish procedures for collecting their members' bids, offers, and quotation sizes for options traded on a national securities exchange or an automated facility of a registered national securities association. The proposed amendment also would require that the quotation information made available to vendors be firm, subject to certain exceptions.

B. Proposed Use of Information

The proposed Trade-Through Disclosure Rule information would be used by customers to evaluate the quality of the trade executions they receive. It would also be used by broker-dealers to evaluate and make determinations related to their best execution obligations. The Commission and options markets would use the information collected pursuant to the proposed rule for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

Customers of broker-dealers, as well as other market participants, would use the firm quote information to determine the best prices available for, and level of trading interest in, listed options trading. The Commission and options markets would use the firm quote information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations of broker-dealers.

C. Respondents

While the proposed Trade-Through Disclosure Rule generally would apply to all of the approximately 7,500 broker-dealers that were registered with the Commission as of December 31, 1999, of which approximately 3,800 broker-dealers conduct business with the general public, most provisions would apply only to the less than 330 broker-dealers that clear customer accounts pursuant to Exchange Act Rule 15c3–3.[98] The proposed amendments to the Quote Rule would apply to the approximately 1,044 broker-dealers registered with the Commission that function as options market makers or specialists.[99]

D. Total Annual Reporting and Recordkeeping Burden

1. Proposed Trade-Through Disclosure Rule

a. *Capital Costs.* If a broker-dealer effects trades on a market that participates in a linkage plan with provisions reasonably designed to limit trade-throughs, including trade-throughs of prices on unlinked markets, the broker-dealer has no paperwork capital costs under the proposed Trade-Through Disclosure Rule.

However, the proposed Trade-Through Disclosure Rule would require broker-dealers to make certain disclosures to customers if the broker-dealer effects trades on markets that do not participate in a linkage plan. Broker-dealers would incur paperwork costs to modify systems to permit them to receive information about when a trade-through has occurred and the price that was traded through. Further, broker-dealer systems would have to be modified to ensure that information about trade-throughs is matched with correct customer accounts, thus permitting broker-dealers to disclose to customers when trade-throughs occur.

Because broker-dealer processes, systems capability, and customer bases vary so widely, it is difficult to provide an estimated cost with which all parties will agree. Nevertheless, the Commission estimates that it would take a computer programmer at an hourly rate of approximately $50[100] between 500 and 1,000 hours[101] to modify the average broker-dealer's systems to receive trade-through information, at a cost of between $25,000 and $50,000 for each broker-dealer. There are approximately 7,500 broker-dealers that were registered with the Commission as of December 31, 1999. Of those, approximately 3,800 broker-dealers conduct business with the general public. Most introducing firms, however, rely on their clearing firms to generate confirmation statements for customers.[102] As a result, fewer than 330 broker-dealers would actually have to modify their systems, should any systems modifications be necessary. However, if all 330 registered broker-dealers that clear customer accounts pursuant to Exchange Act Rule 15c3–3[103] were required to make these systems modifications, the one-time paperwork cost is estimated to be between $8,250,000 and $16,500,000.

The Commission notes, however, that it is quite possible that the participants in the approved linkage plan would amend the plan to adequately limit trade-throughs, and that the Phlx and PCX would choose to join the linkage plan or submit their own linkage plan for Commission approval. If all options markets participate in a linkage plan that includes provisions reasonably designed to limit trade-throughs, no systems modifications would be necessary and broker-dealers would incur no paperwork costs.

b. *Burden Hours.* If a broker-dealer effects trades on a market that participates in a linkage with provisions reasonably designed to limit trade-throughs, including trade-throughs of prices on non-linked markets, the broker-dealer would have no paperwork burden under the proposed Trade-Through Disclosure Rule.

However, the proposed Trade-Through Disclosure Rule would require broker-dealers to make certain disclosures to customers if the broker-dealer effects trades on markets that do not participate in a linkage that has provisions reasonably designed to limit

[98] 17 CFR 240.15c3–3.

[99] The number of specialist and market makers was determined by counting the number of registered broker-dealers that report non-zero market making profits or losses in their FOCUS reports.

[100] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Management and Professional Earnings in the Securities Industry 1999, published by the SIA (''SIA Report'').

[101] The Commission estimates that it would take each broker-dealer that provides confirmation statements to customers between 500 and 1,000 hours to complete the required systems modifications.

[102] The Commission estimates that none of the 41 small broker-dealers who do not have a relationship with a clearing firm regularly represent customer options orders.

[103] 17 CFR 240.15c3–3.

trade-throughs. Specifically, if a customer order was traded-through, a broker-dealer would be required to disclose the trade-through to the customer. Currently, approximately 21,000,000 trades in multiply-listed options classes occur each year.

If the Amex, CBOE, and ISE amend their linkage plan to comply with the proposed Trade-Through Disclosure Rule's alternative to disclosure of trade-throughs, and the Phlx and PCX choose not to join the Amex/CBOE/ISE plan and also choose not to submit for Commission approval another linkage plan, the Commission estimates that approximately one-third of all trades annually, or 7,000,000 trades, in multiply-listed options classes would be subject to the disclosure requirement of the proposed Trade-Through Disclosure Rule. Of those 7,000,000 trades, the Commission estimates that as many as 5%, or 350,000 trades, would involve intermarket trade-throughs. For each trade-through, it is assumed that broker-dealers' systems would have already been reprogrammed to receive information about trade-throughs and to appropriately disclose such trade-throughs to their customers on the customer confirmation statements. Therefore, the Commission estimates that the paperwork burden of the disclosure for broker-dealers would be nominal because it would merely require a small amount of additional information on customer confirmation statements.

The Commission notes, however, that it is quite possible that the participants in the approved linkage plan would amend the plan to adequately limit trade-throughs, and that the Phlx and PCX will choose to join the linkage plan or submit their own linkage plan for Commission approval. If all options markets participate in a linkage plan that is reasonably designed to limit trade-throughs, there may ultimately be no paperwork burden associated with the proposed Trade-Through Disclosure Rule.

2. Proposed Amendments to the Quote Rule

a. *Capital Costs.* Applying the Quote Rule to options trading would require options self-regulatory organizations (''SROs'') to collect bids and offers from their members. However, SROs generally are obligated already, pursuant to their participation in the OPRA plan, to collect bids and offers, and send them to OPRA for dissemination. To comply with the amended Quote Rule, SROs would be required to periodically publish the size (or sizes, if different categories are used) for which a quote must be firm. In addition, under the amended Quote Rule, SROs would be required to file proposed rule changes to identify unusual market conditions. The options markets would incur one-time costs to file and obtain approval of these rule changes, as well as other related rules. The Commission estimates that the five options SROs would need to file two rule changes initially to comply with the proposed amendments to the Quote Rule, for a total of 10 rule changes. The Commission estimates that a routine rule change requires approximately 25 hours of legal review at an hourly cost of $98.25,[104] plus one hour of secretarial time at an hourly cost of $30.40,[105] for a total cost of $2,487 per proposed rule change submitted for Commission approval. Therefore, the Commission estimates that the aggregate cost of two proposed rule changes filed by each of the five options SROs would total approximately $24,867.

Broker-dealers that are market-makers or specialists have existing obligations under SRO rules to communicate their bids and offers to their SROs, and already do so. Therefore, broker-dealers would incur no additional paperwork costs from the amended Quote Rule beyond those related to systems changes, discussed below, to comply with the amended Quote Rule. Specifically, market makers and specialists may, to comply with the amended Quote Rule, change their quote-setting practices by changing the factors used to establish quotes through automated quoting systems (*i.e.,* resetting the parameters). The Commission notes that almost all option quotes are currently set by automated quoting systems. The Commission estimates broker-dealer systems changes made to comply with the amended Quote Rule would require changes estimated to take approximately three to five minutes per options class. As there are approximately 3,000 options classes eligible for multiple listing, the Commission estimates that the total burden for one market could range from 180 to 250 hours. For all five markets, the total burden could range from 900 to 1,255 hours. The hourly rate of an exchange clerk that would make the required system changes is $32.50;[106] therefore, the total cost for these changes could range from $29,250 to $40,787.

b. Burden Hours. SROs may amend their rules to comply with the Quote Rule from time to time. The Commission estimates that the five options SROs would amend their respective rules at most once per year, for a total of five proposed rule changes. The Commission estimates that a routine proposed rule change takes 25 hours of legal review at an hourly cost of $98.25[107] plus one hour of secretarial time at an hourly cost of $30.40,[108] for a total cost of $2,487 per proposed rule change. Therefore, the total annual cost of five SRO proposed rule changes would impose a burden of $12,433.

Broker-dealers would not incur any additional paperwork cost from the Quote Rule beyond the systems changes discussed above. Market-makers and specialists are already required to make and provide quotes in options to their SROs. As a result, amending the Quote Rule to include options would require only that market makers and specialists be firm for their quotes, which would impose no additional paperwork burden on them.

E. General Information about the Collection of Information

Any collection of information pursuant to the proposed rules would be mandatory. Market centers that are national securities exchanges or national securities associations would be required to retain the collections of information required under the proposed Trade-Through Disclosure Rule and the amended Quote Rule for a period of not less than five years, the first two years in an easily accessible place. Broker-dealers would be required to retain the collections of information for a period of not less than three years, the first two years in an easily accessible place.

The information collected pursuant to the Quote Rule would be held by the broker-dealers and markets. The Commission and other securities regulatory authorities would obtain possession of the information only upon request. The information collected pursuant to the proposed Trade-Through Disclosure Rule would be sent

[104] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 100.

[105] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Office Salaries in the Securities Industry 1999.

[106] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 100.

[107] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 100.

[108] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Office Salaries in the Securities Industry 1999.

to customers and also retained by the broker-dealers. The Commission, SROs, and other securities regulatory authorities would obtain possession of the information only upon request. Any collection of information that is received by the Commission, SROs and other securities regulatory authorities, would not be disclosed under the terms of the proposal, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and the clarity of the information to be collected; and (4) minimize the burden of collection on those who are to respond, including through the use of electronic or automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, with reference to File No. S7–17–00.

The Commission has submitted the proposed collection of information to OMB for approval. Members of the public should direct any general comments to both the Commission and OMB within 30 days. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this release. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–17–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549–0609.

VI. Costs and Benefits of Proposed Rules

As discussed above, the Commission is proposing a new rule—the Trade-Through Disclosure Rule—and amendments to the Quote Rule to provide customers with more information with which to evaluate the quality of executions achieved by their broker-dealers and to require that quotes for listed options be firm. Together, these rules would provide incentives for the options exchanges and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, but would not mandate the form of mechanism employed.

The Commission has identified below certain costs and benefits to the proposed Trade-Through Disclosure Rule and the proposed amendments to the Quote Rule. The Commission requests comment on all aspects of this cost-benefit analysis, including identification of additional costs or benefits of the proposed changes. The Commission encourages commenters to identify or supply any relevant data concerning the costs or benefits of the proposed amendments.

A. Costs and Benefits of the Proposed Trade-Through Disclosure Rule

The proposed Trade-Through Disclosure Rule would require a broker-dealer to disclose to its customer (on the confirmation statement) when a trade-through has occurred. A broker-dealer would not be required to make this disclosure if the trade was effected on a market that is a participant in a Commission-approved intermarket linkage plan that contains provisions reasonably designed to limit trade-throughs.

1. Benefits

A trade-through is costly to an investor primarily because the investor receives an execution at a price that is not the best price available. A trade-through also has potential costs for the broker-dealer or customer responsible for the best quote because that quote or customer order does not receive the execution it would have if the order that was executed at a price inferior to the best quote were instead routed to it. Consequently, trade-throughs may increase the incidence of unexecuted customer limit orders.

The staff estimates that approximately 5% of all trades (or 7,964 trades for a total of 156,403 contracts) in the 50 most active multiply-listed option classes took place at prices inferior to the best price quoted on a competing exchange during the week of June 26, 2000.[109] To better describe the execution quality of small customer orders, the staff also estimates that 1% of all automatic execution trades (or 464 automatic execution trades for a total of 2,336 contracts) in the 50 most active multiply-listed option classes took place at prices inferior to the best price quoted on a competing exchange during the week of June 26, 2000.[110]

Investors would benefit from the proposed Trade-Through Disclosure Rule because they would be informed of whether their orders were executed at a price inferior to the best available price. With that information, investors would have the opportunity to reduce the likelihood that their orders would be executed at a price inferior to a price displayed by another market, by selecting broker-dealers that effect their transactions on markets that are participants in a linkage plan with provisions reasonably designed to limit trade-throughs. If all orders executed through automatic execution systems were executed at the best-published quote (*i.e.*, trade-throughs of automatic execution trades were eliminated), the estimated annual savings to investors trading through exchanges' automatic execution systems would be approximately $11,000,000 each year.[111] If all trades were considered, the elimination of trade-throughs would result in substantially higher annual savings to investors.[112]

The Commission requests comment on whether there is a better measure for

[109] The staff relied on data from OPRA for this analysis. All trades marked as spreads, straddles, late or stopped were excluded from the sample. To determine the quote in effect at the time of the trade, the highest offer and lowest bid on each competing exchange for a period of one minute prior and two minutes after the reported execution were identified. Quotes from an exchange that indicated it was experiencing fast market conditions during the time when the trade was executed were not included. Quotes that indicated that an option class was in rotation were also excluded. The staff recognizes that not all these trades in the sample could be fully executed at the best available quoted price because of size or other factors.

[110] Trades executed through automatic execution systems account for about 36% of all trades and about 12% of all contracts traded in the 50 most active multiply-traded options classes during the week of June 26, 2000. The procedure used for the analysis of automatic execution trades is similar to that described for all trades, except only automatic execution trades are included.

[111] The annual benefit estimate is obtained by applying the staff's trade-through findings for automatic execution trades in the 50 most active multiply-traded options classes to all multiply-listed classes and extending the results from one week to a full year.

[112] The Commission estimates the benefits of executing a maximum of 20 contracts at the best-quoted price for those trades identified as trade-throughs could total several hundred million dollars per year.

determining the benefits of the proposed rule than the evaluation of the trades currently executed at a price inferior to the best published quote. Commenters are also invited to express their views on the estimate of the number of trades executed at inferior prices. Would options exchanges' audit trail data, rather than OPRA data, provide a better estimate of the number and cost of trade-through executions? Is it possible to estimate the price and number of contracts that an order would have received had it been routed to an exchange showing a superior price? Is the week of June 26, 2000 representative of general trading patterns? Finally, the Commission would like commenters' views on investors' likely response to order confirmation statements disclosing that their orders were executed at prices inferior to the best prices available in the market, and the impact of such response.

2. Costs

The proposed rule may require broker-dealers and markets to incur capital costs, such as one-time costs to modify existing systems. For example, the proposal could impose one-time costs on markets and broker-dealers that must modify systems to determine when trade-throughs have occurred and to issue notifications to customers of trade-throughs. Further, to identify when an order trades through a posted quote, information systems would need to be developed that could identify the displayed quotes at the time of execution. Because the Commission would allow broker-dealers to rely on notifications from the markets when trade-throughs occur and the quote at that time, the costs of such information systems may be borne by the options markets. The Commission seeks comment on the costs of implementing such systems. The Commission requests commenters' views on whether the current OPRA feed is adequate to identify quotes from options markets. Would information in addition to the quote need to be made available to broker-dealers by the options markets? If so, the Commission requests comment on the anticipated costs of providing such information.

In addition, implementing the proposed rule could require broker-dealers to change the content of customer confirmation statements, issued in either electronic or paper form. The Commission requests estimates of the costs of changing customer confirmation statements. An alternative to changing confirmation statements would be for broker-dealers to route orders to exchanges participating in an approved linkage plan. Although the proposed rule does not require the implementation of such a plan, it does envision that an approved plan could be implemented.

Thus, one possible cost to the options markets of the Trade-Through Disclosure Rule could be a one-time cost to establish a linkage. In addition to the capital costs of establishing the linkage, costs could include regulatory costs, such as obtaining Commission approval of a linkage and of SRO rule changes necessary to implement a linkage. Further, there may be economic implications if a market chooses to participate in an approved linkage plan, because members may then be more likely to route orders to other exchanges that are quoting a better price.

The Commission estimates that capital costs for a linkage plan range from $1,000,000 to $1,500,000 initially, and yearly costs could range from $300,000 to $1,000,000. The Commission requests comment on the costs of developing a linkage between the markets, as well as the costs for individual markets to integrate their systems into such a plan.

B. Costs and Benefits of Proposed Amendments to the Quote Rule

The Commission proposes to amend the Quote Rule so that it applies to trading in listed options. The proposal makes certain accommodations for the fact that options markets do not currently disseminate to quotation vendors the size of their quotes. The Commission also proposes an alternative that would allow broker-dealers to be firm in different sizes for customer and broker-dealer orders. Finally, the proposal would require a broker-dealer to respond to an incoming order within 30 seconds by either: (1) Executing the order in full; or (2) partially executing the order up to the firm quote size and updating its quote.

1. Benefits

Amending the Quote Rule would eliminate discrepancies between the treatment of quotes in the options markets and the equity markets. Although options trading is not currently covered by the Commission's Quote Rule, each exchange's rules require their members' quotes to be firm up to a certain minimum size and establish the process for handling orders in excess of the exchange's firm quote size. Exchange rules also establish whether members' quotes must be firm for all orders or only some orders, such as only for public customer orders.

The Commission believes that applying the Quote Rule to options trading would provide a number of benefits. Firm quotes reduce uncertainty surrounding order routing decisions for broker-dealers that are seeking to fill customer orders at the best available price. If broker-dealers are confident that quotes are firm, investor orders may be routed to the market with the best price and receive an execution at that price. Under current practices, because broker-dealers cannot be confident that a price on another market is firm (due to existing market rules, including trade-or-fade rules), orders do not always receive the best available price. As discussed above, the staff estimates that 5% of all trades in the 50 most active multiply-listed classes took place at prices inferior to the best price quoted on a competing market during a one-week period in June 2000. Broker-dealers often state that such trade-throughs occur when market makers trade at inferior prices because they believe the better price on the other market may not be firm and the quote may ''fade'' if the broker-dealer were to attempt to execute against it. By requiring that posted prices be firm, a great deal of uncertainty about order execution quality could be reduced. This would be true even if the quote were permitted to be firm for different sizes for customer orders than for broker-dealer orders. The Commission is unable to quantify these benefits, and therefore requests comment and estimates.

In addition to providing certainty to broker-dealers making order routing decisions and seeking to fill orders at the best available price, extending the Quote Rule to the options markets may benefit broker-dealers by enhancing their ability to satisfy their regulatory obligations, including best execution. The Commission is unable to quantify these benefits, and therefore requests comment and estimates.

The Commission also believes that the proposed amendments to the Quote Rule would bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. In addition, by requiring the quotations in listed options to be firm, the proposed amendments may also lead to better informed investors, also increasing investor confidence in the market. The Commission requests comment and estimates on any other benefits that would result from applying the Quote Rule to options trading.

Specifically, the Commission requests comment on whether investors (including broker-dealers) have

experienced problems with the execution of their orders because options quotes have not proven to be firm. If so, how widespread are these problems and to what extent do they presently occur? Do these problems encourage broker-dealers to route orders to markets displaying inferior prices? The Commission also requests any data or information on the number of trades executed at inferior prices. Is it possible to estimate the price and quantity that a trade would have received had it been routed to a market showing a superior price?

Another benefit of applying the Quote Rule to options trading is that it would likely increase competition between markets. Because all quotes would be firm, a market participant would know that a posted quote that is superior to the best-published quote would be recognized as firm. Therefore, the posted quote may attract order flow. The ability to attract order flow with a market-improving quote encourages intermarket price competition, which benefits investors. The Commission requests comment on whether firm quotes would affect order routing decisions, including information and data about the impact, if any.

Currently, options markets do not disseminate quotes with size. Options markets determine the size for which their market makers or specialists must be firm. The proposed amendment to the Quote Rule would require each market to establish and periodically publish the sizes for which market makers or specialists must be firm. The Commission requests comment on the costs and benefits of permitting options markets to require different minimum sizes for customer orders than for broker-dealer orders. Would this help avoid market makers widening their spreads to protect themselves from other market professionals? Is it possible to quantify the benefits of having different minimum size requirements for customer and broker-dealer orders? What is the current experience with differential treatment for customer and broker-dealer orders, with particular regard to the markets' minimum size and auto-execution eligibility rules?

The Commission believes the proposed amendments to the Quote Rule will benefit investors whose orders, upon arrival at the options market, are either: (1) delayed, but then executed, or (2) delayed and never executed. The Commission further believes that its proposal would result in (1) fewer unexecuted investor orders due to quote changes after order arrival, or (2) fewer orders executed at prices less favorable to the investor than those prevailing at the time of order arrival. The Commission requests comment on the extent to which order execution is delayed following order arrival at a market, particularly for orders requiring manual execution. What execution prices do delayed orders receive relative to the quotes at order arrival? How many orders are cancelled due to delays incurred prior to exposure to the market?

Finally, the proposed rule would provide a similar standard for firm quotes in both equity and option markets. Does the current regulatory environment create confusion for investors experiencing different firm quote rules in different markets? If such confusion exists, what are the benefits that would be achieved by eliminating the confusion? Do investors have incorrect expectations about the nature of quotes in options markets? If so, do these incorrect expectations have a cost?

2. Costs

Applying the Quote Rule, as proposed, to options trading would require markets to collect bids and offers from their members. This would not impose a significant burden on markets because bids and offers generally are collected already by the markets and sent to (and disseminated through) OPRA. Currently, each of the options markets has rules that establish the maximum size of orders that its automatic execution system will execute. Markets would, however, be required to periodically publish the size (or sizes, if different categories are used) for which their quotes must generally be firm. There are likely to be expenses incurred by the markets related to periodically publishing their firm quote sizes. The Commission requests comment on the cost associated with the proposed requirements.

Amendment of the Quote Rule to include options may require markets to incur one-time costs. For example, options markets will need to enhance surveillance and enforcement mechanisms to ensure that SRO members are complying with the Quote Rule. Further, options market makers and specialists may need to reevaluate and change their quotes in light of the obligation to be firm that would be imposed by the proposed amendment to the Quote Rule. As the Commission is unable to quantify these costs, comment and estimates on the costs described above is requested.

Commenters are invited to express their views about the costs associated with the proposed 30-second response time for orders larger than the firm quote size. What are the costs, including opportunity costs, to investors in waiting 30 seconds for a report on such orders? What are the costs related to enabling the markets to respond to such an order within 30 seconds? Will options markets be able to respond within 30 seconds if both markets involved are not participants in the same linkage plan? The Commission seeks estimates for the costs to market makers of executing orders that they currently decline to fill at their displayed quote. If firm quotes were extended to broker-dealers as well as customers, would there be an increase in the risk to market makers from executing orders against other market professionals? What costs are currently incurred by SROs and other regulators in investigating market maker complaints that broker-dealers are misidentifying their trades as those of public customers? Would these costs be reduced if the amended Quote Rule were adopted? How would a difference in firm quote size between customer orders and broker-dealer orders affect the costs incurred by market makers and specialists?

In order to minimize costs, the Commission is proposing to amend the Quote Rule to conform as closely as possible to existing options market requirements and practices. The Commission seeks comment and supporting data on these and any other costs of the proposed amendments to the Quote Rule.

VII. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a) [113] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Because both the proposed amendments to the Quote Rule and the proposed Trade-Through Disclosure Rule would apply equally to all relevant market participants, the Commission does not believe that the proposals would have any anti-competitive effects. The Commission requests comment on any anti-competitive effects of the proposals.

In addition, Exchange Act Section 3(f) [114] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. The Commission believes that the proposed

[113] 15 U.S.C. 78w(a).

[114] 15 U.S.C. 78c(f).

Trade-Through Disclosure Rule would bolster investor confidence in the options markets by better informing customers about the quality of their executions and the implications of their broker-dealers' execution decisions. This increased investor confidence should promote market efficiency and capital formation. The proposed disclosure requirement likely would help minimize the number of customer orders that do not receive an execution at the best available published quote. Further, the proposed Trade-Through Disclosure Rule would assist broker-dealers in evaluating and complying with their best execution obligations. Finally, it would provide an incentive for securities markets to develop an effective means to access quotes on other markets to avoid trade-throughs. This should increase the efficiency of the markets.

The proposed amendments to the Quote Rule would also bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. Similarly, the increased investor confidence should promote market efficiency and capital formation. The proposed amendments to the Quote Rule also would assist broker-dealers in making their best execution determinations. Further, it would provide information to the market as a whole as to the various factors affecting the market, including the current levels of buying and selling interest. This should promote market efficiency, competition, and capital formation.

Finally, the Commission anticipates that any impact of these proposals on competition would be to promote competition. The Commission requests comment on all of these matters.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[115] It relates to proposed Exchange Act Rule 11Ac1–7 and proposed amendment to Exchange Act Rule 11Ac1–1.

The proposed Trade-Through Disclosure Rule, proposed Rule 11Ac1–7, would require a broker-dealer to disclose when a customer order is executed at a price inferior to a price published by another market. However, a broker-dealer would not be required to provide such disclosure to its customer if it effects the customer transaction on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price, even if the better price is on a market that is not part of the linkage plan.

The Quote Rule, Rule 11Ac1–1, currently requires markets to establish procedures for collecting from their members bids, offers, and quotation sizes for certain equity securities available to quotation venders. It also requires that the quotation information made available to vendors be firm, subject to certain exceptions. The proposed amendments to the Quote Rule would apply the Quote Rule to options trading on a national securities exchange or an automated facility of a national securities association.

A. Reasons for the Proposed Action

The significant increase in multiple trading that has occurred during the past year has dramatically altered the options trading environment and raised a number of issues, including new best execution challenges for broker-dealers. When an option is listed on only one market, broker-dealers do not have to decide where to route the order, and, consequently, satisfying their best execution obligations with respect to such options orders is less complex than when they must consider the relative merits of executing orders on several markets. Directly relevant to a broker's ability to get best execution for its customers is the ability to get the best price available. Currently, it is difficult to ensure that a customer order sent to one market will receive the best available price because there is no effective mechanism that allows broker-dealers on one market to access a better price displayed on another.

Therefore, the Commission is proposing the Trade-Through Disclosure Rule and the proposed amendments to the Quote Rule to help address this situation. The proposed Trade-Through Disclosure Rule would require a broker-dealer to disclose to its customer when the customer's order was executed at a price inferior to the best published quote. A broker-dealer would not be required to make this disclosure when the broker-dealer transacts the customer order on a market that participates in a Commission-approved linkage plan that has rules reasonably designed to limit trade-throughs, even when the better price is displayed by a non-linked market. Amending the Quote Rule to apply to the options markets would provide greater certainty about both options quotes and pricing generally in the options markets. The proposed amendments to the Quote Rule, along with the proposed Trade-Through Disclosure Rule, would assist broker-dealers in making their best execution evaluations.

B. Objectives and Legal Basis

As noted above, the proposed Trade-Through Disclosure Rule and the proposed amendments to the Quote Rule are intended to bolster investor confidence in the options markets by better informing customers about the quality of their executions and the implications of their broker-dealers' execution decisions. The proposed Trade-Through Disclosure Rule likely would help minimize the number of customer orders that do not receive an execution at the best available published quote. Further, the proposed Trade-Through Disclosure Rule would assist broker-dealers in evaluating and complying with their best execution obligations. Finally, it would provide an incentive for options markets to develop effective means to access quotes on other markets to avoid trade-throughs.

The proposed amendments to the Quote Rule would also bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. The proposed amendments to the Quote Rule also would assist broker-dealers in making their best execution determinations. Further, it would provide information to the market as a whole as to the various factors affecting the market, including the current levels of buying and selling interest.

The Commission is proposing the Trade-Through Disclosure Rule and the amendments to the Quote Rule under the authority set forth in Exchange Act Sections 3(b), 5, 6, 15, 11A, 17(a) and (b), 19, and 23(a).

C. Small Entities Subject to the Rules

Commission rules generally define a broker-dealer as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small

[115] 5 U.S.C. 601. Pursuant to 5 U.S.C. 603 when an agency is engaged in a proposed rulemaking, ''the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.''

entity.[116] The Commission estimates that as of December 31, 1999, approximately 41 Commission-registered broker-dealers were small entities that would be subject to the proposed Trade-Through Disclosure Rule.[117] However, the Commission estimates that none of the 41 registered broker-dealers that would be considered small entities for purposes of the statute regularly represent options orders on behalf of their customers. In addition, the Commission notes that only those broker-dealers that are also options specialists or market markers would be required to comply with the proposed amendments to the Quote Rule. As of December 31, 1999, our data indicates that only one broker-dealer that was a small entity was an options specialist or market maker.

The proposed amendments to the Quote Rule also would directly affect the national securities exchanges that trade listed options, none of which is a small entity as defined by Commission rules. Paragraph (e) of Exchange Act Rule 0–10 [118] states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Exchange Act Rule 11Aa3–1. The proposed amendments to the Quote Rule also would directly affect national securities associations. There is one national securities association, which is not a small entity as defined by 13 CFR 121.201.

D. Reporting, Recordkeeping, and other Compliance Requirements

The proposed Trade-Through Disclosure Rule would require a broker-dealer to disclose to its customer (on the confirmation statement) in the event that an options trade executed for the customer was made at a price inferior to a price published by another exchange. The broker-dealer would not be required to provide such disclosure to its customer if the options trade was executed on an exchange that participates in an approved linkage plan that has rules reasonably designed to limit customers' orders from being executed at prices that are inferior to a published price, even if that better published price is on a market that is not part of the linkage plan.

The proposed amendments to the Quote Rule would require a broker-dealer that is either a specialist or market maker to honor its quote for a size determined and disseminated by the options market where the specialist or market maker is quoting. The proposal also would require national securities exchanges and national securities associations to collect quote information from their members and disseminate that information to quotation venders.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes there are no rules that duplicate, overlap, or conflict with the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed rules, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rules, or any part thereof, for small entities.

The Commission believes that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goals of bolstering investor confidence, assisting broker-dealers in best execution determinations, and providing information as to the various factors affecting the market, including the current levels of buying and selling interest. For example, if all broker-dealers quoting prices in options are not required to comply with the proposed amendments to the Quote Rule, investors and market participants would be unable to determine true buying and selling interest, undermining investor confidence and the ability of a broker-dealer to make best execution decisions. Further, broker-dealers would not be certain that a quote was firm without knowing whether the broker-dealer making the quote is a small broker-dealer. In addition, if all broker-dealers were not obligated to comply with the proposed Trade-Through Disclosure Rule, all investors (those that are customers of small broker-dealers) would not benefit fully from the rule, potentially reducing the benefits of the rule.

For the same reasons, the Commission believes that exempting small entities from the proposed rules, in whole or in part, is not appropriate. In addition, the Commission has concluded preliminarily that it is not feasible to further clarify, consolidate, or simplify the proposed rules for small entities. The Commission has used performance elements in the proposed rules. The rules do not require a broker-dealer to satisfy its obligations in accordance with any specific design, but rather provide each broker-dealer, including small entities, with the flexibility to select the method of compliance that is most efficient and appropriate for its business operations. The Commission does not believe different performance standards for small entities would be consistent with the purpose of the proposed rules.

Further, the Commission believes that none of the above alternatives is applicable to the proposed amendment with regard to national securities exchanges or national securities associations. The markets are directly subject to the requirements of the rules and are not ''small entities'' because they are all national securities exchanges or national securities associations that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives to the proposed rules are applicable to the markets.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission requests comments regarding: (1) The number of small entities that may be affected by the proposed rules; (2) the existence or nature of the potential impact of the proposed rules on small entities discussed in the analysis; and (3) how to quantify the impact of the proposed rules. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed Regulation and Rules themselves.

IX. Statutory Authority

We are proposing the rules pursuant to our authority under Exchange Act Sections 3(b), 5, 6, 15, 11A, 17(a) and (b), 19, and 23(a).

[116] 17 CFR 240.0–10(c).

[117] The Commission's estimate of 41 small entities includes all of the registered broker-dealers that do not have relationships with clearing firms.

[118] 17 CFR 240.0–10(e).

List of Subjects in 17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.11Ac1–1 is amended by revising paragraphs (a)(5), (a)(20); in the second sentence of paragraph (b)(3)(i) by revising the phrase ''under paragraph (c)(2)'' to read ''under paragraphs (c)(2) and (d)(3)'', and (d) and adding paragraphs (a)(26), (a)(27), (a)(28), and (e) to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* * * *

(5) The term *consolidated system* shall mean the consolidated transaction reporting system, including a transaction reporting system operating pursuant to an effective national market system plan.

* * * * *

(20) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan or an effective national market system plan for reporting transactions in listed options.

* * * * *

(26) The term *customer* shall mean any person that is not a registered broker-dealer.

(27) The term *listed option* shall have the meaning provided in § 240.15c3–1(c)(2)(x)(B)(*1*).

(28) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

* * * * *

[Alternative A for paragraph (d)]

(d) *Transactions in listed options.*

(1) An exchange or association that establishes by rule and periodically publishes the size associated with its best bid or offer in each options series that is a subject security listed on such exchange or association shall not be required, under paragraph (b) of this section, to collect and make available to quotation vendors the quotation size and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association.

(2) With respect to listed options, if, pursuant to paragraph (d)(1) of this section, the rules of an exchange or association do not require its members to communicate to it their quotation sizes, a responsible broker or dealer that is a member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (c)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option that is a subject security; and

(ii) Comply with its obligations under paragraph (c)(2) of this section by executing any order to buy or sell a listed option that is a subject security, in an amount up to the size associated with its bid or offer as established by such exchange's or association's rules under paragraph (d)(1) of this section.

(3) *Thirty second response.*

(i) Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option must:

(A) Execute the entire order; or

(B)(*1*) Execute that portion of the order equal to at least:

(*i*) The minimum firm quote size established by an exchange's or association's rules pursuant to paragraph (d)(1) of this section, if such exchange or association does not collect and make available to quotation vendors quotation size and aggregate quotation size under paragraph (b) of this section; or

(*ii*) The size of the exchange's or association's quotation made available to quotation vendors by such exchange or association under paragraph (b) of this section; and

(*2*) Revise its bid or offer.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any subject security if:

(A) Any of the circumstances in paragraphs (c)(3) of this section exist; or

(B) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

[Alternative B for paragraph (d)]

(d) *Transactions in listed options.*

(1)(i) An exchange or association that establishes by rule and periodically publishes the size associated with its best bid or offer in each options series that is a subject security listed on such exchange or association:

(A) Shall not be required, under paragraph (b) of this section, to collect and make available to quotation vendors the quotation size and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association; and

(B) May allow, pursuant to such exchange rules, responsible brokers or dealers obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option that is a subject security for the account of a broker or dealer that is different from the quotation size for which it is obligated to execute such an order for the account of a customer.

(ii) An exchange or association that establishes and maintains procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers and dealers for listed options that are subject securities listed on such exchange or association may allow, pursuant to exchange rules, responsible brokers or dealers to publish a quotation size for which it will be obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option that is a subject security for the account of a broker or dealer that is different from its published quotation size for which it is obligated to execute such an order for the account of a customer.

(2) With respect to listed options, if, pursuant to paragraph (d)(1) of this section, the rules of an exchange or association do not require its members to communicate to it their quotation sizes, a responsible broker or dealer that is a member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (c)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option that is a subject security; and

(ii) Comply with its obligations under paragraph (c)(2) of this section by executing any order to buy or sell a listed option that is a subject security, in an amount up to the size associated with its bid or offer as established by such exchange's or association's rules under paragraph (d)(1) of this section.

(3) *Thirty second response.*

(i) Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option must:

(A) Execute the entire order; or

(B)(*1*) Execute that portion of the order equal to at least:

(*i*) The minimum firm quote size established by an exchange's or association's rules pursuant to paragraph (d)(1) of this section, if such exchange or association does not collect and make available to quotation vendors quotation size and aggregate quotation size under paragraph (b) of this section; or

(*ii*) The size of the exchange's or association's quotation made available to quotation vendors by such exchange or association under paragraph (b) of this section; and

(*2*) Revise its bid or offer.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any subject security if:

(A) Any of the circumstances in paragraphs (c)(3) of this section exist; or

(B) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(e) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

3. Section 11Ac1–7 is added to read as follows:

§ 240.11Ac1–7. Trade-through disclosure rule.

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

(1) The term *complex trade* means a transaction in an options series that is executed in conjunction with a related transaction occurring at or near the same time for the purpose of executing a particular investment strategy.

(2) The term *customer* means any person that is not a registered broker-dealer.

(3) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3–2 (Rule 11Aa3–2 under the Act).

(4) The term *listed option* shall have the meaning provided in § 240.15c3–1(c)(2)(x)(B)(*1*).

(5) The term *options class* means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act.

(6) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(7) The term *receipt* means, with respect to an order sent to an away market displaying a superior price, the time at which the order is either represented in the trading crowd or received by the specialist.

(8) The term *trading rotation* means, with respect to a specified options class at a given exchange, the time period during which opening transactions in individual options series are being completed and continuous trading has not yet commenced in such options class.

(b) *Broker-dealer disclosure requirements.* (1) Any broker or dealer that effects a transaction in a listed option for the account of its customer must disclose to such customer, in conformance with the procedures set forth in § 240.10b–10:

(i) When such transaction is effected at a price that trades through a better price published at the time of execution; and

(ii) That better published price at the time of execution;

(2) A broker-dealer shall not be required to provide the disclosure set forth in paragraph (b)(1) of this section if it effects such transaction on a market that is a participant in an effective national market system options linkage plan that includes provisions reasonably designed to limit the incidence of customer orders being executed at prices that trade through a better published price, including prices published other than by a linkage plan participant.

(3) A customer order is executed at a price that trades through a better published price if:

(i) The price at which an order to purchase a listed option is executed is higher than the lowest offer at the time the order was executed published pursuant to a national market system plan for reporting quotations in listed options; or

(ii) The price at which an order to sell a listed option is executed is lower than the highest bid at the time the order was executed published pursuant to a national market system plan for reporting quotations in listed options.

(4) Notwithstanding paragraph (b)(2) of this section, a customer order is not considered to be executed at a price that trades through a better published price if:

(i) Such better published price cannot be accessed due to a failure, material delay, or malfunction of the systems of the market publishing the better price;

(ii) The quotation price reporting system provided for by the national market system plan for reporting quotations indicates that it is experiencing queuing;

(iii) Such better published price was published by an exchange whose members are relieved of their obligations under paragraph (c)(2) of § 240.11Ac1–1 because, pursuant to paragraph (b)(3) of § 240.11Ac1–1, such exchange is not required to meet its obligations under paragraph (b)(1) of § 240.11Ac1–1;

(iv) The market publishing such better price is in a trading rotation for that option class;

(v) The customer order is executed during a trading rotation in that options class;

(vi) The customer order is executed as part of a complex trade; or

(vii) The customer order is executed only after the market publishing the better price fails to respond to an order routed to it within 30 seconds of the order's receipt by that market.

Dated: July 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19728 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 84 and 183

46 CFR Part 25

[USCG 1999–6580]

RIN 2115–AF70

Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that domestic manufacturers of vessels install only certified navigation lights on all uninspected commercial vessels and recreational vessels. This change would align the standards for these lights with those for inspected commercial vessels and with those for all other mandatory safety equipment carried on board all vessels. The Coast Guard expects the resulting reduction in the use of noncompliant lights to improve safety on the water.

DATES: Comments and related material must reach the Docket Management Facility on or before October 3, 2000.

ADDRESSES: To make sure your comments and related material (referred

to USCG 1999–6580) do not enter the docket more than once, please submit them by only one of the following means:

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Randolph J. Doubt, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–6810 or by e-mail at *rdoubt@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety at *http://www.uscgboating.org.* or the Web Site for the Docket Management Facility at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 1999–6580), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, by hand, by fax, or electronically to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or by hand, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and want to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. You may ask for one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

The Coast Guard published a notice of proposed rulemaking to establish requirements for approval, certification, installation, and performance of navigation lights on vessels of less than 20 meters in length in the **Federal Register** of September 7, 1978 (43 FR 39946), and a supplemental notice in that of December 29, 1980 (45 FR 85468). It published a notice withdrawing the proposed rulemaking in the **Federal Register** of January 7, 1982 (47 FR 826). It published a request for comments on regulatory control of navigation lights in the **Federal Register** of October 9, 1997 (62 FR 52673).

Background and Purpose

Until April 1997, a manufacturer of navigation lights for recreational vessels could voluntarily apply for a ''Letter of Acceptance'' from the U.S. Coast Guard for each model of navigation light marketed. Upon receipt of an application, the Coast Guard would review a laboratory report for the given model, documenting compliance with the technical requirements of the International and Inland Navigation Rules (together, ''Navigation Rules''). Basing its judgement solely on the comparison of the report with the rules, the Coast Guard, if it did not object, would state that it did not object to the model being offered for sale and would grant a ''Letter of Acceptance,'' which allowed the manufacturer to state ''U.S. Coast Guard Accepted'' on the package. This statement the public often confused with ''U.S. Coast Guard Approved.'' Since April 1997, the Coast Guard no longer issues Letters of Acceptance. Consequently, other than statements provided by the manufacturer, there is no evidence of compliance with the technical requirements of the Navigation Rules available to a manufacturer, surveyor, owner, or inspector of a vessel, or to a boarding official.

Regulatory controls now exist only for lights manufactured specifically for inspected commercial vessels. These appear in 46 CFR subchapter J, which, in part, states that each light must ''be certified by an independent laboratory to the requirements of [Underwriters Laboratories, Inc. (UL)] 1104 or an equivalent standard'' and be so labeled. The ''independent laboratory'' must be recognized as bonafide and have been placed on a list by the Coast Guard (that list is available from G–MSE–3 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593–0001). Although lights currently certified for commercial inspected vessels are generally too large for uninspected commercial vessels and recreational vessels, a manufacturer may choose to install them; but none need install them.

The National Boating Safety Advisory Council (NBSAC), representing operators and manufacturers of vessels, State boating officials, and national boating organizations, and the National Association of State Boating Law Administrators (NASBLA) both passed resolutions asking that the Coast Guard initiate a certification program for navigation lights installed on recreational vessels offered for sale to the public. The Navigation Safety Advisory Council (NAVSAC) passed a similar resolution relating to uninspected commercial vessels. UL recommends in the report, ''Recreational Boat Collision Accident Research'', that the Coast Guard take stronger measures to ensure that navigation lights installed in recreational vessels meet the minimum requirements established by the Navigation Rules.

In response to the request for comments of October 9, 1997, State law-enforcement personnel, vessels' owners, marine professionals (manufacturers and marine surveyors), standard-setting organizations, manufacturers of navigation lights, and a laboratory testing navigation lights all submitted comments. Of the 34 respondents, 28 favored rulemaking. Some expressed concern about installing navigation lights in vessels with bow-high cruising trim angles that tend to obstruct sidelights' visibility. While it would not

require certification of installations of navigation lights, this proposed rule would require that certified lights be installed in compliance with the visibility requirements established by the Navigation Rules.

The rationale published in January 1982 for withdrawing the proposed rulemakings of September 1978 and December 1980 to establish regulatory controls, was that a newly established voluntary standard and Coast Guard enforcement policies eliminated the need for regulation. UL, in response to the request for comment October 9, 1997, advised that, to the contrary, there has been a steady decline in compliance over the past 20 years and that about half of the navigation lights for recreational vessels submitted for evaluation have failed to meet minimum performance requirements established by the Navigation Rules.

In response to the decline in compliance with the technical requirements for navigation lights established by the Navigation Rules, the proposed requirement of certification by third parties would curtail installations of noncompliant lights by providing evidence of compliance for manufacturers, surveyors, owners, inspectors, and boarding officials. The proposed requirement is similar to that for inspected commercial vessels, though less stringent, and aligns with the requirement of the International Navigation Rules (COLREGS) for ''Approval'' (33 CFR subchapter D, Annex I).

Discussion of Proposed Rule

The proposed rule draws from rules in 46 CFR subchapter J, Electrical Engineering, which require certification of navigation lights for inspected commercial vessels. It would direct manufacturers of all uninspected commercial vessels and recreational vessels to install only lights certified and labeled as meeting the technical requirements of the Navigation Rules. It would designate laboratories listed by the Coast Guard the certifying authorities for navigation lights. It would supply the section of the Inland Navigational Rules, Annex I, ''Approval'' (33 CFR 84.25), currently reserved, by establishing a requirement for certification of all navigation lights, while a subsequent amendment to Inland Navigation Rule 38 (Exemptions) would address requirements for owners and operators of existing vessels to allow for lights installed before its effective date.

The proposed changes are as follows:

(1) Add 33 CFR 84.25 to require that the construction of lights and shapes and the installation of lights meet requirements established by the Commandant.

(2) Add 33 CFR 183.465 to set forth the performance standard for certification of navigation lights for recreational vessels, adapting the standard from existing rules in 46 CFR subchapter J, for inspected commercial vessels.

(3) Add 46 CFR subpart 25.10, consisting solely of § 25.10–1, to set forth the performance standard for certification of navigation lights for uninspected commercial vessels, again adapting from 46 CFR subchapter J the standard for inspected commercial vessels.

To allow for the use of lights that may already be in stock, no rule would become effective until one year after publication of a final rule.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this rule under that Order. We expect the economic effect of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Costs of the Proposed Rule

(1) Manufacturers of navigation lights would incur initial costs associated with laboratory testing of each model of light for compliance with the Navigation Rules. This could result in minor increases in market prices for certified lights. Those manufacturers would pass increases on to manufacturers of boats and eventually on to consumers. However, these increases should be so small that their effect on manufacturers of boats and on consumers should be negligible. Of the roughly 4,400 manufacturers of recreational boats in the United States, 90% install navigation lights on their boats. There are 6 different types of lights on the market, and each of their manufacturers may make multiple models of each type. Through a survey of the lights now available, we have determined that each manufacturer produces an average of 10 models for each type and introduces 3 new models a year. Certification would entail that a representative light of production quality, for each model, pass a performance test. We have identified 9 domestic manufacturers of lights that this rule might affect.

In conversations with the two testing laboratories approved by the Coast Guard, UL and Imanna Laboratory, we developed an estimate of $500 for a performance test of each model. These laboratories do offer a volume discount for multiple models tested, and this discount would decrease the cost for a test of each model to about $400. We would therefore calculate the cost of this rule as follows:

6 types of light × 10 models of light × 9 manufacturers × $400 per test of each model = $216,000.

To account for the one-year phase-in period, we had to determine the present value of this cost. The Department of Transportation uses a standard discount rate of 7%. The calculation is as follows:

$(\$216,000)/(1.07)^1 = \$201,869.16$.

This figure would be the one-time cost for existing models of lights. However, if a manufacturer decided to introduce a new model of light, the manufacturer would have to have that model tested by a laboratory approved by the Coast Guard before the manufacturer could send it to market.

We must also account for the 3 new models of light that each manufacturer sends to market each year. We will sum 15 years of cost using a discount rate of 7%:

Σ [(9 manufacturers × 3 new models × $400)/$(1.07)^n$], n=2 * * * 15 = $80,663.80.

The total cost of labeling over 15 years would be:

$201,869.16 + $80,663.80 = $282,532.96.

(2) Manufacturers of navigation lights would have to offer new labeling with the certified lights. Most of it would be printable on an insert or on a sticker on a package (it is described in proposed 33 CFR 183.465). This proposed rule would not involve modification of the package to accommodate the labeling. We have gathered estimates from labeling companies, and we have determined that the manufacturer would pay about $240 for 1,000 labels. We will assume that each model of light needs 1,000 labels. Each of the 9 manufacturers produces an average of 10 models for each of 6 types and expects to introduce 3 new models a year. The calculations will be as follows:

[(9 manufacturers × 10 models for each type × 6 types × $200/1,000 labels × 1,000 labels)/$(1+0.7)^1$] + Σ [(9 manufacturers × 3 new models × $200/1,000 labels × 1,000 labels)/$(1.07)^n$], n=2 * * * 15 = $145,072.04.

This rule would also require that each light be marked ''USCG'' followed by the tested range of visibility, such as ''2

nm'', to indicate compliance. We believe that manufacturers are already marking their lights and own the necessary equipment for marking them, so this requirement should not impose any added costs.

Benefits of the Proposed Rule

(1) Certification would place navigation lights under regulatory control comparable to that affecting all other items of mandatory safety equipment. This would result in a general improvement in reliability, quality, and effectiveness of such lights, domestic and imported, available to domestic manufacturers of vessels.

(2) Certification would discourage the practice of installing lights that are custom-made by the manufacturer of a vessel but that have proved to be basically noncompliant with the Navigation Rules.

(3) Certification markings would provide evidence for manufacturers, surveyors, owners, and inspectors of vessels, or for boarding officials, in assessing the legality of installed lights.

(4) Certification would facilitate exports to countries enforcing the requirement of the COLREGS for approval of navigation lights (Annex I, 14.)

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we considered whether this proposed rule would have a significant economic effect on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Small Business Administration (SBA) has set up size standards for each SIC code based on the number of employees or annual receipts. The only type of small entity that this rule would affect would be small businesses. Four out of the nine manufacturers of navigation lights qualify as small businesses by the size standards of the SBA. However, we have observed that the four businesses we have identified as small offer fewer models of each type of light than their larger competitors. These four offer between 1 and 5 models of each type, which is well below the average of 10 models each. Therefore, we do not believe that they would bear a disproportionate amount of the burden of this rule. They have annual revenues of $2.5m–$5.0m; $5.0m–$10m; $10m–$20m; and $20m–$50m. Therefore, the greatest possible cost of testing for one of these four ($400 × 6 light types × 5 models per type = $12,000) would be only .05% of the annual revenues of even the smallest company. This would not impose a significant burden on these companies, and it would not create a barrier to entry for companies that wish to enter the industry.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we want to assist small entities in understanding this proposed rule so that they can better evaluate its effect 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 Randolph J. Doubt, Project Manager, Office of Boating Safety, by telephone at (202) 267–6810 or by e-mail at *rdoubt@comdt.uscg.mil.*

Collection of Information

This proposed rule would call for a new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the collections, a description of those who perform them, and an estimate of the total annual burden follow. The estimate covers the time for submitting a new model of light to the third-party certifier and for designing a label for each model of light.

Summary of the Collection of Information

The proposed rule would impose a new burden of collection of information on manufacturers of navigational lights for uninspected commercial vessels and recreational vessels. Each manufacturer of the lights would incur a one-time burden of submitting paperwork to the third-party certifier and of designing labeling for each model of light.

Need and Proposed Use for Information

This collection of information is necessary to accomplish the third-party certification and the labeling. The third party certifier would use the information to document and test the models of lights. Once the model had passed performance testing, the manufacturer of the light would design and provide a label for its product so the consumer would know that the product was certified.

Description of Respondents

This collection of information would affect the current manufacturers of navigational lights for recreational and uninspected vessels. It would also affect any future manufacturers that may enter the market.

Number of Respondents

There are 9 manufacturers of lights in the market. This collection of information will affect them all.

Frequency of Response

This collection would take place only when a manufacturer undertook to place a new light model on the market.

Burden of Response

We estimate that it would take one employee about one hour to prepare the paperwork to submit a light for performance tests. He or she would be an administrative assistant and, as such, would cost around $24 an hour. If each of these manufacturers submitted three new models of lights for testing each year, the burden for the submitted would be 27 hours and $648.

We also estimate that it would take one employee about one hour to update the labeling for each new model. He or she, too, would cost around $24 an hour. The burden for the labeling requirement would likewise be 27 hours and $648 if each of the nine manufacturers submitted 3 new models for testing each year.

Estimate of Total Annual Burden

Using the above estimates, the total burden in hours would be 54 and the total cost would be $1,296.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us

perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a rule that requires a State, local, or tribal government or the private sector, to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This 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.

Reform of Civil Justice

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

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A requirement for certification of navigation lights should not have any environmental impact. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 183

Marine Safety.

46 CFR Part 25

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 84 and 183, and 46 CFR part 25, as follows:

33 CFR PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. The citation of authority for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

2. Add text to § 84.25 to read as follows:

§ 84.25 Approval.

The construction of lights and shapes and the installation of lights on board the vessel must satisfy the Commandant.

33 CFR PART 183—BOATS AND ASSOCIATED EQUIPMENT

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

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

4. Add § 183.465 to read as follows:

§ 183.465 Navigation light: Standard.

(a) Except as provided by paragraph (b) of this section, each navigation light must—

(1) Meet the technical standards of the applicable Navigation Rules;

(2) Be certified by a laboratory listed by the Coast Guard to the standards of UL 1104 or equivalent, although portable battery-powered lights need only meet the requirements of the standard applicable to them; and

(3) Bear a label stating the following:

(i) USCG Approval 183.465.

(ii) ''MEETS _____.'' (Insert the identification name or number of the standard under paragraph (a)(2) of this section, to which the laboratory type-tested.)

(iii) ''TESTED BY _____.'' (Insert the name or registered certification-mark of the laboratory listed by the Coast Guard that tested the fixture to the standard under paragraph (a)(2) of this section.)

(iv) Name of manufacturer.

(v) Number of model.

(vi) Visibility of the light in nautical miles.

(vii) Date on which the light was type-tested.

(viii) Identification of the bulb used in the compliance test.

(b) If a light is too small to attach the required label—

(1) Place the information from the label in or on the package that contains the light; and

(2) Mark each light ''USCG'' followed by the certified range of visibility in nautical miles, for example, ''USCG 2nm''. This mark must be visible, without removal of the light, once installed.

46 CFR PART 25—REQUIREMENTS

5. The citation of authority for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

6. Add subpart 25.10, consisting of § 25.10–1, to read as follows:

Subpart 25.10—Navigation Lights

§ 25.10–1 Requirements.

(a) Except as provided by paragraph (b) of this section, each navigation light must—

(1) Meet the technical standards of the applicable Navigation Rules;

(2) Be certified by a laboratory listed by the Coast Guard to the standards of UL 1104 or equivalent, although portable battery-powered lights need only meet the requirements of the standard applicable to them; and

(3) Bear a label stating the following:

(i) USCG Approval 183.465

(ii) ''MEETS _____.'' (Insert the identification name or number of the standard under paragraph (a)(2) of this section, to which the light was type-tested.)

(iii) ''TESTED BY _____.'' (Insert the name or registered certification-mark of the laboratory listed by the Coast Guard that tested the fixture to the standard under paragraph (a)(2) of this section.)

(iv) Name of Manufacturer.

(v) Number of Model.

(vi) Visibility of the light in nautical miles.

(vii) Date on which the light was type-tested.

(viii) Identification of bulb used in the compliance test.

(b) If a light is too small to attach the required label—

(1) Place the information from the label in or on the package that contains the light; and

(2) Mark each light ''USCG'' followed by the certified range of visibility in nautical miles, for example, ''USCG 2nm''. This mark must be visible, without removal of the light, once installed.

Dated: July 25, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 00–19835 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–208]

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rules.

SUMMARY: In this document, the Commission seeks comment on the adoption of a rule that would require resolution of the merits of any request for designation as an eligible telecommunications carrier under section 214(e) of the Telecom Act, filed either with this Commission or a state commission, to be resolved within six months of the filing date, or some shorter period. We also seek comment on alternative methods by which state commissions, tribal authorities, and this Commission can work together to further facilitate the expeditious resolution of designation requests from carriers serving tribal lands.

DATES: Comments are due August 7, 2000 and reply comments are due August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on June 30, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Further Notice of Proposed Rulemaking, we seek comment on the adoption of a rule that would require resolution of the merits of any request for designation as an eligible telecommunications carrier under section 214(e) of the Telecom Act, filed either with this Commission or a state commission, to be resolved within six months of the filing date, or some shorter period. We also seek comment on alternative methods by which state commissions, tribal authorities, and this Commission can work together to further facilitate the expeditious resolution of designation requests from carriers serving tribal lands.

2. The Commission will take action in a further proceeding to address the remaining issues raised in the Further Notice of Proposed Rulemaking (*FNPRM*), 64 FR 52738 (September 30, 1999), that are not addressed in this Further Notice of Proposed Rulemaking. In particular, we will continue to examine and address the causes of low subscribership in other areas and among other populations, especially among low-income individuals in rural and insular areas. In addition, in areas where the cost to deploy telecommunications facilities is significantly above the national average, we anticipate that additional action may be necessary to encourage such deployment. Providing appropriate incentives for the deployment of facilities in such locations will be central to the issues that we will address, in consultation with the Federal-State Joint Board on Universal Service (Joint Board) in our consideration of rules to implement section 214(e)(3) of the Telecom Act and in considering the recommendations of the Joint Board for high-cost universal service reform for rural carriers.

II. Further Notice of Proposed Rulemaking

3. *Deadline for Resolving Section 214(e) of the Telecom Act Designation Requests.* In this Further Notice of Proposed Rulemaking, we seek comment on the imposition of a time limit during which requests for designation as an eligible telecommunications carrier under section 214(e) of the Telecom Act, filed either with this Commission or a state commission, must be resolved. As noted, we are concerned that lengthy delays in addressing requests for designation may hinder the availability of affordable telecommunications services in many high-cost areas of the Nation. We believe it is unreasonable to expect a prospective entrant to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether it is eligible to receive support. If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas. As the Commission has previously concluded, competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services. We believe such a result to be contrary to Congress' intent in adopting section 254 of the Telecom Act.

4. We therefore seek comment on whether to adopt a rule that would require resolution of the merits of any request for designation under section 214(e) of the Telecom Act within a six-month period, or some shorter period. In addition, we seek comment on whether to require a similar time limit for the resolution of the jurisdictional issues associated with requests for eligibility designations on tribal lands, and what that time limit should be. We intend to consult with members of the Joint Board on this issue and invite comment from the Joint Board and interested parties. We also seek on comment on the Commission's authority to enforce any such requirement imposed on state commissions. For example, we seek comment on our authority under sections 201(b), 253, 254 of the Telecom Act, or *AT&T* v. *Iowa Utilities Board* to enforce any deadline imposed on resolution of requests for eligibility designations under section 214(e) of the Telecom Act.

5. *Alternative Frameworks for Resolving Designation Requests.* In light of the immediate need for expeditious resolution of designation requests from carriers serving tribal lands, we have adopted a framework for resolving designation requests filed at the Commission under section 214(e)(6) of the Telecom Act. This framework is designed to streamline the process for designation of eligible telecommunications carriers serving tribal lands in order to expedite the availability of affordable telecommunications services to tribal

communities. We are guided, however, by our desire to work cooperatively with the state commissions and tribal authorities to consider alternative methods for facilitating the expeditious resolution of eligibility designation requests. We therefore seek comment on additional ways in which the state commissions, tribal authorities, and this Commission can work together toward this end. We look forward to collaborating further with state commissions and tribal leaders to consider additional measures we can take to resolve eligibility designation requests on tribal lands as expeditiously as possible.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

(1) Need for and Objectives of the Proposed Rules

7. The Commission issues the Further Notice of Proposed Rulemaking contained herein as a part of its implementation of the Act's mandate that ''[c]onsumers in all regions of the Nation * * * have access to telecommunications and information services * * *''. The Further Notice of Proposed Rulemaking seeks comment on rules setting a deadline for the consideration of petitions for designation of carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. The Further Notice of Proposed Rulemaking also seeks comment on alternative methods for facilitating expeditious resolution of eligibility designation requests. Our objective is to fulfill section 254 of the Telecom Act's mandate that ''all regions of the Nation * * * have access to telecommunications'' with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.

2. Legal Basis

8. The legal basis as proposed for this Further Notice of Proposed Rulemaking is contained in section 254 of the Telecom Act.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. And finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. The new rules proposed in this Further Notice of Proposed Rulemaking may affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

10. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

11. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

12. We have included small incumbent LECs in this present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497

telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

14. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

15. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

16. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

17. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules proposed herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

18. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as

defined by SBA and the Commissioner's auction rules.

19. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's rules, 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a ''small entity'' in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Further Notice of Proposed Rulemaking.

20. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the Further Notice of Proposed Rulemaking includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

21. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

22. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, 62 FR 16004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

23. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

24. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

25. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

26. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of

the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

27. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the rules proposed in this Further Notice of Proposed Rulemaking includes these eight entities.

28. *Multipoint Distribution Systems (MDS).* The Commission has defined ''small entity'' for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

29. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the rules proposed in this Further Notice of Proposed Rulemaking.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. Currently, there is no deadline for the consideration of petitions for designation of carriers as eligible telecommunications carriers under section 214(e) of the Telecom Act for the purposes of receiving universal service support under section 254(e) of the Telecom Act. Under the rules proposed in the Further Notice of Proposed Rulemaking, state commissions and the Commission would each have a set time frame within which to consider such petitions before them.

(5) Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. Wherever possible, the Further Notice of Proposed Rulemaking proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. Finally, the Further Notice of Proposed Rulemaking seeks comment on measures to avoid significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

(6) Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.

32. None.

B. Comment Dates and Filing Procedures

33. We invite comment on the issues and questions set forth in the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in § 1.415 and § 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due August 7, 2000, and reply comments are due August 28, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, 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 electronic comments by Internet e-mail. To receive 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.

35. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, 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, SW., Washington, DC 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Room 5–B540, Washington, DC 20554.

36. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5-B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read-only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase (''Disk Copy Not an Original.'') Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

IV. Ordering Clauses

37. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, this Further

Notice of Proposed Rulemaking is adopted.

38. It is further ordered that authority is delegated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted.

39. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–19612 Filed 8–2–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4511; Notice 1]

RIN 2127–AD50

Federal Motor Vehicle Safety Standards; Platform Lift Systems for Accessible Motor Vehicles Platform Lift Installations on Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); correction.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Louis Molino, Office of Crashworthiness Standards, at 202–366–1833.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document corrects the supplemental notice proposing to establish two new safety standards: an equipment standard specifying requirements for platform lifts; and a vehicle standard for all vehicles equipped with such lifts. A correction notice is necessary because the SNPRM, as published, misidentified three references to figures and failed to include one figure. Additionally, the SNPRM incorrectly referred to a section of the proposed regulatory text that does not exist.

Therefore, the SNPRM (65 FR 46228, July 27, 2000) is corrected as follows:

1. On page 46234 in the second column, in line 5, the reference to figure 3 should be to figure 2. There is no figure 3.

2. On page 46249 in the third column, S5.1.2.4 references a figure 3. The correct reference is to figure 2.

3. On page 46250 in the first column, S5.2.4 refers to S5.1.4. There is no S5.1.4 and the reference should be deleted. On the same page in the second column, S5.4.2.2 references figure 2. The correct reference is to figure 1.

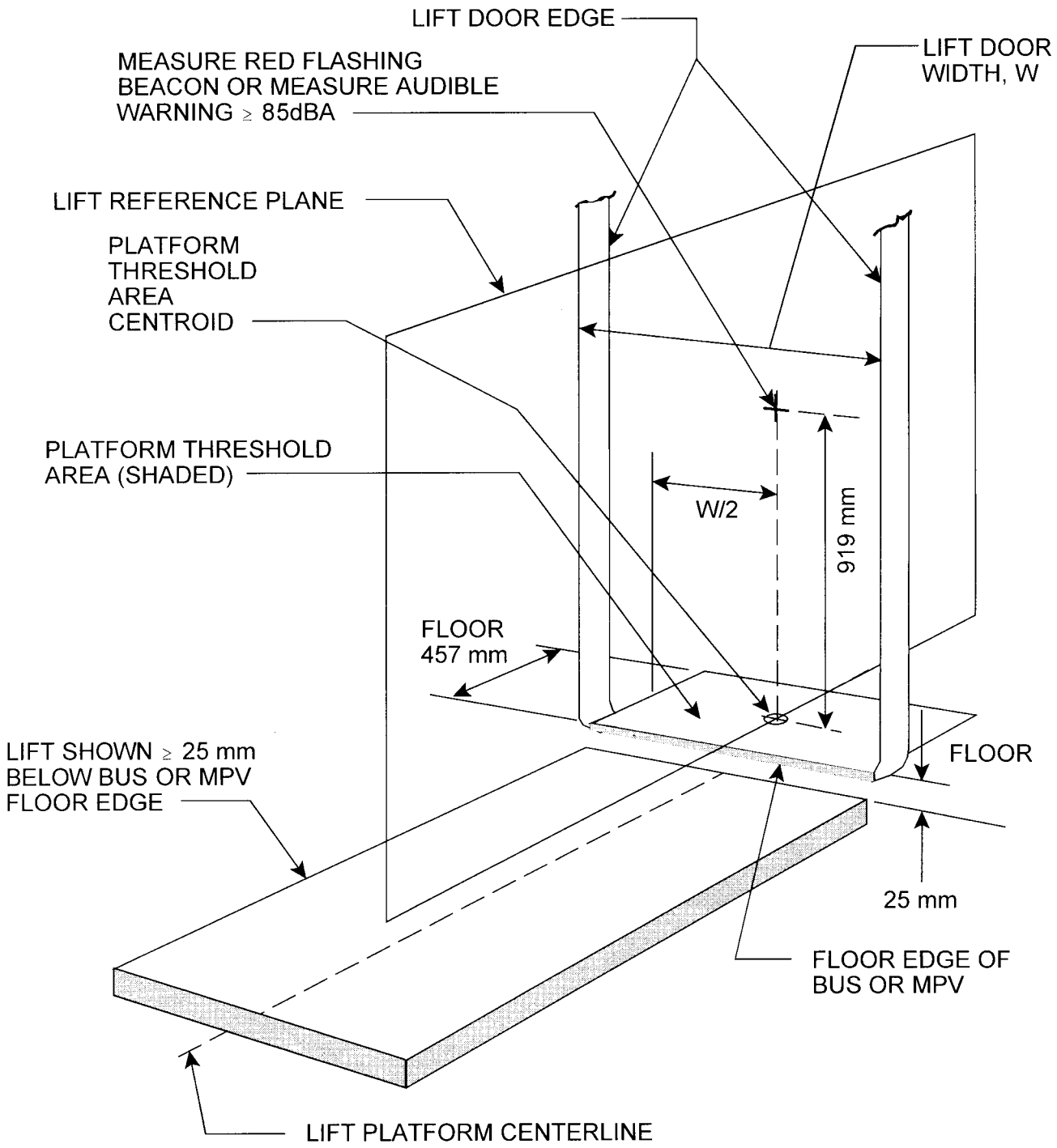
4. On page 46257, figure 2 is missing. Figure 2 is provided in this correction notice.

Issued on: July 27, 2000.

Stephen R. Kratzke,

Associate Administrator for Performance Safety Standards.

BILLING CODE 4910–59–P



PLATFORM THRESHOLD AREA AUDIBLE WARNING MEASUREMENT POINT (S5.1.2.4)

FIGURE 2

[FR Doc. 00–19483 Filed 8–3–00; 8:45 am]
BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 65, No. 151
Friday, August 4, 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.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics

Notice of the Advisory Committee on Small Farms Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the USDA Advisory Committee on Small Farms.

SUPPLEMENTARY INFORMATION: The USDA Advisory Committee on Small Farms, consisting of 18 members, representing small farms, ranches, and woodlot owners and the diverse groups USDA programs serve, has scheduled a meeting for August 22–24, 2000 in Sacramento, California. The Committee meeting will be held 8 a.m.–5 p.m. on Tuesday, August 22, on Wednesday, August 23, 8 a.m.–5 p.m., and on Thursday, August 24, 8 a.m.–12 noon. During this time the Advisory Committee will: (1) Hear reports from working sub-committees, (2) hear comments from the general public, (3) finalize plans for achieving the committee objectives, and (4) determine how and when the Committee will make recommendations to the Secretary.

Dates and Locations: The Committee meeting venue will be the Hilton Sacramento Arden West, Sacramento, California. The Hilton is located at 2200 Harvard Street, Sacramento, California, 95815, telephone (916) 922–4700. A map and detailed directions to the hotel are available from the Committee's Executive Director. Notices with the meeting room name will be placed in the hotel lobby listing directions to it. Previous to the full Committee meting, on Monday, August 21, 2000 from 7:30–10:30 PM, the Sub-Committee on Humane Working Conditions in Production Agriculture will sponsor a public hearing session *focused on issues specifically related to the work force in agriculture.* Organizations or individuals wishing to make a statement should submit a request by letter, fax or e-mail to: Enrique Nelson Escobar, Executive Director, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: eescobar@reeusda.gov. Each individual or group making an oral presentation will be limited to a total time of ten minutes. The hearing session will be at the Hilton Sacramento Arden West and notices with the meeting room name will be placed in the hotel lobby listing directions to it.

The Committee will convene for working sessions on Tuesday, August 22, 2000 from 8 a.m. to 12 noon; on Wednesday, August 23, 2000 from 8 a.m. to 12 noon and from 1:30 p.m. to 5 p.m.; and on Thursday, August 24, 2000 from 8 a.m. to 12 noon. On Tuesday, August 22, from 2 p.m. to 4 p.m., the general public will have an opportunity to provide oral and written comments to the Committee on issues related to small farms. The public hearing session will be at the Hilton Sacramento Arden West and notices with the meeting room name will be placed in the hotel lobby listing directions to it. Anyone wishing to make a statement should submit a request by letter, fax or e-mail to: Enrique Nelson Escobar, Executive Director, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: eescobar@reeusda.gov. Each individual or group making an oral presentation will be limited to a total time of ten minutes.

Type of Meeting: Open to the public.

FOR FURTHER INFORMATION CONTACT: Enrique Nelson Escobar, Executive Director of the USDA Advisory Committee on Small Farms, Research, Education and Economics, U.S. Department of Agriculture, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: eescobar@reeusda.gov.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Small Farms and will be kept on file for public review in the office of the USDA Small Farms Coordination, Room 1410 South Building, U.S. Department of Agriculture, Washington, DC . 20250.

Dated: July 31, 2000.

Susan E. Offutt,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 00–19739 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–03–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 5, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 7, February 4, March 17, June 9, 16 and 23, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 1094, 5492, 14532, 36663, 37757 and 39122) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the

services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, Offutt Air Force Base, Nebraska

Base Supply Center & HAZMART, Marine Corps Air Ground Combat Center, Building 1102, TwentyNine Palms, California

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, McConnell Air Force Base, Kansas

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, McChord Air Force Base, Washington

Food Service Attendant, Nellis Air Force Base, Nevada

Furnishings Management Services, Offutt Air Force Base, Nebraska

Grounds Maintenance, Little Rock Air Force Base, Arkansas

Pest Control, Offutt Air Force Base, Nebraska

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Rita L. Wells,

Deputy Executive Director.

[FR Doc. 00–19832 Filed 8–3–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before September 5, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative/General Support Services

Department of the Army, Office of the Surgeon General, 5111 Leesburg Pike, Room 538, Falls Church, Virginia, NPA: Columbia Lighthouse for the Blind, Washington, DC

Food Service Attendant

Oceana Naval Air Station, Virginia Beach, Virginia

NPA: Chesapeake Service Systems, Inc., Chesapeake, Virginia

Naval Weapons Station, Yorktown, Virginia, NPA: Association for Retarded Citizens of the Peninsula, Inc., Hampton, Virginia

Janitorial/Custodial

Naval and Marine Corps Reserve Center, 3655 S. Wilmot Road, Tucson, Arizona, NPA: Catholic Community Services of Southern Arizona, Tucson, Arizona

Youth Center (Ch–905), New Submarine Base New London, Groton, Connecticut, NPA: CW Resources, Inc., New Britain, Connecticut

On-Call Janitorial Services for GSA Leased Buildings in New York City

NPAs: Fedcap Rehabilitation Services, Inc., New York, New York, The Corporate Source, Inc., New York, New York, Goodwill Industries of Greater New York and Northern New Jersey, Inc., Astoria, New York

Publication Distribution and Toll Free Info Center

Department of Labor, Wage and Hour Division, Rochester, New York, NPA: Association for the Blind and Visually Impaired & Goodwill Industries of Greater Rochester, Inc., Rochester, New York

Rita L. Wells,

Deputy Executive Director.

[FR Doc. 00–19833 Filed 8–3–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Census of Governments Prelist Survey of Special Districts; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Robert McArthur, Chief, Program Evaluation Branch, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301–457–1582).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request approval of data collection Form G–24, Prelist Survey of Special Districts. This form will be used to verify the existence of special districts for the 2002 Census of Governments, to obtain current mailing addresses, and to identify new districts. The quinquennial Census of Governments enumerates five types of local governments: county governments, municipal governments, township governments, school district governments, and special district governments. Lists of county, municipal, and township governments are kept up-to-date through the Boundary and Annexation Survey conducted annually by the Geography Division of the Bureau of the Census. School district governments and other ''local education agencies'' are kept current through data sharing arrangements with state education agencies and the National Center for Education Statistics. However, there is no national source of information on special district governments. We, therefore, enlist the help of county clerks and other county officials to provide information on changes in special districts, including the creation of new districts, disincorporation of existing districts, and address changes. An updated list is necessary for subsequent phases of the Census of Governments to ensure complete coverage and to minimize the need for remailings caused by inaccurate addresses.

II. Method of Collection

Each of 3,039 counties, consolidated city-county governments, and independent cities designated for the survey will be sent a printed list of previously identified special districts within their county areas. Respondents will be requested to review and update the list to identify those districts that are no longer active, districts with address changes, and districts that are not included in the list. For new special districts, respondents will be requested to provide, in addition to the district name, mailing addresses and the names of counties included in the service area.

The feasibility of electronic data collection will be explored in two states (as yet undetermined) by providing along with the printed paper requests instructions for accessing and reporting on spreadsheet files. Spreadsheet files will be prepared for each of the respondent counties to update and passwords provided to each respondent.

In addition, in keeping with Governments Division policy, we will accept printouts of respondents' own files and electronic responses prepared from respondents' own files.

III. Data

OMB Number: None.

Form Number: G–24.

Type of Review: Regular.

Affected Public: County governments, consolidated city-county governments, and independent cities.

Estimated Number of Respondents: 3,039.

Estimated Time Per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 1,520.

Estimated Total Annual Cost: $24,335.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 161.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19719 Filed 8–3–00; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Transactions of U.S. Affiliates With Their Foreign Parents; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank), obtain quarterly cut-off sample data on transactions and positions between foreign-owned U.S. business enterprises and their ''affiliated foreign group'' (*i.e.,* their foreign parents and foreign affiliates of their foreign parents). The data are needed for compiling the international transactions accounts, input-output accounts, and national income and product accounts of the United States. The data are also needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

BEA is proposing the following three changes to the forms and instructions:

1. Revise and clarify the instructions for reporting of net income and capital gains by banks, dealers in financial instruments, and companies in finance, insurance, or real estate.

2. Modify the detail on services transactions on Form BE–605 by adding two categories—management and consulting and research and development—and dropping one—communications services. These changes will improve the usefulness of the detail on services by type without materially affecting the average burden imposed on respondents. Services by type are not collected on Form BE–605 Bank.

3. Eliminate a special instruction requiring that accruals under the terms of interest rate and foreign currency swap agreements be reported as ''interest'' on a net basis. This change will bring reporting into conformity with new international guidelines, which require such transactions to be treated as financial flows rather than interest.

II. Method of Collection

Forms BE–605 and BE–605 Bank are quarterly reports that must be filed within 30 days after the end of each quarter (45 days after the final quarter of the respondent's fiscal year) by every U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales, or net income (or loss) of over $30 million. Potential respondents are those U.S. business enterprises that reported in the last benchmark survey of foreign direct investment in the United States, along with those U.S. business enterprises that subsequently entered the direct investment universe. The data collected are cut-off sample data covering transactions and positions between foreign-owned U.S. business enterprises and their affiliated foreign groups. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0009.

Form Number: BE–605/BE–605 Bank.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 3,950 per quarter; 15,800 annually.

Estimated Time Per Response: 1¼ hours.

Estimated Total Annual Burden: 19,750 hours.

Estimated Total Annual Cost: $592,500 (based on an estimated reporting burden of 19,750 hours and an estimated hourly cost of $30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19720 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Award for Excellence in Economic Development—Request for Comments

ACTION: Reinstatement collection, comment request.

SUMMARY: The Department of Commerce, 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 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)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone: (202) 482–5353.

SUPPLEMENTARY INFORMATION

I. Abstract

EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) Information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

II. Method of Collection

As part of the development of the Award for Excellence in Economic Development, EDA has designed a short nomination form. Nominees will submit the form to EDA, where they will be screened for completeness and forwarded to the Selection Panel for review. The information will be used by the Selection Panel to determine those applicants best meeting the preannounced selection criteria. The Selection Panel will include: Three representatives of the economic development practitioner community; one member from academe; three representatives of the Economic Development Administration; and up to two at-large members.

III. Data

OMB Number(s): 0610–0097.

Form Number: Not applicable.

Burden: 150 hours.

Type of Review: Reinstatement of previously-approved collection.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost: $11,180.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19718 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Short Supply Regulations, Unprocessed Western Red Cedar; Information

ACTION: Proposed collect; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230 (or via the Internet at lengleme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Julissa Hurtado, Department of Commerce, Room 6881, 14th & Constitution Avenue, NW, Room 6881, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs from state or Federal.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0025.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 35.

Estimated Time Per Response: 30 to 105 minutes per response.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19716; 8–3–00; 8:45 a.m.]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Request for Special Priorities Assistance; Proposed Information Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before October 3, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230. (or via the Internet at *lengelme@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Julissa Hurtado, BXA ICB Liaison, Department of Commerce, 14th & Constitution Avenue, NW, room 6881, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The information collected on BXA–999, from defense contractors and suppliers, is required for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation Systems regulation.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0057.

Form Number: BXA–999.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Date: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19717; 8–3–00; 8:45 a.m.]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1097]

Grant of Authority; Establishment of a Foreign-Trade Zone, Victorville, CA

Pursuant to its authority udner the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Baord (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Southern California Logistics Airport Authority (the Grantee), a California public corporation, has made application to the Board (FTZ Docket 65–99, filed 12/16/99), requesting the establishment of a foreign-trade zone in the Victorville, California area, at the Southern California Logistics Airport, a Customs user fee airport; and,

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 72642, 12/28/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 243, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of July 2000.

Foreign-Trade Zones Board.

Norman Y. Mineta,

Secretary of Commerce, Chairman and Executive Officer.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–19824 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1112]

Expansion of Foreign-Trade Zone 21; Charleston, SC, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, submitted an application to the Board for authority to expand FTZ 21 to include a site at the former Charleston Naval Base and Shipyard Park located in North Charleston, South Carolina (Site 14), within the Charleston Customs port of entry (FTZ Docket 54–99; filed 10/28/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 61820, 11/15/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 21 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 25th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19826 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1111]

Approval for Expanded Manufacturing Authority; Fina Oil and Chemical Company (Petrochemical Complex), Jefferson County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, The Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, has requested authority on behalf of the Fina Oil and Chemical Company (Fina), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 116B at the Fina oil refinery complex in Jefferson County, Texas. (FTZ Doc. 55–99, filed 11–8–99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 63786, 11–22–99);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest, if subject to the standard oil refinery restrictions;

Now therefore, the Board hereby approves the request subject to the FTZ

Act and the Board's regulations, including Sec. 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on inputs covered under HTSUS Subheadings # 2710.00.05—# 2710.00.10, # 2710.00.25, and # 2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix ''C'');
—Products for export;
—And, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority is granted in accordance with Board Order 772, which established subzone 116B, and is subject to any restrictions or extensions of that authority.

Signed at Washington, DC, this 25th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19825 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–835]

Initiation of Antidumping Duty Investigation: Anhydrous Sodium Sulfate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Shawn Thompson at (202) 482–0656 and (202) 482–1776, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

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 (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1999).

The Petition

On July 10, 2000, the Department of Commerce (the Department) received a petition filed in proper form by Cooper Natural Resources and IMC Chemicals, Inc. (hereinafter collectively, ''the petitioners''). The Department received information supplementing the petition throughout the initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of anhydrous sodium sulfate from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigation that they are requesting the Department to initiate (*see Determination of Industry Support for the Petition*, below).

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product in the region, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the merchandise described in the scope of the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, below. No party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling is unnecessary. In this case, the petitioners represent over 50 percent of total production of the domestic like product in the United States. *See Initiation Checklist*, dated July 31, 2000 (*Initiation Checklist*), at page 3. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(c)(4)(A) of the Act.

Scope of Investigation

For purposes of this investigation, the product covered is anhydrous sodium sulfate, also referred to as ''salt cake'' or ''disodium sulfate,'' from Canada. Anhydrous sodium sulfate is an

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

inorganic chemical with a chemical composition of Na_2SO_4. The ''Chemical Abstract Service'' number for anhydrous sodium sulfate is 7757–82–6. All forms and variations of anhydrous sodium sulfate are included within the scope of the investigation, regardless of grade, level of purity, production method, or form of packaging. Anhydrous sodium sulfate is currently classifiable under subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Although these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (see Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27323 (May 19, 1997)), we are setting aside a period of time for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 31, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market price and U.S. price are also discussed in the *Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Export Price

The petitioner identified Saskatchewan Minerals and Millar Western Industries Ltd. as the major producers and exporters of subject merchandise in Canada.

The petitioner determined export price (EP) based on direct and contemporaneous sales or offers for sales to U.S. unaffiliated purchasers of anhydrous sodium sulfate, through invoices and affidavits. This information was obtained from industry sources in the United States. The petitioner calculated a net U.S. price by subtracting freight expenses.

Normal Value

With respect to normal value (NV), the petitioner provided home market prices based on invoices and affidavits. These products are comparable to the products exported to the United States which serve as the basis for EP. The petitioners calculated NV by deducting foreign movement expenses, commissions, and domestic packing expenses. The petitioners also adjusted NV for differences in credit expenses.

In addition, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of anhydrous sodium sulfate in the home market were made at prices below the cost of production (COP), in accordance with section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), sales, general, and administrative (SG&A) expenses, and packing. To calculate the foreign producers' COM, the petitioners used the production costs and consumption rates of one of the petitioning companies, adjusted for known differences between costs incurred to produce sodium sulfate in the United States and in Canada using publicly available data. To calculate depreciation and SG&A, the petitioners relied upon the experience of the same U.S. producer. We recalculated SG&A using the consolidated financial statements of GoldCorp Inc., the parent company of Saskatchewan Minerals because this information better reflects the experience of Saskatchewan Minerals. The petitioners also based financing expenses on the consolidated financial statements of this parent company. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe that sales of the foreign like product were made below the COP, in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

In addition, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Canada on constructed value (CV). The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute Canadian home market costs. We recalculated SG&A expenses as noted above. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon a 1999 management report for GoldCorp Inc.

Based on these separate comparisons, the estimated dumping margins for anhydrous sodium sulfate from Canada ranged from 19.29 to 100.10 percent.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below the COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of anhydrous sodium sulfate from Canada are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and production volumes. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist at page 4).

Initiation of Antidumping Investigation

Based upon our examination of the petition on anhydrous sodium sulfate, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of anhydrous sodium sulfate from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than August 24, 2000, whether there is a reasonable indication that imports of sodium sulfate from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19821 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: 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 May 10, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (65 FR 30062). This review covers one manufacturer/exporter of the subject merchandise to the United States and the period of review (POR) of August 1, 1998, through July 31, 1999. The sole respondent did not respond to our supplemental questionnaire and subsequently withdrew from this review. As a result, we based our preliminary results on adverse facts available. We did not receive comments from any interested parties, and have made no changes to our preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2000, the Department published in the **Federal Register** (65 FR 30062) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172 (August 19, 1993); *see also* 61 FR 47871 (September 11, 1996)). We invited parties to comment on our preliminary results. We received no comments. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended, (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085,7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080,

7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.,* aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Period of Review

The POR is August 1, 1998, through July 31, 1999. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands produced by Hoogovens Staal B.V. (Hoogovens).

Changes Since the Preliminary Results

We received no comments from interested parties, and we have made no changes to our preliminary results.

Use of Facts Available

For reasons set forth in our preliminary determination, we have determined that the use of adverse facts available is warranted in this case. In addition, we preliminarily determined that the rate assigned to Hoogovens in the current review is corroborated. *See Cold-Rolled Carbon Steel Flat Products From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review,* 65 FR 30062 (May 10, 2000).

Section 776(b) of the Tariff Act permits the Department to use an inference that is adverse to a particular party under certain circumstances, and specifies that ''[s]uch adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.'' The rate we have applied to Hoogovens in the current review, 19.32 percent, is the actual rate calculated for Hoogovens in the amended final determination of the original less than fair value (LTFV) investigation.

In corroborating this rate, we note that Hoogovens has been the only respondent subject to this antidumping duty order since its inception. Hoogovens' rates, calculated for review periods subsequent to the LTFV, ranged from a high of 5.54 percent in the first administrative review period (August 18, 1993 through July 31, 1994) to a *de minimis* rate in the most recently completed segment of these proceedings (August 1, 1997 through July 31, 1998). However, these lower rates were calculated during review periods in which Hoogovens cooperated to the best of its ability. In the current review, Hoogovens failed to cooperate to the best of its ability. Based upon the premise that Hoogovens would have cooperated to the best of its ability if it had a dumping margin of less than 19.32 percent, and absent any evidence to the contrary, we have determined that 19.32 percent, the rate calculated for the amended final determination of the LTFV investigation, is probative of the rate that Hoogovens would have received had it fully cooperated in this review. Therefore, as adverse facts available we have assigned a margin of 19.32 percent to Hoogovens for the current review.

Final Results of Review

As a result of our review, we determine that the weighted-average margin for Hoogovens Staal B.V. for the period of August 1, 1998 through July 31, 1999 is 19.32 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be an *ad valorem* rate applied to the entered value of the subject merchandise. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hoogovens will be 19.32 percent; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value 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 (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the ''all others'' rate from the amended final determination in the less than fair value investigation. *See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 61 FR 47871 (September 11, 1996).

These 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. Timely notification of return or 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 and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and sections 351.213 and 351.221 of the Department's regulations.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19820 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit for Final Results of New-Shipper Antidumping Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 and (202) 482–3020, respectively.

The 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 March 30, 1999, the Department received a request from Yancheng Haiteng Aquatic Products & Foods Co., Ltd. to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On May 6, 1999, the Department published its initiation of this new shipper review covering the period September 1, 1998 through February 28, 1999 (64 FR 24328). On March 15, 2000, the Department published the preliminary results of review (65 FR 13939). On May 1, 2000, the Department extended the time limit for the final results of this new shipper review to June 23, 2000 (65 FR 25309). On June 28, 2000, the Department extended the time limit for the final results of this new shipper review to July 14, 2000 (65 FR 39868).

Extension of Time Limits for Final Results

Because of the complexities enumerated in the *Memorandum from Edward C. Yang to Joseph A. Spetrini, Extension of Time Limit for the Final Results of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China,* dated July 13, 2000, we find this case is extraordinarily complicated and thus are unable to complete this review by the scheduled deadline. Therefore, in accordance with section 351.214(i)(2) of the Department's regulations, the Department is extending the time period for issuing the final results of review until July 24, 2000.

Dated: July 14, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–19827 Filed 8–3–00; 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: Notice of Partial Rescission of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Recission of New Shipper Antidumping Duty Review.

EFFECTIVE DATE: August 4, 2000.

SUMMARY: On November 15, 1999, the Department of Commerce (the Department) published in the **Federal Register** (64 FR 61833) a notice announcing the initiation of six new shipper reviews of the antidumping duty order on freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC), covering the period September 1, 1998 through August 31, 1999. One new shipper review is now being rescinded as a result of the withdrawal of request for a new shipper antidumping duty review by Yixing Ban Chang Foods Co., Ltd. (Yixing).

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0648.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1999, Yixing, an exporter of the subject merchandise, requested an new shipper review of the antidumping duty order on crawfish from the PRC in accordance with 19 CFR 351.214(b). On November 14, 1999, in accordance with 19 CFR 351.221(c)(1)(i), we initiated a new shipper review of this order for the period September 1, 1998 through August 31, 1999. On February 25, 2000, Yixing withdrew its request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.214(f)(1) provide that a party may withdraw its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Although Yixing's request for withdrawal was more than 60 days from the date of initiation, consistent with the Department's past practice in context of administrative reviews conducted under section 751(a) of the Act, the Department has discretion to extend the time period for withdrawal on a case-by-case basis. (*See e.g. Iron Construction Casings from Canada: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 45797 (August 27, 1998).) Rescission of this review would not prejudice any party in this proceeding, as Yixing would continue to be included in the PRC-wide rate to which it was subject at the time of its request for this new shipper review. Yixing is the only party that requested a review of Yixing of its sales for the September 1, 1998 through August 31, 1999 period and no other party has objected to its withdrawal of that request. Therefore, we are rescinding this review. This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.214(f).

Dated: June 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19828 Filed 8–3–00; 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: Notice of Final Results of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of new shipper antidumping duty review.

SUMMARY: On March 15, 2000, the Department of Commerce (the Department) published the preliminary results of the new shipper review of sales to the United States by Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng) of freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC) (65 FR 13939). This review covers the period September 1, 1998 through February 28, 1999. We received no comments on our preliminary results, but we have made

changes to the program to account for clerical errors. In addition, we revised our results to reflect information received from the U.S. Customs Service. The final weighted-average dumping margin for Yancheng Haiteng is listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Sarah Ellerman, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0648 or (202) 482–4106, 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. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On March 15, 2000, the Department published preliminary results of a new shipper review of the antidumping order on crawfish from the PRC for Yancheng Haiteng (65 FR 13939). We invited parties to comment on our preliminary results of review. We received no comments. The Department has conducted this new shipper review in accordance with section 751 of the Act.

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 numbers 0306.19.00.10 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.

Comments From Interested Parties and Changes Since the Preliminary Results

We received no comments from interested parties in response to our preliminary results. We corrected clerical errors made in the preliminary results. For more information regarding these corrections, see the *Memorandum to the File From Sarah Ellerman; Analysis for the Final Results of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Yancheng Haiteng Aquatic Products and Foods, Co., Ltd.,* dated July 24, 2000.

In addition, we received certain information from the U.S. Customs Service. As a result of this new information, we applied facts available to Yancheng Haiteng. For more information, refer to the Memorandum to Troy H. Cribb from Joseph A. Spetrini; *Issues for the Final Results of New Shipper Review of Freshwater Crawfish Tail Meat From the People's Republic of China; Yancheng Haiteng Aquatic Products and Foods Co., Ltd.,* dated July 24, 2000.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period September 1, 1998 through February 28, 1999:

Manufacturer/exporter	Margin (percent)
Yancheng Haiteng Aquatic Products & Foods Co., Ltd	36.42

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate instructions directly to the U.S. Customs Service. Furthermore, the following cash deposit rates will be effective upon publication of this notice of final results of review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Yancheng Haiteng, which was found to merit a separate rate for the final results of this review, the cash deposit rate will be the rate stated above; (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 cash deposit rate will be the PRC-wide rate, 201.63 percent; and (4) for 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.

Dated: July 24, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19829 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–805]

Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Silicomanganese From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for the preliminary results of administrative review of the suspension agreement on silicomanganese from Ukraine.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limits for the preliminary results of the administrative review on the suspension agreement on silicomanganese from Ukraine.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Rick Johnson; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0165 or (202) 482–3818, respectively.

Extension of Preliminary Results

The Department published its notice of initiation of this review in the **Federal Register** on December 21, 1999 (64 FR 72644). Because it is not practicable to issue the preliminary results of review by the current deadline of August 1, 2000, the Department is extending the time limits for the preliminary results of the aforementioned review 120 days, to November 29, 2000, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended by the Uruguay Round Agreements Act of 1994 (for a further discussion, *see* the August 1, 2000 *Decision Memorandum from Edward C. Yang to Richard O. Weible: Request to Extend Preliminary Results*

in the Review of the Antidumping Duty Suspension Agreement on Silicomanganese from Ukraine).

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 31, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–19823 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part.

SUMMARY: In response to requests by American Silicon Technologies, Elkem Metals Company, and Globe Metallurgical, Inc. (collectively ''petitioners''), and by Companhia Brasileira Carbureto De Calcio (''CBCC''), Ligas de Aluminio S.A. (''LIASA''), Eletrosilex S.A. (''Eletrosilex''), RIMA Industrial S.A. (''RIMA'') and Companhia Ferroligas Minas Gerais—Minasligas (''Minasligas''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (''POR'') is July 1, 1998 through June 30, 1999.

We preliminarily determine that two respondents sold subject merchandise at less than normal value (''NV'') during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct Customs to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument: (1) A statement of the issue(s), and (2) a brief summary of the argument (not to exceed five pages). Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor (RIMA), telephone: (202) 482–5831; Nova Daly (Eletrosilex), 482–0989; Mark Manning (LIASA), 482–3936, Zev Primor (CBCC), 482–4114; Alexander Amdur (Minasligas), 482–5346, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil (56 FR 36135). On July 15, 1999, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1998, through June 30, 1999 (64 FR 38181). On July 27, 1999, in accordance with 19 CFR 351.213(b)(1), LIASA requested that the Department conduct an administrative review of its sales and revoke the order with respect to LIASA pursuant to 19 CFR 351.222(e). Also on July 27, 1999, RIMA and Minasligas requested that the Department conduct an administrative review of their respective sales. On July 28, 1999, Eletrosilex requested that the Department conduct an administrative review of its sales. Also on July 28, 1999, CBCC requested that the Department conduct an administrative review of its sales and revoke the order with respect to CBCC pursuant to 19 CFR 351.222(e).

On July 30, 1999, petitioners requested that the Department conduct an administrative review of sales made by CBCC, Eletrosilex, LIASA, Minasligas, and RIMA. On August 30, 1999, in accordance with 19 CFR 351.221(b)(1), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review (64 FR 47167).

The Department issued questionnaires on October 19, 1999, to CBCC, Eletrosilex, LIASA, Minasligas, and RIMA, and received responses to Section A on December 2, 1999, from all respondents. The Department received responses to sections B, C, and D of the questionnaire from Eletrosilex on December 17, 1999, and from CBCC, LIASA, Minasligas, and RIMA on December 27, 2000. The Department issued supplemental questionnaires to LIASA on February 25, 2000, March 23, 2000, and June 6, 2000, and received responses on March 27, 2000, April 18, 2000, and June 12, 2000. The Department issued supplemental questionnaires to Minasligas on February 25, 2000, May 11, 2000, and June 2, 2000, and received responses on March 27, 2000, May 26, 2000, and June 7, 2000. The Department issued supplemental questionnaires to CBCC and Rima on February 25, 2000, and received responses on March 27, 2000. The Department issued a supplemental questionnaire to Eletrosilex on March 2, 2000, and did not receive a response.

On March 2, 2000, in accordance with section 751(a)(3)(A) of the Act, the Department published in the **Federal Register** its notice extending the deadline for the preliminary results until July 30, 2000 (65 FR 11285). The Department is conducting this review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by CBCC, LIASA, Minasligas, and RIMA. RIMA was verified from April 25, 2000, through May 4, 2000, CBCC was verified from May 8, 2000, through May 12, 2000, Minasligas was verified from June 13, 2000, through June 21, 2000 and LIASA was verified from June 19, 2000, through June 23, 2000. We used standard verification procedures including; on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File).

Facts Available (''FA'')

Eletrosilex

In accordance with section 776 of the Act, we have determined that the use of adverse FA is warranted for Eletrosilex.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, Eletrosilex failed to provide the necessary information in the form and manner requested. Thus, pursuant to section 776(a) of the Act, the Department is applying, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, not withstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

After careful analysis, we have determined that the use of FA with respect to Eletrosilex is appropriate. Eletrosilex failed to respond to the Department's request for additional information in its supplemental questionnaire dated March 2, 2000. Thus, Eletrosilex did not submit requested information by the established deadline. Furthermore, the information on the record is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or an appropriately calculated margin for Eletrosilex. *See* Memorandum Regarding the Application of Adverse Facts Available to Eletrosilex, dated July 27, 2000 (''Eletrosilex FA Memo''). For these reasons, the Department has determined that the use of FA is warranted.

2. Selection of FA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997).

Eletrosilex completely failed to respond to the Department's supplemental requests for information, which prevented the Department from making critical decisions involving the calculation of Eletrosilex's dumping margin. In addition, as required by section 782(d), Eletrosilex was put on notice, via Department extension letters and other correspondence, that failure to respond to the Department's supplemental request for information constituted a deficiency which could result in the use of FA. *See* Extension Letter from U.S. Department of Commerce to Eletrosilex, dated March 17, 2000; Letter from U.S. Department of Commerce to Eletrosilex, dated April 12, 2000. Moreover, section 782(e) is not applicable as the information Eletrosilex submitted is so incomplete that it cannot serve as a reliable basis for making a preliminary determination. Specifically, because of Eletrosilex's failure to provide: audited financial statements, explanations of affiliation issues, product specifications (regarding silicon content), values for billing adjustments, values for inland freight, reconciliation of direct and indirect selling expenses, reconciliation of packing expenses, reconciliation of U.S. imputed credit expenses, detail regarding the costs associated with furnace shut downs, reconciliation of ICMS and IPI taxes, and a reconciliation of total cost of manufacturing (''TOTCOM'') figures, the Department has determined that the information on the record is insufficient for purposes of calculating a dumping margin. *See* Eletrosilex FA Memo. Accordingly, Eletrosilex did not act to the best of its ability to comply with the request for information and thus, under section 776(b) of the Act, an adverse inference is warranted. For further discussion of the Department's selection of FA, *see* Eletrosilex FA Memo.

Pursuant to section 776(b) of the Act, we are basing Eletrosilex's margin on adverse FA for purposes of these preliminary results. As adverse FA for Eletrosilex, we have used the highest rate determined for Eletrosilex in any segment of this proceeding. This rate is 93.20 percent. *See Silicon Metal From Brazil; Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6305 (February 9, 1999) (''*1996–1997 Silicon Metal*'').

3. Corroboration of Information Used as FA

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value (''LTFV'') investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action (''SAA'')

accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

The SAA further provides that the term ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. The rate selected is a calculated rate from a prior segment of this proceeding. Thus, it is not necessary to question the reliability of the rate. *See e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 65 FR 6140 (February 8, 2000) and *1996–1997 Silicon Metal.*

As to the relevance of the margin used for adverse FA, the courts have stated that ''by requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality.'' *See F.Lli De Cecco Di Filippo Fara S. Martino S.p.A.,* v. *U.S.,* _____ CAFC ____, Slip Op. 99–1318 (June 16, 2000).

In determining a relevant and reasonable adverse FA rate for Eletrosilex, the Department notes that margins for Eletrosilex have historically fluctuated between the present rate of 18.87 percent and the 93.20 percent rate, determined for the1996–1997 POR. *See Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil,* 65 FR 7497 (February 15, 2000) (''*1997–1998 Silicon Metal*''), and the *1996–1997 Silicon Metal.* Eletrosilex received a calculated rate of 18.87 percent for the 1997–1998 POR, an FA rate of 93.20 in the 1996–1997 POR, a calculated rate of 39.00 percent for the 1995–1996 POR, a calculated rate of 6.33 percent for the 1994–1995 POR, a calculated rate of 38.39 percent for the 1993–1994 POR, and a calculated rate of 51.84 percent for the 1992–1993 POR. *See: 1997–1998 Silicon Metal, 1996–1997 Silicon Metal, Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil,* 63 FR 6899 (February 11, 1998) (''*1995–1996 Silicon Metal*''), *Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 54087 (October 17, 1997), *Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 54094 (October 17, 1997) and *Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review in Accordance With Court Decision,* 65 FR 33297 (May 23, 2000), respectively. Furthermore, during the last three administrative reviews, whereas Eletrosilex has received margins of 18.87 percent, 93.20 percent, and 39.00 percent, other parties in this proceeding have had calculated rates below 10 percent. *See 1997–1998 Silicon Metal, 1996–1997 Silicon Metal, and 1995–1996 Silicon Metal,* respectively.

Noting that Eletrosilex's rates have moved up and down from one period of review to the next, and given Eletrosilex's failure to cooperate to the best of its ability in this review, we have no reason to believe that Eletrosilex's dumping margin would be any less than the highest rate at which we have previously found Eletrosilex to have dumped or that other available rates would ensure that Eletrosilex does not benefit by failing to cooperate fully. Thus, we used the highest rate determined for Eletrosilex of 93.20 percent.

Partial FA

Minasligas

The Department has determined, in accordance with section 776 of the Act, that the application of partial FA is warranted for Minasligas.

In the course of verification, the Department discovered a U.S. sale, made by Minasligas within the current POR, which Minasligas had not reported. Minasligas officials explained that the failure to report this sale was inadvertent. For further information regarding the discovery of this unreported sale, see Sales Verification Report for Minasligas, dated July 31, 2000.

For purposes of these preliminary results, the Department has concluded that because Minasligas failed to report this sale, an adverse FA is warranted for the sale. Consequently, as partial adverse FA we have preliminarily calculated a margin for that transaction using the actual price, which is on the record in verification documents, and the highest U.S. selling expenses from Minasligas' reported transactions.

Intent Not To Revoke

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes, *inter alia,* that the exporter and producer covered at the time of revocation: (1) sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2) (1999); *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Pure Magnesium from Canada,* 64 FR 12977, 12982 (March 16, 1999) (''*Pure Magnesium from Canada*'').

I. CBCC

On July 28, 1999, CBCC submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from CBCC that for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. CBCC also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV.

On March 23, 2000, the Department requested additional information from CBCC and interested parties regarding CBCC's revocation request. We received comments from CBCC and from petitioners in April and May of 2000.

After review of the record, the Department preliminarily determines that although CBCC has had zero or *de minimis* dumping margins for the previous two review periods, during the current review CBCC's weight-averaged dumping margin is preliminarily determined to be 0.63 percent, an above *de minimis* rate. A rate must be below 0.50 percent to be *de minimis. See* 19 CFR 351.106(c). Consequently, CBCC failed to achieve sales of subject merchandise ''at not less than NV for a period of at least three consecutive years'' as required by the Department's regulations. Because one of the

requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is necessary to offset dumping with regard to CBCC. However, should this rate be revised to below 0.50 percent for the final results of review, it will be necessary to address these factors at that time. Interested parties are invited to comment on these factors in their case briefs.

As a result of our analysis of factual information submitted to us during the course of this review, we preliminarily intend not to revoke this order with respect to CBCC.

II. LIASA

On July 27, 1999, LIASA submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering silicon metal from Brazil with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from LIASA that for a consecutive three-year period, including this review period, it had sold the subject merchandise in commercial quantities at not less than NV, and would continue do so in the future. LIASA also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under, 19 CFR 351.216, that subsequent to revocation, it sold the subject merchandise at less than NV.

On March 23, 2000, the Department requested additional information from LIASA and interested parties regarding LIASA's revocation request. We received comments from LIASA and from petitioners in April and May of 2000.

For these preliminary results, the Department has relied upon LIASA's sales activity during the 1996–1997, 1997–1998, and 1998–1999 review periods in making its decision regarding LIASA's revocation request. LIASA argues that, as part of its normal business operations, it sells ''small'' quantities of silicon metal to all, *i.e.,* foreign and domestic, customers. Accordingly, LIASA claims, the quantities of the subject merchandise sold to the United States are not small but rather ''commercially representative'' of LIASA's activity in all markets. *See* LIASA's Revocation Comments, dated April 18, 2000, at 4 (''LIASA's Comments''). Petitioners argue that LIASA's small individual sales are not relevant because the Department evaluates commercial quantities based on aggregate volumes of such sales during each of the consecutive PORs rather than the volumes of individual sales. *See* ''Petitioners Rebuttal Comments,'' dated May 2, 2000, at 4.

In accordance with the regulations described above, we must determine whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See* 19 CFR 351.222(d)(1). In other words, the Department must determine whether the quantities sold during these time periods are reflective of the company's normal commercial activity. *See Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 64 FR 2175 (January 13, 1999) (''*Certain Corrosion-Resistant Carbon Steel Flat Products from Canada*''). Sales during a POR which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.; see also, Pure Magnesium From Canada.* However, the determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts on the record of each proceeding. See section 751(d) of the Act; 19 CFR 351.222; *see also Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands* 65 FR 750, (January 6, 2000) (''*Brass from Netherlands*'').

In the present case, we compared LIASA's aggregate U.S. sales during each of the PORs to the six-month period of investigation (''POI''). The POI was used as an appropriate benchmark because it reflects sales activity without the discipline of an antidumping order in place. The comparison indicates that LIASA's sales to the U.S. market during the three above-mentioned PORs represent 0.69 percent, 12.77 percent, and 1.6 percent, of the U.S. sales during the POI, respectively. When the POI sales are annualized, the sales for each of the three consecutive PORs decline even further to approximately 0.35 percent, 6.38 percent, and 0.8 percent, respectively, when compared to the POI sales volume. In *Brass from Netherlands,* the Department denied revocation by stating that the volume of merchandise sold to the United States was approximately two percent of the volume of merchandise sold in the benchmark investigative period. *Id.* at 752. Similarly, in the most recently completed segment of the proceeding, the Department denied revocation for CBCC because it failed to meet the commercial quantities threshold. In that particular administrative review, the Department determined that CBCC's aggregate sales during one of the three-consecutive years forming the basis for revocation, represented approximately 2 percent of the sales volume sold during the POI. Based on that finding, *inter alia,* the Department denied CBCC's revocation request. *See 1997–1998 Silicon Metal.* In the instant review, we find that in 1996–1997 and 1998–1999 PORs, LIASA's sales to the United States were significantly lower, as a percentage of its POI sales, than in cases mentioned above.

After review of the criteria outlined at sections 351.222(b) and 351.222(d) of the Department's regulations, the Department's practice, the comments of the parties, and the evidence on the record, we have preliminarily determined that the requirements for revocation have not been met. Based on the preliminary results of this review and the final results of the two preceding reviews, LIASA has not demonstrated three consecutive years of sales in commercial quantities. Therefore, because LIASA has not sold subject merchandise in commercial quantities during each of the three consecutive PORs, we do not intend to revoke the antidumping duty order as to LIASA. *See* Memorandum Regarding ''Eighth Administrative Review: Commercial Quantities,'' dated July 30, 2000.

Additionally, because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issue of whether the continued application of the antidumping duty order is necessary to offset dumping with regard to LIASA. However, should this decision be revised for the final results of review, it will be necessary to address this factor at that time. Interested parties are invited to comment on this factor in their case briefs.

NV Comparisons

During the POR, all U.S. sales by Brazilian respondents were export price (''EP''), none were constructed export price (''CEP'') sales. To determine whether sales of silicon metal by the Brazilian respondents to the United States were made at less than normal value, we compared EP to the NV, as

described in the ''*EP*'' and ''*NV*'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP transactions.

Sales Reviewed

We have continued to employ the approach, adopted in the final results of the second review of this order, covering the 1992–1993 POR, in determining which U.S. sales to review for all companies. If a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR. *See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review,* 61 FR 46763 (September 5, 1996).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the ''*Scope of Review*'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, as in the preceding segment of this proceeding, we have continued to treat all silicon metal meeting the description of the merchandise under the ''*Scope of Review*'' section, above (with the exception of slag and contaminated products) as identical products for purposes of model-matching. *See Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits,* 64 FR 43161 (August 9, 1999).

Level of Trade (''LOT'')

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs actually existed in the home and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

CBCC reported sales through one LOT, consisting of three customer categories (*i.e.,* original equipment manufacturers, distributors and silicon metal producers) which also represent three channels of distribution for its home market sales. CBCC reported only EP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (*i.e.,* direct sales to an unaffiliated trading company, for sale to the U.S. market). CBCC claimed in its response that EP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, CBCC has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing CBCC's selling activities for the home and U.S. markets, we determined that essentially the same selling functions were provided for both markets. These selling functions in both markets were minimal in nature and usually limited to arranging for freight, if requested by the customer. No other selling functions or services were rendered for either home market (regardless of customer category) or EP sales. Therefore, based upon this information, we have preliminarily determined for CBCC that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for CBCC.

RIMA reported sales through one channel of distribution to one customer category (*i.e.,* end users) for home market sales. In the U.S. market, RIMA reported EP sales through one channel of distribution to one customer category (*i.e.,* end users). In its response, RIMA stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, RIMA has not requested a LOT adjustment.

In analyzing RIMA's services for the home and U.S. market, we determined that essentially the same services were provided for both markets. These services in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined for RIMA that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for RIMA.

LIASA reported one customer category (*i.e.,* ''end-user'') and one channel of distribution for its home market sales. LIASA reported only EP sales in the U.S. market. For EP sales, LIASA reported one customer category and one channel of distribution (*i.e.,* direct sales to unaffiliated ''end-users'' in the U.S. market). LIASA claimed in its response that EP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, LIASA has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing LIASA's selling activities for its EP sales, we noted that the sales involved basically the same selling activities associated with the home market LOT described above. These selling activities in both markets were minimal in nature and usually limited to arranging for freight, if requested by the customer. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined for LIASA that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for LIASA.

Minasligas reported sales through one LOT consisting of one customer category (*i.e.,* original equipment manufacturers) which represents one channel of distribution for its home market sales. Minasligas reported only EP sales in the U.S. market. For EP sales, Minasligas reported one customer category and one channel of distribution (*i.e.,* direct sales to trading companies). Minasligas claimed in its response that its U.S. and home market sales were made at the same LOT. For this reason, Minasligas has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing Minasligas' selling activities for the home and U.S. market, we determined that essentially the same

services were provided for both markets. These selling activities in both markets were minimal in nature and limited to arranging for freight and delivery. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined for Minasligas that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Minasligas.

EP

For CBCC, LIASA, RIMA, and Minasligas, we used the Department's EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by each producer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation (or to unaffiliated trading companies for export to the United States) and CEP methodology was not otherwise warranted. We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight, brokerage and handling, and international freight. Where foreign inland freight was reported inclusive of the value-added tax (''VAT''), we deducted the VAT from the gross freight cost. For Minasligas, we added duty drawback to the starting price. We made company-specific adjustments to EP as follows:

I. RIMA

We recalculated RIMA's inventory carrying costs and indirect selling expenses pursuant to corrections presented at verification. For further discussion of these changes, see Calculation Memorandum for RIMA dated July 30, 2000, and Report on the Verification of the Sales and Cost Responses for Rima, dated July 24, 2000, for further information regarding sales and cost verification.

II. Minasligas

We recalculated Minasligas' U.S. credit expense using corrected payment dates and interest rates. First, we used the date of payment by the U.S. customer to Minasligas for each sale rather than the date of payment by the bank to Minasligas. Second, for the interest rate, Minasligas reported a rate based on the Brazilian dollar Taxa Referencial (''TR'') rate, the published Government of Brazil prime lending rate, while we calculated a U.S. dollar rate based on the Advance Exchange Contract (''ACC'') information presented in Minasligas'' March 27, 2000 and May 27, 2000 submissions. Further, we recalculated Minasligas' reported duty drawback adjustment by allocating all import duties, forgiven by the Brazilian government through duty drawback during the POR, over all of Minasligas' export sales of silicon metal during the POR. We also made adjustments for unreported bank charges that we found at verification. For further discussion, see Calculation Memorandum for Minasligas, dated July 31, 2000.

III. LIASA

Although LIASA stated in the narrative section of its questionnaire response that it reported U.S. credit expenses, it did not include this expense in its U.S. market database. We calculated LIASA's U.S. credit expense using its reported date of sale and date of payment. Since LIASA stated that it did not have any short-term borrowing in U.S. dollars, we calculated this expense using an interest rate obtained from the Federal Reserve's data for short-term commercial and industrial loans. For further discussion, see Calculation Memorandum for LIASA dated July 31, 2000.

NV

1. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for each respondent. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production (''COP'') Analysis

In the review segment of this proceeding most recently completed prior to initiating this review, we disregarded home market sales found to be below the cost of production for LIASA. *See 1996–1997 Silicon Metal.* Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made by LIASA at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act.

On April 3, 2000, the petitioners in this proceeding filed a timely sales-below-cost allegation with regard to CBCC, RIMA, and Minasligas. In the cases of CBCC and Minasligas, the petitioners' allegation was based on the respondents' antidumping duty questionnaire responses. Upon review of the allegations, we found that petitioners' methodology provided the Department with a reasonable basis to believe or suspect that sales in the home market had been made at prices below the COP by both CBCC and Minasligas. Accordingly, pursuant to section 773(b)(1) of the Act, we have initiated an investigation to determine whether CBCC and Minasligas' sales of silicon metal were made at prices below COP during the POR. *See* Analysis of Petitioners' Allegation of Sales Below the COP for CBCC, dated May 23, 2000; Analysis of Petitioners' Allegation of Sales Below the COP for Minasligas, dated May 23, 2000.

With regard to petitioners' allegation against RIMA, petitioners' did not base their sales-below cost analysis of RIMA on company-specific data submitted in RIMA's supplemental questionnaire response submitted on March 27, 2000. When company-specific information has been placed on the record, any subsequent sales-below-cost allegation must take into account such information. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27336 (May 19, 1997). Therefore, because the petitioners did not take into account RIMA's most current reported sales and cost data, we find that the petitioners did not provide the Department with a reasonable basis to believe or suspect that sales in the home market have been made at prices below the COP. Accordingly, pursuant to section 773(b)(1) of the Act, we have not initiated an investigation to determine whether RIMA's sales of silicon metal were made at prices below COP during the POR. For further discussion of this decision, *see* Memoranda from Maisha Cryor to Thomas F. Futtner, dated July 24, 2000.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a product-specific COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling,

general and administrative expenses (''SG&A'') expenses, including interest expenses and packing costs.

We relied on the home market sales and COP information submitted by each respondent in its questionnaire responses, except for the following company-specific adjustments described below.

Minasligas

1. In its response, Minasligas allocated its reported costs for silicon metal over different grades of silicon metal, while in its own books and records, it only records one cost for all grades of silicon metal (*see e.g.,* page D–14 of Minasligas' December 27, 1999 response). We calculated one cost for all grades of silicon metal, as Minasligas itself records in its books and records as verified by the Department. *See* Report on the Verification of Cost Information for Minasligas, dated July 31, 2000.

2. We recalculated variable overhead by: (1) reallocating certain variable overhead expenses by production quantities, as is the Department's practice (*see Notice of Preliminary Results of Antidumping Duty Administrative Review: Ferrosilicon From Brazil,* 62 FR 16763, 16766 (April 8, 1997)); (2) correcting the errors that we found at verification in other indirect costs; and (3) subtracting packaging costs, which were incorrectly double-reported as part of variable overhead and in the sales response.

3. We recalculated fixed overhead by using the corrected amount of depreciation expense that we found at verification.

4. We did not offset Minasligas' gross charcoal cost by the reported offset for charcoal fines sales because we found at verification that the reported gross charcoal cost already includes an offset for charcoal fines sales.

5. Since we compared both COP and home market prices on an ICMS tax-exclusive basis, we based the electricity cost on the reported gross electricity cost, and not on the reported cost net of the electricity cost paid with ICMS credits. *See 1997–1998 Silicon Metal,* at 7497, 7507.

Due to the proprietary nature of these issues, for further discussion, *see* Calculation Memorandum for Minasligas and Minasligas: Report on the Verification of Cost Information Submitted in the Administrative Review Covering July 1, 1998 through June 30, 1999, both dated July 31, 2000.

B. Test of Home Market Sales Prices for CBCC, Minasligas and LIASA

For CBCC, Minasligas and LIASA, we compared the per-unit COP figures for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts.

C. Results of COP Test for CBCC, Minasligas and LIASA

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in ''substantial quantities.'' Where (1) 20 percent or more of the respondent's sales of a given product during the POR are made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to per-unit COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that only CBCC and LIASA made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP (*i.e.,* sales by CBCC, LIASA, RIMA, and Minasligas), we based the respondents' NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at the same level of trade as the EP sales. For level of trade, please see the ''*Level of Trade*'' section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate for inland freight, brokerage and handling charges, and rebates. Where inland freight was reported inclusive of value-added taxes VAT, we deducted the VAT from the gross freight cost. To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and commissions and adding an amount for late payment fees earned on home market sales, and by adding U.S. direct selling expenses (including U.S. credit expenses) and, where appropriate, deducting an amount for late payment fees earned on U.S. sales. For Minasligas, we recalculated home marking credit by using as an interest rate the simple average of monthly TR rates, as is the Department's practice (*see Silicon Metal From Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 42759, 42761 (August 8, 1997)). Where commissions were paid on home market sales and no commissions were paid on U.S. sales, we increased NV by the lesser of either: (1) The amount of commission paid on the home market sales or (2) the indirect selling expenses incurred on U.S. sales. *See* 19 CFR 351.410(e). In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. Where home market prices were reported exclusive of VAT we made no adjustment. However, where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a ''fluctuation'' to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (Mar. 8, 1996).) Our preliminary analysis of dollar-real

exchange rates shows that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. As such, we preliminarily determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. We preliminarily find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999. We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in January 1999. Thus, we used a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates were merely fluctuating. Beginning on January 13, 1999, we used only daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5554, 5563–64 (Feb. 4, 2000); and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 64 FR 56759, 56763 (Oct. 21, 1999). Applying this methodology in the instant case, we used daily rates from January 13, 1999, through March 4, 1999. We then resumed the use of a benchmark, starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999. We resumed the use of the normal 40-day benchmark starting on April 3, 1999, through the close of the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 1998, through June 30, 1999, and we preliminarily determine not to revoke the order covering silicon metal from Brazil with respect to CBCC's and LIASA's sales of this merchandise.

Manufacturer/exporter	Weighted-average margin percentage
CBCC	0.63
Eletrosilex	93.20
LIASA	0.00
RIMA	0.00
Minasligas	0.00

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review except if the rate is less than 0.5 percent, and therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated 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 review, a prior review, or the original 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) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the ''all others'' rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations 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 issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19822 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062300A]

National Plan of Action for the Conservation and Management of Sharks

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

ACTION: Notice of availability of draft plan.

SUMMARY: NMFS announces the availability of a draft National Plan of Action (NPOA) developed pursuant to the endorsement of the International Plan of Action (IPOA) for the Conservation and Management of Sharks by the United Nations' Food and Agriculture Organization Committee on Fisheries (COFI) Ministerial Meeting in February 1999. NMFS has prepared this draft plan based on consultation with scientific and technical experts and certain Federal and state agencies. Members of the public are encouraged to provide comments on the draft NPOA.

DATES: Comments must be received no later than September 30, 2000.

ADDRESSES: Written comments and requests for copies of the draft NPOA should be sent to Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or internet.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, (301) 713-2347; fax (301) 713-1917.

SUPPLEMENTARY INFORMATION: Noting the increased concern about the expanding catches of sharks and their potential negative impacts on shark populations, the IPOA calls on member nations to voluntarily develop national plans to ensure the conservation and management of sharks for their long-term sustainable use by applying the precautionary approach. Member nations are encouraged to develop and implement an NPOA if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks incidentally in fisheries for other species. Specifically, the IPOA calls on member nations to ensure that shark catches from directed and incidental fisheries are sustainable; assess threats to shark populations; protect critical habitats; provide special attention to vulnerable or threatened shark stocks; minimize unutilized incidental catches of sharks; encourage full use of dead sharks; improve species-specific catch and landings data and monitoring of shark catches; and consult with stakeholders in research, management, and educational initiatives within and between member nations. The United States has committed to developing this national plan, and reporting on its implementation to COFI, no later than the 25th COFI session in February 2001.

A proposed schedule, outline, background, and rationale were published in the Federal Register on September 30, 1999 (64 FR 52772). A revised schedule was published in the **FEDERAL REGISTER** on March 27, 2000 (65 FR 16186).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 31, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19846 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 000721216–0216–01]

Announcement of the Establishment of a Joint Public-Sector Private-Sector Technology Demonstration Center

AGENCY: Technology Administration, Commerce.

ACTION: Notice of establishment of a Technology Demonstration Center.

SUMMARY: The United States Department of Commerce Technology Administration announces the establishment of a joint public-sector private-sector Technology Demonstration Center. The purpose of the Center will be to demonstrate state-of-the-art and future technological advances in a variety of technologies and to encourage future development. Demonstrations will consist of joint presentations by the United States Department of Commerce Technology Administration and private sector parties. The Center is a joint activity, conducted under the auspices of Cooperative Research and Development Agreements. This is not a grant program.

DATES: The Technology Demonstration Center is immediately available for interested parties.

ADDRESSES: Parties interested in participating in the Technology Demonstration Center should send inquiries to, Technology Demonstration, United States Department of Commerce, Technology Administration, Attn: Ms. Jacki Pickett, Washington DC, 20232.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Pickett, Technology Administration, (202) 482–1039.

SUPPLEMENTARY INFORMATION: Under the authorities granted by Title 15 United States Code sections 3704 and 3710a, the Under Secretary for Technology is establishing a Technology Demonstration Center in cooperation with one or more private sector entities.

The purpose of the Center will be to demonstrate state-of-the-art and future technological advances in a variety of technologies and to encourage future development. The demonstrations will consist of joint presentations by the United States Department of Commerce Technology Administration and private sector parties.

The Center will be established under the auspices of Cooperative Research and Development Agreements between the Technology Administration and one or more private sector parties. The Center will be for demonstration purposes only and will comply with applicable Federal regulations and Departmental requirements. The Center will not be used for sales of merchandise, solicitations, orders or for the advertisement of specific products or services. The Center will be physically located at the United States Department of Commerce's Herbert C. Hoover Building, in Washington D.C.

Dated: July 28, 2000.

Cheryl L. Shavers,

Undersecretary of Commerce for Technology.

[FR Doc. 00–19805 Filed 8–3–00; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

AGENCY: Department of Defense (DoD).

ACTION: Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

SUMMARY: The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of items enumerated from sources in the UK, unless otherwise restricted by statute.

EFFECTIVE DATE: This waiver is effective for one year, beginning August 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, OUSD (AT&L), Director of Defense Procurement, Foreign Contracting, Room 3C762, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 697–9353.

SUPPLEMENTARY INFORMATION: Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation ''would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items'' and if he determines that ''that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.'' The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition, Technology, and Logistics).

DoD has a reciprocal procurement Memorandum of Understanding (MOU) with the UK that was signed on December 13, 1994.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including sections 8016 and 8067 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106–79). This waiver applies to procurement under solicitations issued during the period from August 19, 2000, to August 18, 2001. Similar waivers were granted for the period from August 4, 1998, to August 3, 2000 (63 FR 38815, July 20, 1998, and 64 FR 38896, July 20, 1999). For contracts entered into prior to August 4, 1998, this waiver applies to procurements of the defense items listed below under—

(1) Subcontracts entered into during the period from August j19, 2000, to August 18, 2001, provided the prime contract is modified to provide the Government adequate consideration such as lower cost or improved performance; and

(2) Options that are exercised during the period from August 19, 200, to August 18, 2001, if the option prices are adjusted for any reason other than the application of the waiver, and if the contract is modified to provide the Government adequate consideration such as lower cost or improved performance.

List of Items to Which This Waiver Applies

1. Air circuit breakers.

2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.

3. Gyrocompasses.

4. Electronic navigation chart systems.

5. Steering controls.

6. Pumps.

7. Propulsion and machinery control systems.

8. Totally enclosed lifeboats.

9. Ball and roller bearings.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–19804 Filed 8–3–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting With the Community College of the Air Force Board of Visitors To Review and Discuss Academic Policies and Issues Relative to the Operation of the College

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Matthew M. Groleau, Designated Federal Officer for the Board, at the address below no later than 4 p.m. on November 1, 2000. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. A minimum of 35 copies of the presentation materials must be given to First Lieutenant Matt Groleau no later than 3 days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Matt Groleau on a 3½-inch computer disk in Microsoft PowerPoint format no later than 4 p.m. on November 1, 2000 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Wednesday, November 15, 2000 at 8 a.m. on the First Floor Conference Room, Air University, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Matt Groleau, 334–953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama,

36112–6613, or through electronic mail at *matthew.groleau@maxwell.af.mil.*

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–19807 Filed 8–3–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Revised Performance Review Boards List of 2000 Members

Below is a revised list of individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Awards System.

Secretariat

Mr. Ronald L. Orr
Maj Gen James E. Sherrard III
Mr. Frank Tuck
Mr. Gary M. Erickson
Ms. Susan A. O'Neal
Mr. Harlan G. Wilder

Air Staff and ''Others''

Mr. William A. Davidson
Mr. Gene L. Hathenbruck
Maj Gen Larry Northington
Mr. James C. Barone
Ms. Mary Lou Keener
Mr. Anthony J. DeLuca

Air Force Materiel Command

Lt Gen Charles H. Coolidge, Jr.
Brig Gen Wilber D. Pearson, Jr.
Mr. Harry E. Schulte
Ms. Cathlynn B. Sparks
Mr. Gregory W. Den Herder

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–19806 Filed 8–3–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Mandatory Use of USBank's PowerTrack System by DOD Freight Carriers

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services, proposes the mandatory use of PowerTrack as a transaction and payment system for all DOD freight carriers.

DATES: Comments must be submitted on or before October 3, 2000. Proposed effective dates for mandatory use of PowerTrack are: November 30, 2000 for air (includes small package express freight shipments), barge, pipeline, rail and sealift carries, and December 31, 2000, or all Guaranteed Traffic carriers.

ADDRESSES: Comments may be sent as follows: by fax: 703–428–3397 attn: Jerome Colton by e-mail: coltonj@mtmc.army.mil by mail or courier to: Headquarters, Military Traffic Management Command, ATTN: MTOP–MRM (Jerome Colton),Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Colton at 703–428–2384, e-mail moneypennyk@mtmc.army.mil.

SUPPLEMENTARY INFORMATION: A notice announcing the DOD Management Reform Memorandum #15 (MRM15) directed reengineering of the DOD transportation documentation and financial processes was published in the **Federal Register,** Vol. 64, No. 14, p. 3488, Friday, Jan 22, 1999. Through a joint effort, the DOD transportation and financial communities, in conjunction with the commercial transportation industry, have developed an electronic acquisition and payment process, which uses commercial documentation to procure and pay for transportation services. Over the past three years, DOD, in conjunction with the commercial transportation industry, has taken several major steps toward adopting transportation industry commercial practices. Specifically, the DOD is eliminating government unique documentation, including freight Government Bills of Lading and military manifests for commercial Sealift movement. Several prototypes have been conducted with commercial carriers. These prototypes tested the reenginerred process in a demanding but controlled environment. Based on the success of the prototypes, Dr. John J. Hamre, Deputy Secretary of Defense, directed the implementation of PowerTrack service for commercial transportation of freight movements within the United States, worldwide air movements, and Sealift intermodal service. PowerTrack, a product of US Bank, Inc., is an online payment and transaction system that is projected to reduce the payment cycle from an average of 60 days to 3 days from notification that service has been performed. PowerTrack effectively supports up-front pricing, facilitates the exchange of electronic information between shipper and carrier, and provides an automated payment and reconciliation tool. These changes will streamline procedures, reduce paperwork, and eliminates the need for Government payment centers dedicated to paying transportation services.

PowerTrack is now being used for the majority of DOD's freight shipments both in terms of number of shipments and in terms of dollar value. Today over 300 commercial carriers utilize PowerTrack. These carriers haul approximately 95% of DOD's freight traffic. Based on the success of the MRM 15 reengineering initiative, DOD wishes to expedite implementation of PowerTrack to all commercial carriers doing business with DOD. Accordingly, it is proposed that effective November 30, 2000, all remaining carriers, to include, air express, air freight, barge, pipeline, rail and sealift carriers wishing to transport freight for the DOD must have an agreement with US Bank and be PowerTrack certified for the electronic payment of commercial transportation services. It is important that interested carriers begin the PowerTrack signup process by calling US Bank at 1–800–417–1844. Additional information on PowerTrack is available at www.usbank.com/powertrack.

If the proposed schedule implementing mandatory use of PowerTrack is adopted, the following actions will be taken effective:

November 30, 2000—For all carriers in the categories listed above that are not PowerTrack capable, their voluntary and negotiated rate tenders on file will be placed in a nonuse status. Carriers with non-binding contracts will not be used for DOD freight movements. MTMC will work with carries to modify those contracts that do not contain the PowerTrack requirement in an effort to meet the November 30, 2000 implementation date.

December 31, 2000—For carriers participating in Guaranteed Traffic (GT) movements, carriers that are not PowerTrack capable will not be considered for GT awards beyond this date. Carriers that are not PowerTrack capable but are currently performing under GT awards will be allowed to continue performance until expiration of the contract period. MTMC may, with the carrier's agreement, extend a GT award if required for operational reasons. Only those carriers that are PowerTrack certified will be eligible for the extension of Guaranteed awards after December 31, 2000.

Regulatory Flexibility Act

This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 USC 3501 *et seq.,* does not apply because no information collection requirements or recordkeeping responsibilities are imposed on offerors, contractors, or members of the public.

Thomas Hicks,

Assistant Deputy Chief of Staff for Operations and Plans.

[FR Doc. 00–19796 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Prospective Grant of Exclusive Patent License

AGENCY: U.S. Army Soldier and Biological Chemical Command, U.S. Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), SBCCOM hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Provisional Patent Application 60/184,376 entitled: ''Automated Decision-Aid System for Hazardous Incidents (ADASHI)'' to Optimetrics, Inc.

The Automated Decision-Aid System for Hazardous Incidents (ADASHI) is a unique computer-based integrated decision-aid support system for improving tactical response to a hazardous incident. ADASHI effectively integrates the specific technical functions required to control a hazardous event involving chemical, biological or radiological (CBR) materials. ADASHI will automatically monitor most aspects of the CBR event, whether it be a ''What if?'' simulated event for training purposes or a real event. ADASHI can also be utilized as an ''over the shoulder'' decision-support system to aid incident commanders in making better, more timely decisions by rapidly processing the multi-variant input data and providing critical information to that commander in a high-stress environment.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Gross, Technology Transfer Office, U.S. Army SBCCOM, ATTN: AMSSB–RAS–C, 5183 Blackhawk Road (Bldg E3330/245), APG MD 21010–5423; Phone: (410) 436–5387 or E-mail: rigross@sbccom.apgea.army.mil.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within sixty days from the date of this published Notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–19797 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Integrated Total Army Personnel Data Base (ITAPDB) Data Element Standard Version 1.0 (V1.0)

AGENCY: Deputy Chief of Staff for Personnel, U.S. Army, DoD.

ACTION: Notice (Request for comments).

SUMMARY: The Department of the Army, Office of the Deputy Chief of Staff for Personnel announces a draft Integrated Total Army Personnel Data Base (ITAPDB) Data Standard Version 1.0 (V1.0), dated 3 August 2000. Comments are invited on: (a) Ways to enhance the quality and clarity of the information contained therein; and (b) ways to establish a common set of data element standards that will enable the Army to eliminate redundant data, ensure commonality of information, reduce data conversion cost, and align with DoD development initiatives.

DATES: Consideration will be given to all comments received by September 5, 2000. All comments received within 30 days of publication of this notice will be considered before any decision on whether to adopt this proposal.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Director, Information Systems, Office of the Deputy Chief of Staff for Personnel, ATTN: DAPE–ZXI (Ms. Golden Giddings/Ms. Angela McCoy), 300 Army Pentagon, Washington, DC 20310. Consideration will be given to all comments received within 30 days of the date of publication of this notice. E-mail address for Ms. Giddings is *giddigl@hqda.army.mil* and for Ms. McCoy is *mccoyak@hqda.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Oestreich, (703) 325–8877, *oestreip@perscom.army.mil.*

SUPPLEMENTARY INFORMATION: The ITAPDB establishes data element standards that will be shared among Army Information systems horizontally between Army communities and vertically between field level and DA human resource information systems. Establishing a common set of data element standards enables the Army to eliminate redundant data, ensure commonality of information, reduce data conversion costs, and align with DoD development initiatives. As ITAPDB Data Element Standard evolves, it will apply to intelligence, operations, fire support, logistics, safety, transportation, human resource, military police, medical, dental, finance, chaplain, legal, post operation, civilian personnel, moral and welfare, recreation, force management, education center, inspector general and contractor support mission areas as it pertains to people related exchange of information or data.

This standard is essential to achieve effective and efficient system interoperability among systems that support all Army human resources—soldier, civilian, or contractor in active or retired status.

Individuals desiring a copy of the draft ITAPDB Data Element Standard Version 1.0 should e-mail or write to Ms. Giddings or Mr. Oestreich at the above addresses.

Robert D. Buckstad,

Colonel, U.S. Army, Director, Information Systems.

[FR Doc. 00–19801 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Improvements to the Corpus Christi Ship Channel Near Corpus Christi, Texas as Published in House Document 99, 90th Congress, Second Session

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action to be addressed in the Draft EIS is to evaluate several deepening and widening alternatives to improve a deep-draft navigation channel that connects harbor facilities in the Corpus Christi area with the Gulf of Mexico. The study will focus on circulation and salinity changes associated with an improved channel

and develop dredged material disposal options that will include an evaluation of beneficial uses of dredged material. The project is being maintained at its authorized depth of 45 feet and includes about 34.5 nautical miles of deep-draft channel. The Corpus Christi area is located about 200 miles southwest of Houston, Texas. The local sponsor for the project is the Port of Corpus Christi Authority.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Carl Anderson, (409) 766–3914, Project Manager, Project Management Branch, or Dr. Terry Roberts, (409) 766–3035, Environmental Lead, Environmental Branch, Planning, Environmental, and Regulatory Division, P.O. Box 1229, Galveston, Texas 77553–1229.

SUPPLEMENTARY INFORMATION:

1. The study process began in 1990 when Congress directed the Secretary of the Army to study the feasibility of modifying the 45-foot channel to accommodate larger vessels, increase shipping efficiency, and enhance navigation safety. A reconnaissance study evaluated a deepening and widening plan to establish a Federal interest in the project. The study concluded there was a Federal interest in continuing studies in 1994. The feasibility study began in June 1999 and will determine the most cost-effective alternative for improving the channel while protecting the Nation's environment.

2. Alternatives: a. The six construction alternatives that will be evaluated in the feasibility phase are:

(1) Widening the existing 400-foot channel across Corpus Christi Bay between Ingleside and the Harbor Bridge.

(2) Add barge lanes across Corpus Christi Bay.

(3) Extend the La Quinta Channel approximately 8,000 feet.

(4) Deepen the channel to 52 feet from the Gulf of Mexico to the Viola Turning Basin and widen it across Corpus Christi Bay between Ingleside and the Harbor Bridge.

(5) Deepen the channel to 50 feet from the Gulf of Mexico to the Viola Turning Basin and widen it across Corpus Christi Bay between Ingleside and the Harbor Bridge.

(6) Deepen the La Quinta Channel to 50 feet.

b. A ''No Action'' alternative will be evaluated and presented for comparison purposes in evaluating the various construction alternatives.

3. Scoping: The scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. A series of scoping workshops will be conducted to discuss various issues associated with the channel improvements and placement of dredged material. Separate Scoping Notices will be issued for the various workshops. Issues to be considered in this process include beneficial uses of dredged material, changes in salinity and circulation, water and sediment quality, erosion along the channel, and threatened and endangered species impacts. Any person or organization wishing to provide information on issues or concerns should contact the Corps of Engineers at the above address.

4. Coordination: Further coordination with environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), and the Coastal Zone Management Act (Texas Coastal Management Program). A Regulatory Agency Coordination Team has been formed to provide guidance and counsel on matters relating to the evaluation of environmental impacts of this project. The Team is composed of representatives from three Federal and six State regulatory agencies, the local sponsor, and the U.S. Army Corps of Engineers.

5. DEIS Preparation: It is estimated that the DEIS will be available to the public for review and comment in March 2002.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–19799 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–GK–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement, Osceola County, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), the Florida Fish and Wildlife Conservation Commission, and the South Florida Water Management District intend to prepare a Draft Environmental Impact Statement (DEIS) on the feasibility of implementing a plan for the Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Osceola County, Florida.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS may be addressed to Ms. Heather Carolan or Ms. Lizabeth R. Manners, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–2016/3923.

SUPPLEMENTARY INFORMATION:

1. Proposed Project

a. Lake Tohopekaliga, located in Central Florida, has previously undergone three extreme drawdowns in 1971, 1979, and 1987. The drawdowns are designed to improve aquatic habitat that has been negatively impacted by flood control practices, which have resulted in detrimental stable lake levels and nutrient enrichment. Following refill of Lake Tohopekaliga after the three previous drawdowns the numbers of fish food organisms, sport fish and forage fish increased significantly; new aquatic vegetation communities became established; and organic sediments decreased in the lakes.

b. The purpose of this project is to improve the environmental ecosystem of Lake Tohopekaliga and thus provide quality habitat for fisheries, birds and other wildlife. Beneficial effects associated with the drawdown plan include bottom substrate improvements as organic build-up is reduced. Reduction of muck will lead to an increase in diversity and density of desirable vegetation. The drawdown will also allow the control of nuisance aquatic plants, such as hydrilla, water hyacinth, cattails, alligator weed, smartweed and pickerelweed, which proliferate under the unnatural static lake level conditions. In addition, the water quality of Lake Tohopekaliga will be enhanced by the nutrient uptake and filtration abilities by the recruitment of native plant species. Restoring littoral habitat, which favors bass, will increase native fish species.

c. Approximately 2,844 acres (40%) of shoreline along Lake Tohopekaliga will be exposed during the drawdown. Organic bottom sediments should compact and consolidate during the scheduled low water period. Coverage of beneficial aquatic vegetation such as knotgrass, maidencane and bulrush should increase following refill due to germination of seeds exposed during the drawdown. The subsequent increase in vegetation communities should significantly increase fish food organisms and sport fish populations.

d. Muck removal will be performed to enhance aquatic habitat and improve

boating conditions. Approximately 5 million cubic yards of organic material will be removed. The material will be disposed of on upland sites or used to create in-lake wildlife islands. Wildlife islands serve as excellent rookery sites for wading birds and also serve as resting and basking areas for reptiles.

2. Alternatives

a. Several drawdown alternatives will be identified and evaluated during the study.

b. Potential environmental resources and issues to be evaluated in the DEIS include project impacts on:

(1) Fish and wildlife resources.

(2) Wetlands resources.

(3) Wildlife habitat & values.

(4) Vegetation.

(5) Water quality.

(6) Surface & groundwater resources.

(7) Endangered or threatened species.

(8) Historical or archeological resources.

(9) Aesthetics.

(10) Nuisance and exotic plant species.

(11) Downstream effects.

(12) Air quality & noise.

(13) Soils.

(14) Navigation and recreation.

(15) Freeze protection.

(16) Local tropical fish farms.

c. Because of the magnitude and duration of this project the U.S. Army Corps of Engineers, the Florida Fish and Wildlife Conservation Commission and the South Florida Water Management District have determined that a DEIS should be prepared for the Project pursuant to the National Environmental Policy Act (NEPA).

3. Scoping

The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies; and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, local agencies and interested parties requesting comments and concerns regarding issues to consider during the study. Responses to this letter will help identify the potential environmental impacts to be evaluated in the DEIS. Additional comments are welcome and may be provided to the above address. Public meetings may be held in the future. Exact dates, times, and locations will be published in local papers.

4. Schedule

It is estimated that the DEIS will be available to the public by the spring of 2001.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–19798 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–AJ–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) for the American River Project, Long Term Evaluation, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), lead agency under the National Environmental Policy Act, and the California State Reclamation Board (The Board), lead agency under the California Environmental Quality Act, intend to prepare a joint document to evaluate the environmental effects of proposed flood control and ecosystem restoration components for the Sacramento, California, area.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and draft SEIS should be addressed to Ms. Patricia Roberson, Environmental Resources Branch, Planning Division, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–6705.

SUPPLEMENTARY INFORMATION:

1. Project Location

Sacramento is located where the American River joins the Sacramento River. The American River watershed, or drainage basin, covers approximately 2,100 square miles northeast of Sacramento and includes portions of Placer, El Dorado, and Sacramento Counties. Runoff from this basin flows through Folsom Reservoir and passes through Sacramento in a channel controlled by a system of levees. In addition to providing flood control to Sacramento, Folsom Dam and Reservoir are part of the Federal Central Valley Project, California's largest water delivery system. The primary study areas include Folsom Dam and Reservoir, lower American River, Sacramento Bypass, and the Yolo Bypass. These features are located within Sacramento, Yolo, Placer, and El Dorado Counties.

2. Proposed Action and Alternatives

The Corps and the Board are conducting a supplemental feasibility evaluation of alternative measures to provide additional flood protection to the City of Sacramento. This documentation and the accompanying SEIS/EIR are supplements to the 1996 American River Watershed Project Supplemental Information Report and SEIS/EIR, which in turn supplement the 1991 American River Watershed Investigation feasibility study and EIS. Alternatives to address resource problems and needs identified to date will include in whole or in part: (1) Enlarging Folsom Reservoir; (2) a downstream levee plan, which would involve raising and strengthening levees, raising bridges, and widening the Sacramento Bypass, and (3) a combination of downstream levee work and Folsom enlargement. Potential for ecosystem restoration will also be evaluated.

3. Scoping Process

a. Scoping is a process to identify the actions, alternatives, and effects to be evaluated in an environmental document. The public is invited to assist the Corps and non-Federal sponsor in scoping this SEIS. The Process provides an opportunity for the public to identify Significant resources in the study area that may be affected by the project. To facilitate this involvement, a series of public scoping meetings will be held in Folsom and Sacramento in August/September 2000. Individuals, organizations, and agencies are also encouraged to submit written scoping comments by September 30, 2000.

b. After the draft SEIS is prepared, it will be circulated to all interested parties for review and comment. Public meetings will be held to receive verbal and written comments. All comments will be considered and responded to in the final SEIS/EIR.

4. Availability

The draft SEIS/EIR is scheduled to be distributed for public review and comment in June 2001.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–19800 Filed 8–3–00; 8:45 am]

BILLING CODE 3710–EZ–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/606,113 entitled, ''METHOD OF NEUTRALIZING ORGANOPHOSPHOROUS AGRICULTURAL CHEMICALS'', filing date: June 8, 2000, Navy Case No. 82170.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, telephone (540) 653–8016.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: July 14, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19306 Filed 8–3–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department.

U.S. Patent Application Serial No. 09/266,868 entitled ''Adaptive Routing Method for a Dynamic Network'' Navy Case No. 80,215.

U.S. Patent Application Serial No. 09/513,245 Navy Case No. 80,244.

Requests for copies of the patent applications cited include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 14, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advcoate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–19307 Filed 8–3–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Norway.

This subsequent arrangement concerns the retransfer of 400g of U.S.-origin uranium and 100g of U.S.-origin plutonium, in the form of sintered mixed-oxide fuel pellets in sealed tubes, from the Euratom Supply Agency to the Government of Norway for irradiation and analysis. The sintered pellets contain 1.2g of the isotope U–235. The material is currently located at the Institut Transurane, Karlsruke, Germany, and will be shipped to the Institut for Energiteknikk (IFE), Halden, Norway. IFE Halden is a research institute within the fields of nuclear technology, man-machine communication, and energy technology.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 21, 2000.

For the Department of Energy.

Trisha Dedik,

Director, International Policy and Analysis for Arms Control and Nonproliferation, Office of Defense Nuclear Nonproliferation.

[FR Doc. 00–19762 Filed 8–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Inventions Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice of inventions available for license.

SUMMARY: The Department of Energy hereby announces that U.S. No. Patent 5,480,549, entitled ''Method for Phosphate-Accelerated Bioremediation'' and U.S. Patent No. 5,753,109, entitled ''Apparatus and Method for Phosphate-Accelerated Bioremediation'' are available for license, in accordance with 37 U.S.C. 207–209. A copy of the patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404.37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register**.

Issued in Washington, DC, on July 27, 2000.

Paul A. Gottlieb,

Assistant General Counsel for Technology, Transfer and Intellectual Property.

[FR Doc. 00–19763 Filed 8–3–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–417–00]

Colorado Interstate Gas Company; Notice of Tariff Filing

July 31, 2000.

Take notice that on July 25, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the proposed tariff sheets listed on Appendix A to the filing, to be effective September 1, 2000.

CIG states it manages it storage fields by controlling the injection and withdrawal cycles such that the reservoir pressure, calculated in pound/days, above original pressure conditions in the reservoir are balanced against those below original pressure conditions. CIG further states it manages these pound/day requirements through the use of a Reservoir Integrity Inventory Limit which is a graphical representation of a shipper's maximum allowable gas inventory in place on any day as a percentage of the shipper's contractual maximum inventory. To increase the flexibility of its storage service CIG proposes to revise the graph to allow shippers to retain more gas in storage between cycles while maintaining the pound/day balancing requirement. CIG further states to accomplish this objective, the period of time that shippers can maintain a full storage inventory must be slightly reduced.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19751 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–412–000, CP00–413–000 and CP00–414–000]

Cross Bay Pipeline Company, L.L.C. Transcontinental Gas Pipe Line Corporation; Cross Bay Pipeline Company, L.L.C.; Notice of Applications

July 31, 2000.

Take notice that on July 21, 2000, Cross Bay Pipeline Company, L.L.C. (Cross Bay) and Transcontinental Gas Pipe Line Corporation (Transco) filed jointly in Docket No. CP00–412–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations. Also take notice that on July 21, 2000, Cross Bay filed in Docket Nos. CP00–413–000 and CP00–414–000 applications pursuant to Section 7 of the NGA and the Commission's Rules and Regulations. By these applications, Cross Bay seeks certificates of public convenience and necessity authorizing it to construct, own, operate, and maintain natural gas facilities in order to become a new interstate natural gas pipeline company in New Jersey and New York. Cross Bay intends to provide up to 125,000 dth per day of new firm transportation between New Jersey and New York for any potential future customers. Transco seeks authority abandon, by transfer to Cross Bay, certain of its facilities in New Jersey and New York. Cross Bay's and Transco's proposals are more fully set forth in the applications which are on file with the Commission and open to public inspection. The filing(s) may also be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Any initial questions regarding these applications should be directed to Gisela B. Cherches, attorney for Cross Bay Operating Company, at P.O. Box 1396, Houston, Texas, 77251–1396, call (713) 215–2397.

Cross Bay seeks a certificate of public convenience and necessity authorizing the acquisition of certain facilities by Cross Bay from Transco and the construction and operation by Cross Bay of other natural gas pipeline facilities in New Jersey and New York. Cross Bay also seeks approval of its initial recourse rates for firm and interruptible open access transportation services, approval of its lease of pipeline capacity from Transco, and approval of its leasing of its capacity to Transco. Cross Bay further requests that the Commission grant it a Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G of the Commission's Regulations authorizing the transportation of gas for others, and a Blanket Certificate of public convenience and necessity under Part 157, Subpart F of the Commission's Regulations authorizing certain limited future facility construction and operation. Transco seeks approval of the related abandonment of certain of its natural gas pipeline facilities located in New Jersey and New York so that they can be contributed to Cross Bay as one of Transco's contributions.

Cross Bay respectfully requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by December 15, 2000, and a final order granting the authorizations requested by June 15, 2001. Cross Bay says that this approval schedule is necessary to allow the project to be completed by December 1, 2002, the proposed in-service date for the project.

Cross Bay is a limited liability company formed under the laws of the State of Delaware. The members of Cross Bay are Transco Cross Bay Company (Transco Cross Bay), a Delaware corporation and wholly owned subsidiary of Transco, Texas Eastern Cross Bay Company (Texas Eastern Cross Bay), a Delaware corporation and wholly owned subsidiary of Texas Eastern Transmission Corporation (Texas Eastern), and KeySpan Cross Bay, L.L.C. (KeySpan Cross Bay), a Delaware limited liability company and wholly owned subsidiary of KeySpan Corporation. Transco Cross Bay and Texas Eastern Cross Bay each have a 37.50% ownership interest in Cross Bay and KeySpan Cross Bay has a 25% ownership interest in Cross Bay. Cross Bay Operating Company, a wholly owned subsidiary of Transco, will act as operator of Cross Bay, overseeing the construction of Cross Bay's facilities, operating the facilities and handling the day-to-day business affairs of Cross Bay.

Cross Bay's pipeline system will have a total firm transportation capacity of 614,628 Dth. per day. Of this total capacity, Cross Bay will have 125,000 Dth. per day of incremental firm capacity available to new shippers. Cross Bay will lease up to 489,628 Dth.

per day of capacity on a firm basis back to Transco. Transco says that the lease will enable Transco to continue to provide seamless transportation service to existing customers who are currently served through the facilities Transco will transfer to Cross Bay. The cost of this lease is $61,483 per month, plus an additional amount for its share of operation and maintenance expenses and property taxes.

In addition, Transco will lease to Cross Bay up to 125,000 Dth. per day of pipeline capacity from Transco's meter station at Linden, New Jersey, which interconnects with Texas Eastern's facilities, to the interconnection of Transco's system with Cross Bay's system at the Cross Bay compressor station to be constructed in Middlesex County, New Jersey. The cost of this lease is $31,878 per month.

Cross Bay says that there is no economic or operational impact on Transco's existing customers due to the transfer of facilities or the terms of the lease arrangements. Cross Bay says it will have no adverse impacts on existing pipelines or their captive customers, as it will serve incremental load. Cross Bay says its project will enhance reliability of service to existing customers of Transco by adding compression and will enhance service to existing customers of Texas Eastern by providing additional access to New York markets through Cross Bay. The Cross Bay project involves less than two miles of replacement pipeline in existing right-of-way and construction of a compressor station on a site for which Cross Bay has secured the right to purchase the land.

Cross Bay's pipeline system will consist of the following existing facilities and modifications to such facilities:

1. About 3.3 miles of existing 42-inch pipeline in Middlesex County, New Jersey, and about 33.7 miles of existing 26-inch pipeline crossing Middlesex and Monmouth Counties, New Jersey and Queens and Nassau Counties, New York, including the Morgan Meter & Regulator Station and the Long Beach Meter & Regulator Station, which are both located along that pipeline segment. [Transco presently owns and operates these facilities, and refers to them as the Lower New York Bay Extension. Transco will cause these facilities to be transferred to Cross Bay at net book value.]

2. Modifications to the two existing meter stations, Morgan and Long Beach.

3. Uprating, by hydrostatic testing, of the 33.7 mile 26-inch pipeline.

4. Replacement of 5 sections of the 42-inch pipeline and uprating by hydrostatic testing.

5. Construction of one new compressor station consisting of two 8,000 horsepower electric driven reciprocating compressors and metering facilities near Old Bridge in Middlesex County, New Jersey (Cross Bay Compressor Station) at a location on which Cross Bay has secured the rights to purchase the property.

6. Modifications to other appurtenant facilities.

Cross Bay estimates that the total cost of its project will be approximately $59.5 million. Cross Bay is proposing a capital structure consisting of 75% non-recourse debt and 25% partner-contributed equity. Cross Bay has assumed that the debt will bear interest at the rate of 8% for a term of twenty (20) years. However, Cross Bay plans to seek the most favorable financing terms available in the marketplace at the time the project is financed. Cross Bay proposes that the equity component of its capital structure earn a return of 14%.

The *pro forma* FERC Gas Tariff pursuant to which Cross Bay will provide transportation service is included in its application in Exhibit P. Cross Bay says that the terms and conditions of the tariff are structured to conform to the requirements of the Commission's Order Nos. 636 and 637. The tariff includes proposed Rate Schedule FT, under which Cross Bay will render firm transportation service to shippers, and proposed rate Schedule IT, under which Cross Bay will render interruptible transportation service. The tariff also provides for the ability to negotiate rates. Cross Bay says that any shippers subscribing to Cross Bay's firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under Rate Schedule FT. Cross Bay proposes that the initial recourse rate for firm transportation service under Rate Schedule FT will be a monthly reservation rate of $7.4161 per Dth./month, which is based on the straight fixed-variable rate design methodology. The initial rate for interruptible transportation service under Rate Schedule IT will be a commodity rate of $0.2438 per Dth./day.

Cross Bay requests that the Commission issue it a Blanket Certificate of public convenience and necessity pursuant to Section 284.221 of the Commission's Regulations authorizing Cross Bay to provide transportation service to the customers requesting and qualifying for transportation service under Cross Bay's FERC Gas Tariff. Cross Bay states that it will comply with the conditions set forth in Section 284.221(c).

Cross Bay also request that the Commission grant to it a Blanket Certificate of public convenience and necessity pursuant to Section 157.204 of the Commission's Regulations authorizing limited future facility construction, operation and abandonment as set forth in the Blanket certificate Regulations in part 157, Subpart F. Cross Bay states that it will comply with the terms, conditions and procedures specified in Part 157, Subpart F.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before August 21, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (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. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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.

A person obtaining intervenor status will be laced on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all

other parties. However, commenters will not receive copies of all documents filed by the other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 NGA 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Cross Bay or Transco to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–19745 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–212–001]

Florida Gas Transmission Company; Notice of Proposed Compliance Filing

July 31, 2000.

Take notice that on July 27, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective August 25, 2000:

First Revised Sheet No. 186
Fifth Revised Sheet No. 187

FGT states that on March 8, 2000, NUI Corporation (City Gas Company of Florida Division) (NUI) filed a complaint contending that FGT violated applicable Commission policy, as well as FGT's tariff, by not permitting NUI to reduce its contract demand selectively by season in matching a bid submitted under FGT's right-of-first-refusal (ROFR) procedure. Subsequently, on July 14, 2000, the Commission issued an order in the referenced docket requiring FGT to clarify shippers' rights to uniformly reduce contract demand when exercising their ROFR rights. FGT states that in the instant filing, FGT is complying with the Commission's Order by adding tariff language allowing shippers exercising ROFR rights to reduce contract demand by either a uniform percentage reducing for each season or by the same absolute volume amount in each season.

Any person desiring to protest this filing shall 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. 00–19750 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–374–005]

Kern River Gas Transmission Company; Notice of Annual Threshold Report

July 31, 2000.

Take notice that on July 26, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing its Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the terms of its Settlement in this proceeding and with its tariff requirement to file an Annual Threshold Report, identifying the eligible firm shippers receiving a share of excess revenues and the amounts received.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 7, 2000. 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.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19752 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–115–000, et al.]

Electric Rate and Corporate Regulation Filings; FortisUS Energy Corporation, et al.

July 27, 2000.

Take notice that the following filings have been made with the Commission:

1. FortisUS Energy Corporation

[Docket No. EC00–115–000]

Take notice that on July 20, 2000, FortisUS Energy Corporation tendered for filing, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. Section 824b (1994), and Part 33 of the Commission's regulations, 18 CFR Part 33, an application for authorization to dispose of jurisdictional facilities under an intra-corporate restructuring.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER00–2075–001]

Take notice that on July 24, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing an amended filing consisting of an Amended Power Purchase Agreement (Amendment) with Dynegy Power Marketing, Inc. (Dynegy) dated July 19, 2000 and the Power Purchase Agreement between Virginia Power and Dynegy dated September 30, 1999 on a non-confidential basis. The

Company filed the amended filing in response to the Commission's June 23, 2000 deficiency letter in this proceeding.

Virginia Power requests that the Commission accept the Amendment under the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4).

The Company asks that the Commission grant a waiver to make the Amendment effective June 1, 2000.

Copies of the filing were served upon the parties of record, Dynegy Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER00–3132–000]

Take notice that on July 24, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to the executed Service Agreement with Wind Utility Consulting providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER00–3133–000]

Take notice that on July 24, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to the executed Service Agreement with Wind Utility Consulting providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Oleander Power Project, Limited Partnership

[Docket No. ER00–3240–000]

Take notice that on July 24, 2000, Oleander Power Project, Limited Partnership (Oleander) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, and to reassign transmission capacity. Oleander proposes to construct a natural gas-fired, simple cycle power plant with a nominal generating capacity of approximately 875 MW on a site located in Brevard County, Florida.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER00–3241–000]

Take notice that on July 24, 2000, the California Independent System Operator Corporation tendered for filing a Participating Generator Agreement between the ISO and Wheelabrator Shasta Energy Company for acceptance by the Commission.

The ISO states that this filing has been served on Wheelabrator Shasta Energy Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 12, 2000.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER00–3242–000]

Take notice that on July 24, 2000, the California Independent System Operator Corporation tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Wheelabrator Shasta Energy Company for acceptance by the Commission.

The ISO states that this filing has been served on Wheelabrator Shasta Energy Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 12, 2000.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER99–3603–001]

Take notice that on July 24, 2000, Pacific Gas and Electric Company tendered for filing a refund report in compliance with the April 26, 2000, Letter Order issued by the Federal Energy Regulatory Commission (Commission) approving the Offer of Settlement filed in the above-referenced docket on March 3, 2000.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–3016–000]

Take notice that on July 21, 2000, Ameren Services Company (ASC), tendered for filing an amendment to the Network Integration Transmission Service Agreement between Ameren Services and Illinois Municipal Electric Agency (IMEA). Ameren Services asserts that the purpose of the amended filing is to file Attachment B which was inadvertently omitted from the original filing.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. West Texas Utilities Company

[Docket No. ER00–3243–000]

Take notice that on July 24, 2000, West Texas Utilities Company (WTU), tendered for filing revised tariff sheets to its Wholesale Power Choice Tariff (WPC Tariff) to reflect changes being implemented in several sections of the WPC Tariff pursuant to agreement of WTU and the WPC Customers.

WTU seeks an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on the affected WPC Customers and on the Public Utility Commission of Texas.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER00–3244–000]

Take notice that on July 24, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with The Legacy Energy Group, LLC (Transmission Customer).

SPP seeks an effective date of July 18, 2000, for each of the service agreements. Copies of this filing were served on the Transmission Customer.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER00–3245–000]

Take notice that on July 24, 2000, Arizona Public Service Company (APS), tendered for filing notice that effective July 31, 2000, APS FERC Rate Schedule No. 201, effective date June 1, 1976 and filed with the Federal Energy Regulatory Commission by Arizona Public Service Company is to be canceled.

Notice of the proposed cancellation has been served upon The San Carlos Irrigation Project and The Arizona Corporation Commission.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Exelon Generation Company, L.L.C.; PECO Energy Company; Commonwealth Edison Company; Horizon Energy Company; AmerGen Energy Company, L.L.C.; AmerGen Vermont, LLC; Unicom Power Marketing, Inc.; Unicom Energy, Inc.

[Docket Nos. ER00–3251–000, ER99–1872–002, ER98–1734–002, ER98–380–012, ER99–754–004, ER00–1030–001, ER97–3954–012, ER00–2429–001]

Take notice that on July 24, 2000, Exelon Generation Company, L.L.C., PECO Energy Company, Commonwealth Edison Company, Horizon Energy Company, AmerGen Energy Company, L.L.C., AmerGen Vermont, LLC, Unicom Power Marketing, Inc., and Unicom Energy, Inc., tendered for filing the Application of Exelon Generation Company for Market-based Rate Authority and Application of Exelon Corporation Subsidiaries and Affiliates for Other Forms of Relief under Section 205 of the Federal Power Act.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Montana Power Company

[Docket No. ER00–3252–000]

Take notice that on July 24, 2000, Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Firm and Non-Firm Point-To-Point Transmission Service Agreements with Constellation Power Source, Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Constellation Power Source, Inc.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Company

[Docket No. ER00–3253–000]

Take notice that on July 24, 2000, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Sonat Power Marketing, Inc., for non-firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 21, 2000.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER00–3246–000]

Take notice that on July 24, 2000, Arizona Public Service Company (APS), tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name	APS–FPC/ FERC rate schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority [1]	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	[2] 65
Electrical District No. 1	68
Arizona Power Pooling Association	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	[2] 207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

[1] Formerly Papago Utility Tribal Authority.
[2] 2 APS–FPC/FERC Rate Schedule in effect during the refund period.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19744 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–230–000, et al.]

Electric Rate and Corporate Regulation Filings; Trigen-Cholla LLC, et al.

July 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Trigen-Cholla LLC

[Docket No. EG00–230–000]

Take notice that on July 25, 2000, Trigen-Cholla LLC, 25 Tenth Street, Golden, Colorado 80401–0088 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company. The Applicant is in the process of constructing and will own two electric generation plants, each consisting of a single approximately 5-megawatt gas turbine, located in unincorporated Baca County, Colorado (the Facilities). The Facilities are scheduled to begin commercial operation July 1, 2000. All of the electric output of the Facilities will be sold at wholesale, initially to Tri-State Generation and Transmission Association, Inc.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Broad River Investors LLC

[Docket No. EG00–232–000]

Take notice that on July 27, 2000, Broad River Investors LLC (Applicant) with its principal office c/o SkyGen Energy LLC, Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, Illinois 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of ''exempt wholesale generator'' status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will be engaged in owning and operating Units 4 and 5 (the Facility) at the Broad River Energy Center consisting of two (2) natural gas fueled simple cycle combustion turbines each having a maximum electrical output of approximately 180 MW. The Facility will be constructed in Cherokee County, at Gaffney, South Carolina. The Applicant also states that it will sell electric energy exclusively at wholesale to meet peaking electricity needs in the region.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. East Central Area Reliability Council

[Docket No. ER00–2234–001]

Take notice that on July 25, 2000, the East Central Area Reliability Council (ECAR), on behalf of Allegheny Power, American Electric Power Co., Big Rivers Electric Corp., Cinergy Corp., Consumers Energy Co., The Dayton Power and Light Co., The Detroit Edison Co., Duquesne Light Co., East Kentucky Power Cooperative, Inc., Enron–SE Corp, FirstEnergy Corp., Hoosier Energy REC, Indianapolis Power and Light Co., LG&E Energy Corp., Northern Indiana Public Service Co., Ohio Valley Electric Corp., and Southern Indiana Gas and Electric Co., tendered for filing an amendment to the Inadvertent Settlement Tariff that was accepted by the Commission on May 31, 2000. 91 FERC ¶ 61,197. This amendment, and Index of Parties, adds Enron-Wheatland-Indianapolis (ENWI) and Enron-Wheatland-Cinergy (ENWC), new ECAR Control Areas, as Parties to the Inadvertent Settlement Tariff. ECAR also requests that the Commission waive its notice requirements to allow this filing to go into effect by July 26, 2000. The filing is available on the ECAR's web site (www.ecar.org).

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–3254–000]

Take notice that on July 25, 2000, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Utica Power Authority for acceptance by the Commission.

The ISO states that this filing has been served on Utica Power Authority and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 17, 2000.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Hardee Power Partners Limited

[Docket No. ER00–3255–000]

Take notice that on July 25, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with the City of Lakeland, Florida (Lakeland) under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on June 26, 2000.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER00–3256–000]

Take notice that on July 25, 2000, Consumers Energy Company (Consumers), tendered for filing executed transmission service agreements with Conectiv Energy Source, Inc. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of July 17, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER00–3257–000]

Take notice that on July 25, 2000, South Carolina Electric & Gas Company (SCE&G), tendered a service agreement establishing Allegheny Energy Supply Company, LLC as a non-firm point-to-point customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Allegheny Energy Supply Company, LLC and the South Carolina Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER00–3258–000]

Take notice that on July 25, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Utica Power Authority for acceptance by the Commission.

The ISO states that this filing has been served on Utica Power Authority and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 17, 2000.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–3259–000]

Take notice that on July 25, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing: (1) Nine signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), four of which are replacement pages for entities which have changed their corporate name and five of which are additional parties to the RAA; (2) request for Commission approval of the withdrawal of three parties from the RAA; (3) an amended Schedule 17 of the RAA adding the new entities to the list of RAA signatories, deleting the entities that are withdrawing or have withdrawn from the RAA, and reflecting the corporate name changes; (4) Notice of Cancellation for Edison Source to terminate its membership in PJM, to

cancel certain service agreements with PJM and to withdraw it as a signatory to the RAA; and (5) Notices of Cancellations for Cinergy Resources, Inc., and DuPont Power Marketing, Inc., to withdraw as signatories to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including the parties for which a signature page is being tendered with this filing, the parties that are withdrawing from the RAA, the PJM members, and each of the state electric regulatory commissions within the PJM control area.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Trigen-Cholla LLC

[Docket No. ER00–3262–000]

Take notice that on July 25, 2000, Trigen-Cholla LLC, tendered for filing pursuant to Rules 205 and 207 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on or before August 1, 2000, subject to approval by the Commission, and accepting two power purchase agreements between it and Tri-State Generation and Transmission Association, Inc.

In transactions where Trigen-Cholla LLC will sell electric energy and/or capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed with the purchasing party.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER00–3263–000]

Take notice that on July 25, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2).

Wisconsin Electric respectfully requests an effective date July 25, 2000.

Copies of the filing have been served on Wisconsin Public Service Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3264–000]

Take notice that on July 25, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement Nos. 315 and 316 to add The Energy Authority, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is July 24, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Electric Utilities Corporation

[Docket No. ER00–3265–000]

Take notice that on July 25, 2000, PPL Electric Utilities Corporation (PPL), tendered for filing an Interconnection Agreement and Addendum to Interconnection Agreement between PPL and International Paper Corporation.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Pepco Energy Services, Inc.

[Docket No. ER00–3276–000]

Take notice that on July 21, 2000, Pepco Energy Services, Inc., tendered for filing a Notice of Succession of Ownership and Operation.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Hardee Power Partners Limited

[Docket No. ER00–3260–000]

Take notice that on July 25, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with Florida Power Corporation (FPC) under HPP's market-based sales tariff.

Copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Hardee Power Partners Limited

[Docket No. ER00–3261–000]

Take notice that on July 25, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with The Energy Authority, Inc. (TEA) under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on June 26, 2000.

Copies of the filing have been served on TEA and the Florida Public Service Commission.

Comment date: August 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19743 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene and Protests

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 6115–010.

c. *Date Filed:* June 5, 2000.

d. *Applicant:* Pyrites Associates.

e. *Name of Project:* Pyrites.

f. *Location:* The project is located on the Grass River in St. Lawrence County, New York. The project does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Michael B. Peisner, Esq., Curtis Thaxter Stevens Broder & Micoleau LLC, One Canal Plaza, P.O. Box 7320, Portland, Maine 04112.

i. *FERC Contact:* Any question on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and or motions:* September 1, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the Project Number (6115–010) on any comments or motions filed.

k. *Description of Transfer:* Pyrites Associates is a general partnership organized under the laws of the state of New York, consisting of the general partners Hydro Development Group, Inc. (Hydro), and Hydra-Co Enterprises, Inc. (Hydra). The application states that the proposed transfer will result from CHI-Dexter, Inc., a Delaware corporation, purchasing the remaining interest of Hydra as a general partner in Pyrites Associates. Under the purchase transaction, Hydra will cease to be a general partner and CHI-Dexter will become a general partner in the partnership entity that will continue to operate under the name Pyrite Associates. The application states that the purchase transaction will arguably cause a technical dissolution of Pyrites Associates under Section 60 of New York's Partnership Law.

The applicant states that operation of the project will not change as a result of the proposed transfer and the current operator, Hydro, will continue as operator.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19746 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11842–000.

c. *Date filed:* June 26, 2000.

d. *Applicant:* Hydro Energy Development Corporation.

e. *Name of Project:* Big and Grade Creeks Project.

f. *Location:* On Big Creek and Grade Creek, in Skagit County, Washington. The project would utilize approximately 25.8 acres of federal lands within Mt Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Jacobs, Hydro Energy Development Corporation, 19515 North Creek Parkway, Suite 310, Bothell, WA 98011–8208, 425–487–6550.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All document (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A 120-foot-long, 20-foot-high concrete Big Creek diversion structure; (2) having an impoundment with a surface area of 0.2 acres and negligible storage, with normal water surface elevation of 1,630 feet msl; (3) a 13,184-foot-long, 48-inch-diameter steel penstock; (4) an 80-foot-long, 12-foot-high reinforced concrete weir wall Grade Creek Diversion structure; (5) having an impoundment with a surface area of 0.1 acres and negligible storage, with normal water surface elevation of 2,170 fee msl; (6) a 12,696-foot-long, 28-inch diameter steel penstock; (7) both penstocks would enter a single powerhouse containing two generating units having a total installed capacity of 9.2 MW; (8) a tailrace; (9) 15-mile-long, 34.5 kV transmission line; and (10) appurtenant facilities.

The project would have an annual generation of 40,588 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed scope of studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19747 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11843–000.

c. *Date filed:* July 3, 2000.

d. *Applicant:* Gene Arlin Shanks.

e. *Name of Project:* Elfin Inian Project.

f. *Location:* On Elfin Cove, near the town of Elfin Cove, Alaska. The project would utilize federal lands within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gene Arlin Shanks, P.O. Box 47, 129 Lindgard Lane, Elfin Cove, AK 99825, 907–239–2322.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) an intake structure; (2) a 1,100-foot long, 10-inch-diameter steel penstock; (3) a powerhouse containing two generating units having a total installed capacity of 128 kW; (4) A tailrace; (5) a 7.2 kV transmission line; and (6) appurtenant facilities. The project generation would be sold to a local utility.

A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application

may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received or or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secetary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19748 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11844–000.

c. *Date filed:* July 3, 2000.

d. *Applicant:* Indianford Water Power Company, Inc.

e. *Name of Project:* Indianford Project.

f. *Location:* On Rock River, in Rock County, Wisconsin, No federal Lands or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas J. Reiss, Jr., President, Indianford Water Power Company, Inc, P.O. Box 553, 319 Hart Street, Watertown, WI 53094, 920–261–7975.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance dated of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) An existing 463-foot long, 6-foot-high reinforced concrete gated dam; (2) an existing impoundment with a surface area of 10,460 acres, having a storage capacity of 55,793 acre-feet, and a normal water surface elevation of 775.73 feed msl; (3) an existing powerhouse containing two generating units having a total installed capacity of 500 kW, (4) a proposed 100-foot-long transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 73 MWh that would be sold to a local utility.

A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and

reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A completing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission , 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary

[FR Doc. 00–19749 Filed 8–3–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Business Ownership Representation

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: Business Ownership Representation, EPA ICR No. 1962.01, this is a new collection. 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 September 5, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1962.01. For technical questions about the ICR contact Leigh Pomponio at EPA by phone at (202) 564–4364 or by email at pomponio.leigh@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Business Ownership Representation, OMB No. not yet assigned, EPA ICR No. 1962.01. This is a new collection.

Abstract: EPA will request that contractors selected for award reply to the Business Ownership Representation clause by checking the appropriate box to indicate the ethnic affiliation of the company ownership. EPA will use the collected information in aggregate to encourage full participation in the contractor selection process by identifying business communities that are under-represented in Agency awards, and sponsoring outreach efforts in those areas. Responses to the collection of information are voluntary, and responses will be treated as confidential business information in accordance with 40 CFR 2.201 *et seq.* 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 04/24/00 (65 FR 21763). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 minutes per response. Burden means the total time, effort, or financial resources expended

by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large and small business receiving contracts from EPA.

Estimated Number of Respondents: 240.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 12 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 addresses. Please refer to EPA ICR No. 1962.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, 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: July 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19790 Filed 8–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for New Stationary Sources; New Residential Wood Heaters

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: New source Performance Standards for New Residential Wood Heaters (Subpart AAA), OMB Control Number 2060–0161, expiration date: 9/30/00. 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 September 5, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1176.06. For technical questions about the ICR, contact Robert C. Marshall, Jr. at EPA by phone at (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Title: 40 CFR 60.530 thru 60.539(b), New source Performance Standards for New Residential Wood Heaters (Subpart AAA), OMB Control No. 2060–0161, EPA ICR No. 1176.06, expiring 9/30/00. This is an extension of a currently approved collection.

Abstract: Information is supplied to the Agency under the applicable rule by emission testing laboratories, manufacturers and commercial owners (e.g., distributors, retailers).

The information supplied by manufacturers to the Agency is used: (1) To ensure that the best demonstrated technology (BDT) is being used to reduce emissions from wood heaters, (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards, (3) to provide evidence that production-line wood heaters have emission performance characteristics similar to tested models and (4) to provide assurance of continued compliance.

Manufacturers submit a notification to the Agency stating the dates of certification testing, perform the certification testing at an accredited laboratory, supply detailed component drawings including manufacturing tolerances to the Agency, reapply for certification every five years, seal/store each tested model and maintain all necessary certification test records.

Most recordkeeping and reporting provisions of the rule consists of emissions-related data and other information not considered confidential. However, the confidentiality of certain information obtained by the Agency is safeguarded according to Agency policies.

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 3/31/2000 (65 FR 17258); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.5 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: Manufacturers/Sellers of new residential wood heaters.

Estimated Number of Respondents: 54.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 7,653 hours.

Estimated Total Annualized Non-labor Cost Burden: $1,500,573.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing

respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1176.06 and OMB Control No. 2060–0161 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, 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: July 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19791 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–J65300–CO Rating LO, Upper Blue Stewardship Project, Implementation of Vegetation Management, Travel Management, Designation of Dispersed Camping Sites, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: Based on a limited review, EPA does not foresee having any environmental objections to the proposed project.

ERP No. D–AFS–J65324–WY Rating EC2, State of Wyoming School Section 16 T.12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY.

Summary: EPA expressed concerns about potential impacts on fisheries, threatened/endangered species and the roadless character of the land.

ERP No. D–AFS–J67028–MT Rating LO, Rocky Mountain Front Mineral Withdrawal, Implementation, Helena and Lewis and Clark National Forests, Great Falls, MT.

Summary: EPA has no objection to the action as proposed.

ERP No. D–AFS–L65358–ID Rating EC2, Starbucky Restoration Project, Implementation of Vegetative Treatment, Road Construction and Watershed Improvements, Nez Perce National Forest, Red River Ranger District, Idaho County, ID.

Summary: EPA expressed concerns regarding potential for sediment entering Santiam and Buckhorn Creeks; probability of intrusions into Buckhorn watershed riparian zone by off-road vehicles; uncertainty of whether restoration projects would receive funding; and degradation from possible mine exploration activities in the watersheds. The EPA requested that these concerns be addressed in final EIS and ROD.

ERP No. D–BIA–L65352–WA Rating EC2, Colville Indian Reservation Integrated Resource Management Plan, Implementation, Colville Indian Reservation, Okanogan and Ferry Counties, WA.

Summary: EPA expressed concern that there appeared to be no clear NEPA process for use on projects that would tier off this document. EPA requested that the final document discuss the tiered NEPA process and also include additional information on potential air and water quality issues.

ERP No. D–FHW–H40169–MO Rating LO, US Route 65/US Route 36 in Livingston County, Transportation Improvements, Funding and COE Section 404 Permit, Livingston County, MO.

Summary: EPA expressed a lack of objections to the proposed project, but recommended that MoDOT evaluate compatibility of the C–1 sub-alignment, with the City of Chillicothe's draft land use plan.

ERP No. D–FHW–K53008–NV Rating EC2, Reno Railroad Corridor, Implementation of the Freight Railroad Grade Separation Improvements in the Central Portion of the City of Reno, Washoe County, NV.

Summary: EPA expressed concerns regarding the treatment of contaminated groundwater during construction, the treatment of stormwater during operation, the impact of the project on the Glendale Water Treatment Plant, PM–10 emissions during construction, and diesel emissions during operations. EPA requested the development of more stringent stormwater quality controls, fugitive dust PM–10 controls, and the reconsideration of build alternative along alternative alignments located away from heavily populated areas and riparian areas.

ERP No. D–GSA–D80030–DC Rating LO, Department of Transportation Headquarters, Proposal to Lease 1.3 to 1.35 Million Rentable Square Feet of Consolidated and Upgraded Space, Five Possible Sites, Located in the Central Employment Area, Washington, DC.

Summary: While EPA has no objection to the alternative as presented, it did request that GSA mitigate any adverse Environmental Justice impacts, impacts to historic resources/archeology, including historic views and traffic impacts on local streets that may develop as the project proceeds.

ERP No. D–NPS–B61024–MA Rating LO, Boston Harbor Islands National Recreation Area, Implementation, General Management Plan, Boston, MA.

Summary: EPA had no objections to the project described in the EIS.

ERP No. D–SFW–K99029–NV Rating EC2, Clark County Multiple Species Habitat Conservation Plan, Issuance of a Permit to Allow Incidental Take-of-79 Species, Clark County, NV.

Summary: EPA expressed concerns about mitigation that relies on increased funding and coordination for conservation measures primarily on existing public lands. EPA asked that the FEIS describe how the plan would result in improved on-the-ground conditions which would not otherwise be achieved through existing resource management plans. EPA also believes a commitment to growth which is town-centered, transit and pedestrian oriented, and has a greater mix of housing, commercial and retail uses would significantly enhance the benefits of the regional conservation planning effort. In addition, EPA urged the adoption of the 20-year permit duration versus the preferred alternative's 30-year permit.

ERP No. DS–AFS–J65287–UT Rating LO, Rhyohite Fuel Ecosystem Rehabilitation Project to the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

Summary: Based on a limited review. EPA does not foresee having any environmental objections to the proposed project.

ERP No. RD–AFS–L61208–00 Rating EC2, Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Revised and Updated Information on Five Alternatives, Implementation, Wallowa-Whitman National Forest, Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce and Adam Counties, ID.

Summary: EPA expressed concerns regarding potential impacts to water

quality and existing impaired waterbodies. EPA recommends that the EIS include plans to obliterate roads versus closing them; a comprehensive road plan that balances environmental effects, funding constraints, and access needs and includes maintenance and monitoring elements; and a strategy to restore impaired waters that is based on the 303(d) protocol.

Final EISs

ERP No. F–AFS–L65313–ID, Silver Creek Integrated Resource Project, Implementation, Middle Fork Payette River, Boise National Forest, Boise and Valley Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65329–AK, Skipping Cow Timber Sale, Harvesting Timber, South half of Zarembo Island, Tongass National Forest, Wrangell Ranger District.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L67037–ID, Dry Valley Mine—South Extension Project, Construction of two New Open Pit Mine, Special-Use-Permit, COE Section 404 Permit, Public and Private Land Used, Caribou County, ID.

Summary: EPA expressed concerns that the area surrounding the proposed project would be at risk without commitments in the ROD. EPA requested that the ROD require regular analysis and reporting of data, a strategy for dealing with unforeseen circumstances at the site, bonding adequate to reclaim the site, and clear acknowledgment that land application of wastewater has not been approved by BLM.

ERP No. F–COE–K36130–AZ, Tres Rios Feasibility Study Project, Ecosystem Restoration, Located at the Salt, Gila and Agua Fria Rivers, City of Phoenix, Maricopa County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–TVA–E70001–TN, Tim Ford Reservoir Land Management and Disposition Plan, Implementation, Tim Ford Reservoir, Franklin and Moore Counties, TN.

Summary: EPA continues to be concerned about potential water quality concerns involving shoreline development of the reservoir.

Dated: August 1, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–19847 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6609–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed July 24, 2000 Through July 28, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000260, FINAL EIS, FHW, ME, Augusta River Crossing Study, To Reduce Traffic Deficiences within the Transportation System Serving the City of Augusta, Funding, Kennebec River, Kennebec County, ME, Due: September 05, 2000, Contact: Mr. A. Graham Bailey (207) 622–8487.

EIS No. 000261, DRAFT EIS, BOP, CA, Lompoc United States Penitentiary (UPS) Construction and Operation of a New High-Security Facility and Ancillary Structures on One of Three Sites located in the City of Lompoc, Funding, Santa Barbara County, CA, Due: September 18, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000262, FINAL EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements from Uniontown to Brownsville Area, Funding and COE Section 404 Permit, Fayette and Washington Counties, PA, Due: September 05, 2000, Contact: Daniel W. Johnson (717) 221–2276.

EIS No. 000263, FINAL EIS, FHW, TX, TX–45 Highway Project, Extending from Anderson Mill Road just west of US 183 to Farm-to-Market Road 685 (FM–685) east of IH–35, Funding, Williamson and Travis Counties, TX, Due: September 05, 2000, Contact: Mr. Walter Waidelich (512) 916–5988.

EIS No. 000264, FINAL EIS, COE, FL, Improving the Regulatory Process in Southwest Florida for the Review of Applications for the Fill of Wetlands (US Army COE Section 404 Permit), Lee and Collier Counties, FL, Due: September 05, 2000, Contact: Bob Barron (904) 232–2203.

EIS No. 000265, DRAFT EIS, SFW, OH, Little Darby National Wildlife Refuge Establishment in the Little Darby Creek Watershed for Restoration, Preservation, Enhancement and Protection of Fish and Wildlife Resources, Madison and Union Counties, OH, Due: September 28, 2000, Contact: Thomas J. Larson (612) 713–5430.

EIS No. 000266, FINAL EIS, DOE, Sodium-Bonded Spent Nuclear Fuel Treatment and Management, Candidate Disposal Sites are Argonne National Laboratory-West (ANL–W) located within the boundaries of the Idaho National Laboratory, ID and the Savannah River Sites (SRS) F-Area and L-Area, SC, Due: September 05, 2000, Contact: Susan M. Lesica (301) 903–8755.

EIS No. 000267, FINAL SUPPLEMENT, COE, FL, Central and Southern Florida Project for Flood Control and Other Purposes, Everglades National Park Modified Water Deliveries, New Information concerning Flood Mitigation to the 8.5 Square Mile Area (SMA), Implementation, South Miami, Dade County, FL, Due: September 05, 2000, Contact: Dennis Barnett (404) 562–5225.

EIS No. 000268, DRAFT EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: September 18, 2000, Contact: D. Foley (314) 331–8648.

Amended Notices

EIS No. 000180, DRAFT EIS, NRS, MS, New Porters Bayou Watershed Plan, Reducing Flood and Drainage Damage To Cropland, Improvements to Watershed Channels, City of Shaw, Bolivar and Sunflower Counties, MS, Due: July 31, 2000, Contact: Homer L. Wilkes (601) 965–5205.

Officially Withdrawn by the Preparing Agency.

Dated: August 1, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–19848 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6846–1]

Notification of Proposed Policy Change; Superfund Construction Completion List

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed policy change.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to revise its policy with respect to the Construction Completion category established in the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). Existing Agency

policy had limited sites eligible for inclusion to the Construction Completion List (CCL) to sites that are on the NPL at the time a determination is made that all physical construction has been completed. As a result, deleted sites would never qualify for the CCL if physical construction remains at the time of deletion from the NPL.

The proposed policy would allow all sites that are on the NPL or have been deleted from the NPL to be eligible for the CCL when all physical construction under all authorities is complete and all other applicable construction completion policy criteria have been satisfied. This will allow Superfund to track and report completion of all construction activities at NPL sites.

DATES: Comments on the proposed policy change must be submitted by September 5, 2000.

ADDRESSES: Send comments to: Mr. Richard Jeng, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jeng, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 at (703) 603–8749 or e-mail *Jeng.Richard@epa.gov* or the RCRA/Superfund Hotline from 8:30 a.m. to 7:30 p.m., Monday-Friday, toll free at 1–(800)–424–9346.

SUPPLEMENTARY INFORMATION:

A. Background

During the initial years of the Superfund program, outside audiences often measured Superfund's progress in cleaning up sites by the number of sites deleted from the NPL as compared to the number of sites on the NPL. This measure, however, did not and still does not fully recognize the substantial construction and reduction of risk to human health and the environment that has occurred at NPL sites. In response, the National Contingency Plan Preamble **Federal Register** (FR) Notice (55 FR 8699, March 8, 1990) established a Construction Completion category of NPL sites to more clearly communicate to the public the status of cleanup progress among sites on the NPL.

A later Notification of Policy Change **Federal Register** Notice (58 FR 12142, March 2, 1993) introduced the Superfund Construction Completions List (CCL) ''* * * to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities.'' A total of 155 sites were included on this initial list. The same notice that introduced the CCL also indicated that ''* * * deleted sites will not qualify for the CCL if physical construction remains to be conducted under another statutory authority.'' As a result, EPA adopted the policy where only sites on the NPL (*i.e.,* not proposed or deleted sites) should qualify for inclusion to the CCL. In EPA's Close Out Procedures for National Priorities List Sites (Office of Solid Waste and Emergency Response Directive 9320.2–09 A–P, January 2000) guidance, EPA defined a construction completion site as a former toxic waste site where physical construction of all cleanup actions is complete, all immediate threats have been addressed, and all long-term threats are under control.

B. Notice of Proposed Policy Change

Construction Completion List (CCL) will now include sites deleted from the NPL.

EPA now believes it is important to assess all NPL Superfund sites, including those that have been deleted, to ensure that all construction of response actions has been completed. In doing so, EPA believes that although a site is deleted from the Superfund NPL, it should be accounted for on the CCL when EPA determines that all physical construction is complete under all statutory authorities and all applicable construction completion policy criteria have been satisfied. Any previously listed NPL Superfund site added to the CCL as a result of this proposed policy change will be subject to all report documentation requirements as currently required for construction completions at NPL sites. Program projections indicate that this proposed policy revision could eventually affect up to eight sites currently deleted from the NPL. This includes sites deleted from the NPL as a result of deferral of physical construction to another authority. Should the proposed policy change become effective during the current fiscal year, one of the eight sites will have all physical construction completed under all authorities and will be added to the CCL in fiscal year 2000.

Notice: This document does not substitute for EPA's statutes or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, states, or the regulated community. EPA may change this guidance in the future, as appropriate.

Dated: July 27, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–19789 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6845–3]

State Program Requirements; Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period on application for approval of the Maine Pollutant Discharge Elimination System.

SUMMARY: The State of Maine has submitted a request for approval of the Maine Pollutant Discharge Elimination System (MEPDES) Program pursuant to section 402 of the Clean Water Act. On December 30, 1999 (64 FR 73552) EPA published a notice requesting comments on the Maine application by February 29, 2000. On June 28, 2000 (65 FR 39899) EPA published an extension of the comment period until July 28, 2000. Today, EPA is extending the comment period on the State's request until August 21, 2000 in response a request from commenters, solely for the purposes of taking comment on the question of whether EPA should approve the State's application to administer its program in the lands or territories of the Indian Tribes in Maine.

DATES: EPA Region I will take written comments solely on the question of whether EPA should approve the State's application to operate its program in the lands or territories of the Indian Tribes in Maine through August 21, 2000 at its office in Boston, MA. EPA requests that copies of such written comments also be provided to the Maine Department of Environmental Protection (MEDEP).

ADDRESSES: Written comments must be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114–2023. EPA requests that a copy of each comment be submitted to: Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 04333–0017.

Copies of documents Maine has submitted in support of its program approval request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1

Congress Street—Suite 1100, Boston, MA 02114–2023, 617–918–1990 or 1–888–372–5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

FOR FURTHER INFORMATION CONTACT: Stephen Silva at the address listed above or by calling (617) 918–1561 or Dennis Merrill at the address listed above or by calling (207) 287–7788. The State's submissions (which comprise approximately 128 pages in the application, 382 pages in the appendix, and 11 pages in a supplement with an additional 688 pages of attachments) may be copied at the MEDEP office in Augusta, or EPA office in Boston, at a cost of 15 cents per page. A copy of the entire initial submission (not including the supplement) may be obtained from the MEDEP office in Augusta for a $20 fee.

Part of the State's program submission and supporting documentation is available electronically at the following Internet address: http://www.state.me.us/dep/blwq/delegation/delegation.htm

Other Federal Statutes

Nothing in this extension of the public comment period changes any of the analyses or findings concerning other federal statutes which EPA made in its notice of December 30, 1999. See 64 FR 73554–73555.

Authority: This action is prepared under the authority of section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: July 26, 2000.

Ira W. Leighton,

Acting Regional Administrator, Region I.

[FR Doc. 00–19788 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 25, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0854.

Expiration Date: 01/31/2001.

Title: Truth-in-Billing Format—CC Docket No. 98–170.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3099 respondents; 505.3 hours per response (avg.).; 1,565,775 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,000,000.

Frequency of Response: On occasion; Third Party Disclosure.

Description: Under Section 201(b) of the Communications Act, the charges, practices, and classifications of common carriers must be just and reasonable. The Commission believes that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bill is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of Section 201(b). In the Truth-in-Billing and Billing Format Order on Reconsideration, the Commission addressed several petitions for reconsideration or clarification of the principles and guidelines contained in Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking (TIB Order), 64 FR 34487 (June 25, 1999). In the Order on Reconsideration, the Commission modified, as noted below, its collections of information to ensure that telephone bills contain information necessary for consumers to determine the validity of charges assessed on the bills and to combat telecommunications fraud. a. *Clear identification of service providers.* Telephone bills must clearly identify the name of the service provider associated with each charge. In the Order on Reconsideration, the Commission clarified that, where an entity bundles a number of services as a single package offered by a single company, such offering may be listed on the telephone bill as a single offering, rather than listed as separate charges by provider. Carriers providing bundled services in this manner must, however, make sure that an inquiry contact number or numbers appears on the bill for customer questions or complaints concerning the services provided through the bundle, as required by section 6.2401(d). The Commission also clarified that the carrier name of the telephone bill should be the name by which such company is known to its consumers for the provision of the respective service. (No. of respondents: 3099; hours per response: 10 hours; total annual burden: 30,990 hours). b. *Separation of charges by service provider and highlighting new services provider information.* In the TIB Order, the Commission required that all telephone bills containing wireline common carrier service (1) separate charges by service provider and (2) clearly and conspicuously show any change in service providers by identifying all service providers that did not bill for services on the previous billing statement and, where applicable, describing any new presubscribed or continuing relationship with the customer. In the Order on Reconsideration, the Commission modified its rule requiring highlighting of new service providers to only apply to providers that have a continuing arrangement with the subscriber that results in periodic charges on the subscriber's telephone bill. This change will ensure that services billed solely on a per-transaction basis, such as operator service and directory assistance, are not subject to the highlighting requirement. The Commission modified the language in the rule concerning when the highlighting requirement is triggered. (No. of respondents: 2295; hours per response: 465 hours; total annual burden: 1,067,175 hours). c. *Full and non-misleading bill charges.* The TIB Order requires that (1) bills for wireline service include for each charge a brief, clear, plain-language description of the services rendered; and (2) when a bill for local wireline service contains additional carrier charges, the bill must differentiate between those charges for which non-payment could result in termination of local telephone service and those for which it could not. In the Order on Reconsideration, the Commission retained its requirement that carriers distinguish on telephone bills those charges that consumers may refuse to pay without jeopardizing the provision of basic, local service, and charges for which non-payment may result in such disconnection. The Commission, however, clarified that a carrier need not label every charge as either deniable or non-deniable. (No. of respondents: 2295; hours per response: 197 hours; total annual burden: 452,115 hours). d. *Clear and Conspicuous Disclosure of Inquiry Contacts.* The TIB Order requires that all telephone bills display a toll-free number or numbers by which consumers may inquire about or dispute any charge on the bill. The

number(s) must be displayed in a manner that permits a customer to identify easily the appropriate number to use to inquire about a particular charge. In the Order on Reconsideration, the Commission modified the requirement by creating a limited exception where the customer does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet. (No. of respondents: 3099; hours per response: 5 hours; total annual burden: 15,495). The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect themselves against fraud and to help them resolve billing disputes if they wish. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19298 Filed 8–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2425]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings; Correction [1]

July 24, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 3, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed by August 14, 2000.

Subject: Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21).

Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 3.

Subject: Reexamination of the Comparative Standards for Noncommercial Educational Applicants (MM Docket No. 95–31).

Number of Petitions Filed: 17.

Subject: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS (GEN Docket No. 90–314, ET Docket No. 92–100).

Implementation of Section 309(j) of the Communications Act-Competitive Bidding, Narrowband PCS (PP Docket No. 93–253).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19299 Filed 8–3–00; 8:45 am]

BILLING CODE 6712–01–P

[1] This is a correction to Public Notice Report #2425, released on July 13, 2000, published in the **Federal Register** July 19, 2000, 65 FR 44786, to include two additional petitions which were inadvertently omitted from the listing for CC Docket Nos. 97–21 and 96–45. Therefore the dates established in the initial **Federal Register** publication for filing oppositions and replies will remain the same.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 15, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Phillip Eugene Kauffman, Barbara Kauffman; Christine Kauffman; Jason Kauffman; Ryan Kauffman; all of Carrollton, Georgia; and Scott Kauffman, Villa Rica, Georgia; all to acquire additional voting shares of Peoples Bancorp, Inc., Carrollton, Georgia, and thereby indirectly acquire additional voting shares of Peoples Bank of West Georgia, Carrollton, Georgia.

Board of Governors of the Federal Reserve System, July 26, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19311 Filed 8–3–00; 8:45 am]

BILLING CODE 6210–01–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 August 25, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Cornerstone Bancorp, Inc., Palatine, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone National Bank and Trust Company (in organization), Palatine, Illinois.

2. Southern Michigan Bancorp, Inc., Coldwater, Michigan; to acquire 100 percent of the voting shares of Sturgis Bank & Trust Company, Sturgis, Michigan.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Frankston Bancorp, Inc., Frankston, Texas, and FDB, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First State Bank, Frankston, Texas.

Board of Governors of the Federal Reserve System, July 26, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19310 Filed 8–3–00; 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: 10 a.m., Wednesday, August 9, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 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: August 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–19898 Filed 8–2–00; 1:10 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Tilmicosin Phosphate Injection for Sheep; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness and target animal safety data that may be used in support of a new animal drug application (NADA) or supplemental NADA for veterinary prescription use of tilmicosin phosphate injection for treatment of bacterial pneumonia in sheep. The data, contained in Public Master File (PMF) 5673, were compiled under National Research Support Project–7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION:

Tilmicosin phosphate injection, used for the treatment of sheep for bacterial pneumonia, is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, tilmicosin phosphate is subject to section 512 of the act (21 U.S.C. 360b), requiring that its uses in sheep be the subject of an approved NADA or supplemental NADA. Sheep are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, Southern Region, University of Florida, Gainesville, FL 32610, has provided effectiveness and target animal safety data for veterinary prescription use of tilmicosin phosphate injection in sheep for treatment of bacterial pneumonia due to *Pasteurella (Mannheimia) haemolytica*. These data are contained in PMF 5673.

Under 21 CFR 25.15(d) and § 25.33(d)(4) (21 CFR 25.33(d)(4)), sponsors of NADA's and supplemental NADA's for drugs in minor species, including wildlife and endangered species, are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement when the drug has been approved for use in another or the same species where similar animal management practices are used. The categorical exclusion applies unless, as in § 25.21 (21 CFR 25.21), extraordinary circumstances exist that indicate that the proposed action may significantly affect the quality of the human environment. Therefore, based upon information available, FDA agrees that when the application is submitted, the applicant may claim a categorical exclusion under § 25.33(d)(4) provided that the applicant can state that to the best of the applicant's knowledge, as in § 25.21, no extraordinary circumstances exist. It is assumed that the applicant has made a reasonable effort to determine that no extraordinary circumstances exist.

Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as: Data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data; data concerning manufacturing methods, facilities, and controls; data concerning human food safety; and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA or supplement may contact Naba K. Das (address above).

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.

Dated: July 25, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–19300 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1364]

Prescription Drug User Fee Act (PDUFA); Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to hold a public meeting on the Prescription Drug User Fee Act (PDUFA). The legislative authority for PDUFA expires at the end of September 2002, and without further legislation the fees and resources provided under PDUFA will also expire. FDA is now considering what features it should advocate in proposing new or amended authorizing legislation. Section 903(b) of the Federal Food, Drug, and Cosmetic Act encourages FDA to consult with stakeholders, as appropriate, in carrying out agency responsibilities. Accordingly, FDA will convene a public meeting to hear stakeholder views on this subject. FDA is proposing four specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

DATES: The public meeting will be held on September 15, 2000, at 9 a.m. Submit written comments by October 31, 2000. Registration to attend the meeting must be received by September 8, 2000.

ADDRESSES: The meeting will be held in the Auditorium, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC (between 3d and C St.).

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: FDADockets@oc.fda.gov, or via the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. More information about various aspects of PDUFA and this public meeting are available on the Internet at: http://www.fda.gov/oc/pdufa2/meeting2000.html.

REGISTRATION AND REQUEST FOR ORAL PRESENTATION: If you wish to make an oral presentation during the open public comment period of the meeting, you must specify on your registration form or with the registration contact person listed below that you wish to make a presentation. You must submit along with your registration form: (1) A brief written statement of the general nature of the views you wish to present, (2) the names and addresses of all persons who will participate in the presentation, and (3) an indication of the approximate time that you request to make your presentation. Depending on the number of people who register to make presentations, FDA may have to limit the time allotted for each presentation.

In order to register, you must submit your name, title, business affiliation, address, telephone, fax number (optional), and email address (optional).

REGISTRATION CONTACT: All registration materials should be sent to Patricia Alexander, Office of Consumer Affairs (HFE–40), Food and Drug Administration, Rockville, MD 20857, 301–827–4391, FAX 301–827–2866, e-mail: palexand@oc.fda.gov, or on the Internet at http://www.fda.gov/oc/pdufa2/meeting2000.html.

All registration will be accepted on a first-come, first-served basis. Speakers will be chosen in order of registration. All other comments should be sent to the FDA docket.

If you need special accommodations due to a disability, please inform the contact person when you register.

FOR FURTHER INFORMATION CONTACT: Virginia Cox, Office of the Commissioner (HF–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3409, FAX 301–594–6777, e-mail: vcox@oc.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, Congress passed PDUFA. PDUFA authorized FDA to collect fees from companies that produce certain human drug and biological products. The original PDUFA had a 5-year life; it ended in 1997, the same year Congress passed the FDA Modernization Act (FDAMA). Part of FDAMA included an extension of PDUFA (PDUFA II) for an additional 5 years.

PDUFA's original intent was to provide FDA with additional revenue so it could hire more reviewers and support staff and upgrade its information technology to speed up the application review process for human drug and biological products without compromising review quality. The revenues are provided by a set of three fees, with one-third of the total annual revenue coming from each of the following fees:

1. Application fees for the submission of certain human drug or biological application (in fiscal year (FY) 2000, $285,740 per application with clinical data, and $142,870 per application without clinical data or per supplemental application with clinical data);

2. Annual establishment fees paid for each establishment that manufactures prescription drugs or biologicals (in FY 2000, $141,971 per establishment); and

3. Annual product fees assessed on certain prescription drug and biological products (in FY 2000, $19,959 per product).

In the aggregate these fees are expected to generate $135 million this FY, and increase to about $162 million in FY 2002, the last year of PDUFA II. No separate fees are charged for investigational new drug applications. However, since the review of investigational new drug applications is included in the definition of the process for the review of human drug applications, as defined in PDUFA, FDA uses some of the application, establishment, and product fees collected for the review of investigational new drug applications.

In consultation with industry and the Congress, FDA agreed to meet a set of review performance goals that became more stringent each year if FDA also received sufficient fee resources to enable goal achievement. These goals applied to the review of original new human drug and biological applications, resubmissions of original applications, and supplements to approved applications. FDA met every PDUFA I performance goal and, to date, has met all but one PDUFA II performance goal. Industry also insisted on a statutory provision that fees could only be collected and spent each year if a large, inflation-adjusted portion of drug review costs would continue to be funded from appropriations rather than fees, so that the fees were funding additional drug review resources rather than replacing appropriations.

Under PDUFA II, the review goals continue to shorten. By 2002, the PDUFA II goals call for FDA to review and act on 90 percent of:

1. Standard new drug and biological product applications and efficacy supplements within 10 months;

2. Priority new drug and biological product applications and efficacy supplements (i.e., for products providing significant therapeutic gains) within 6 months;

3. Manufacturing supplements within 6 months, and those requiring prior approval within 4 months;

4. Class 1 resubmissions within 2 months, and Class 2 resubmissions within 6 months.

In addition, PDUFA II added a new set of procedural goals intended to

improve FDA's responsiveness to, and communication with, industry sponsors during the early years of drug development. These goals specify timeframes for activities such as scheduling meetings and responding to various sponsor requests. While PDUFA's original intent was to speed up the review process, PDUFA II's intent is to speed up the entire drug development process.

PDUFA has had a dramatic and undeniable impact on the drug review process. Total resources for drug review activities have increased from $120 million in 1992, before PDUFA was enacted, to an estimated $325 million in FY 2002, about half of which will come from fees paid by industry. These resources allowed FDA to increase its drug and biological review staff by almost 60 percent between 1993 and 1997, adding about 660 staff-years to the program by 1997. By the end of PDUFA II in 2002, FDA expects to have added another 313 staff-years of effort to this program. These additional staff, and resources to support them, have enabled FDA to respond more rapidly to new drug and biologic applications without compromising review quality.

While it is important to note that PDUFA's goals specify decision times, not approval times, both decision and approval times have decreased dramatically. Total approval time, the time from the initial submission of a marketing application to the issuance of an approval letter, has dropped from a pre-PDUFA median of 23 months to 12 months. Total approval time for priority applications, those for products providing significant therapeutic gains, has dropped from a median of over 12 months in the early PDUFA years to 6 months. In addition, because FDA has put greater effort into communicating what it expects applicants to submit, a higher percentage of applications are being approved. Before PDUFA, only about 60 percent of the applications submitted were ultimately approved. Now, about 80 percent are approved. For the consumer, this has meant more products available more quickly.

The agency has also encountered some challenges with PDUFA. Assuring that enough appropriated funds are spent on the process for the review of human drug applications to meet requirements of PDUFA, and at the same time spending our resources in a way that best protects the health and safety of the American people is becoming increasingly difficult. Each year, the amount that FDA must spend from appropriations on the drug review process is increased by an inflation factor. Yet, since 1992 FDA has not received increased appropriations to cover the costs of the across-the-board pay increases that must be given to all employees.

The result is that our workforce and real resources for most programs other than PDUFA have contracted each year since 1992 while we struggle to ensure that enough funds are spent on the drug review process to meet this PDUFA requirement. Several consecutive years of operating in this way have made it difficult to continue to further reduce staffing levels in FDA programs other than drug review. We are increasingly concerned that spending enough appropriations on the drug review process to meet the statutory conditions makes FDA less able to manage the resources available in a way that best protects the public health and merits public confidence. Just one example of an area we have not been able to fund adequately is responding to reports of adverse events related to the use of prescription drugs.

II. Scope of Discussion

The legislative authority for PDUFA II expires at the end of September 2002, and without further legislation the fees and resources they have provided will also expire. FDA is now considering what characteristics and conditions it should advocate in proposing new or amended authorizing legislation. Section 903(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)) encourages FDA to consult with stakeholders, as appropriate, in carrying out agency responsibilities. Accordingly, FDA will convene a public meeting on September 15, 2000. Interested persons are invited to attend and present their views.

A list of questions that we are asking interested parties to address at this meeting follows:

1. Since 1993 FDA has been receiving fees for the review of certain human drug and biological products. As a result, FDA has implemented management improvements that have substantially decreased the time for new drug review and made new medications available to the public faster. Do you view this as a benefit of the user fee program that should be maintained in the future? What are some of the other benefits that you think are important? How do you think the program can be strengthened? In addition, what do you see as the downside of a regulatory agency like FDA collecting user fees and what remedies would you propose for the future?

2. Should we continue to have performance goals for the drug and biological review process? If so, how should goals be determined?

3. If user fees fund FDA's drug and biological review processes, what percentage of the program's costs should be covered by fees, and how should those fees be used? The following table shows the percent of drug and biological review spending funded by industry fees since the beginning of PDUFA in 1993:

TABLE 1.

Year	1993	1994	1995	1996	1997	1998	1999
Fee percent	7%	24%	36%	36%	36%	40%	43%

The percent paid from fee revenues is currently estimated to exceed 50 percent of FDA's spending on drug review by 2002.

The following table shows the approximate percent of costs of overall drug regulation paid from industry fees in some other countries:

TABLE 2.

Country	Australia	Canada	United Kingdom
Fee percent	100%	70%	100%

4. Should fees collected from industry be used to pay for other costs FDA incurs to ensure that drugs in the American marketplace are safe and effective? Such additional costs might include monitoring adverse drug reactions, monitoring drug advertising, and routine surveillance, inspection and testing of drug manufacturers.

III. Comments

Interested persons may submit written comments to the Dockets Management Branch (address above), or via e-mail to FDADockets@oc.fda.gov, or via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/commentsdocket.cfm. by October 31, 2000. Comments are to be identified with the docket number found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

You may request a transcript of the PDUFA public meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 10 cents per page. You may also examine the transcript of the meeting after September 30, 2000, at the Dockets Management Branch between 9 a.m. and 4 pm., Monday through Friday, as well as on the Internet at http://www.fda.gov/oc/pdufa2/meeting2000.html.

Dated: July 25, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–19301 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10015]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Evaluation of the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) Programs—Beneficiary Survey;

Form No.: HCFA–10015 (OMB #0938–NEW);

Use: Medicare beneficiaries eligible for the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) Programs will be surveyed. Numerous studies have shown that large numbers of potentially eligible QMB's and SLMB's do not participate in these programs. To further its goals under GPRA, the Health Care Financing Administration (HCFA) needs information on the effects of the QMB and SLMB programs. This project will help HCFA to develop a better understanding of the reasons for the low participation rates among the potential eligibles for both programs. Also, it will provide HCFA with information on the awareness of the QMB and SLMB programs; the paths and barriers to QMB and SLMB enrollment and the benefits of the QMB and SLMB coverage;

Frequency: Other: One-Time;

Affected Public: Individuals or Households;

Number of Respondents: 1,500;

Total Annual Responses: 1,500;

Total Annual Hours: 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan (HCFA–10015), Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

July 13, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19308 Filed 8–3–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing, Department of Health and Human Services (HHS), Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, ''National Emphysema Treatment Trial (NETT) System, HHS/HCFA/CHPP, 09–70–0531.'' HCFA and the National Heart, Lung and Blood Institute, which is part of the National Institutes of Health, are collaborating on an effort to study the effectiveness of lung volume reduction surgery. The study is called ''National Emphysema Treatment Trial.'' The purpose of this multi-center randomized study is to evaluate the long-term outcomes of lung volume reduction surgery on function, morbidity and mortality, and to define appropriate patient selection criteria in order to determine which patients will likely benefit from lung volume reduction surgery.

The primary purpose of the system of records is to maintain data that will allow HCFA to collect and provide secure data on participants in the randomized phase of the study, pay claims, and to monitor and evaluate the clinical trial. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement and policy functions performed within the agency or by a contractor or consultant, another federal or state agency to enable such agency to administer a federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health

benefits program funded in whole or in part with federal funds, support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects, support constituent requests made to a congressional representative, support litigation involving the agency, and, combat fraud and abuse in certain health benefits programs. We have provided background information about the proposed system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: HCFA filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 18, 2000. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Steven Sheingold, Ph.D., HCFA, Center for Health Plans and Providers, 7500 Security Boulevard, C4–10–07, Baltimore, Maryland 21244–1850. His telephone number is (410) 786–5896.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

A. Background

HCFA and the National Heart, Lung and Blood Institute, which is part of the National Institutes of Health, are collaborating on an effort to study the effectiveness of lung volume reduction surgery. The purpose of this multi-center randomized study is to evaluate the long-term outcomes of lung volume reduction surgery on function, morbidity and mortality, and to define appropriate patient selection criteria. Data related to health care services furnished to Medicare beneficiaries participating in the NETT will be collected and used to monitor and evaluate the trial and its interventions. The trial is designed to:

- Establish a multi-center randomized clinical trial in association with a prospective registry to evaluate the long-term efficacy, morbidity and mortality associated with intensive medical therapy with lung volume reduction surgery as compared with intensive medical therapy alone.
- Define patient selection criteria in order to determine which patients will likely benefit from lung volume reduction surgery.

The NETT contains information on beneficiaries participating in the study. HCFA and its evaluation contractor will use this information to monitor and evaluate the trial and its interventions. Individual patient data will be collected on the HCFA claim forms for fee-for-services and Medicare managed-care beneficiaries. The trial was scheduled to began in 1997 and will continue for 7 years from its actual start date or until the recruitment goal of 2600 patients is attained, whichever comes first.

B. Statutory and Regulatory Basis for System of Records

Authority for maintenance of the system is given under Section 1862(a)(1)(A) of the Social Security Act, and 42 U.S.C. 1395, which states that Medicare must provide coverage for items and services that are ''reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.''

II. Collection and Maintenance of Data in the System.

A. Scope of the Data Collected

The system of records will contain information about Medicare beneficiaries with emphysema, as well as referring and servicing physicians. Utilization and frequency of specific health care services, the provider, and the sites of services are provided as part of the trial. The system will also contain the beneficiary's name, address, date of birth, sex, health insurance claim number (HIC), telephone number, marital status, clinical outcomes, and morbidity and mortality rates.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release NETT information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of NETT. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the system of records will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., developing and monitoring the quality of care provided to patients in the study, to monitor and evaluate the trial and its interventions.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record; and

(2) Remove or destroy at the earliest time all patient-identifiable information.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HCFA may release

information from the NETT without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA function relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To another federal or state agency:

(1) To contribute to the accuracy of HCFA's proper payment of Medicare benefits, and/or

(2) To enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

Other federal or state agencies in their administration of a federal health program may require NETT information in order to support evaluations and monitoring of Medicare claims information of beneficiaries who are participating in the study, including proper reimbursement for services provided.

3. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

The NETT data will provide the research, evaluations and epidemiological projects a broader, longitudinal, national perspective of the status of patients participating in the study. HCFA anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. HCFA understands the concerns about the privacy and confidentiality of the release of data for a research use.

4. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of congress in resolving some issue relating to a matter before HCFA. The member of congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To HCFA contractors, including but not necessarily limited to fiscal intermediaries and carriers under Title XVIII of the Social Security Act; to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud and abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA functions relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information.

7. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in health benefits program funded in whole or in part by federal funds.

Other state agencies in their administration of a Federal health program may require NETT information for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

IV. Safeguards

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards

sufficient to protect the confidentiality of the data and to prevent authorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (*e.g.*, tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges. This class is used by the NETT data submission applications to receive and validate file uploads.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the NETT system.

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to AIS resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the NETT system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all NETT transmission connections to the system. As a result, Netscape controls all NETT information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards

All automated systems must comply with federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, IRM Circular #10, HHS Automated Information Systems Security Program, the HCFA Information Systems Security Policy and Program Handbook, and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the Proposed System of Records on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

09–70–0531

SYSTEM NAME:

''National Emphysema Treatment Trial (NETT) System, HHS/HCFA/CHPP''.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain information about Medicare beneficiaries with emphysema enrolled

in the randomized phase of the trial, as well as referring and servicing physicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain information about Medicare utilization and frequency of specific health care services, the provider and provider's speciality, provider's location or sites of services, cost of surgery, medical or pulmonary rehabilitation, extra-site therapy, medical services necessary for treatment, and self-administered drug therapy. The system will also contain the beneficiary's name, address, date of birth, sex, health insurance claim number (HIC), telephone number, marital status, clinical outcomes, and morbidity and mortality rates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 1862 (a)(1)(A) of the Social Security Act (the Act), and 42 U.S.C. 1395.

PURPOSE(S):

The primary purpose of the system of records is to maintain data that will allow HCFA to collect and provide secure data on participants in the randomized phase of the study, pay claims, and to monitor and evaluate the clinical trial. Information retrieved from this system of records will also be disclosed to: support regulatory, reimbursement and policy functions performed within the agency or by a contractor or consultant, another federal or state agency to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects, support constituent requests made to a congressional representative, support litigation involving the agency, and, combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine use in this system meets the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To another federal or state agency:

(1) To contribute to the accuracy of HCFA's proper payment of Medicare benefits, and/or

(2) To enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

3. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

4. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government

is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

6. To HCFA contractors, including but not necessarily limited to fiscal intermediaries and carriers under title XVIII of the Social Security Act; to administer some aspect of a HCFA-administered health benefits program, or to a grantee of a HCFA-administered grant program, which program is or could be affected by fraud and abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

7. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any state or local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in health benefits program funded in whole or in part by Federal funds.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in file folders, magnetic tapes and computer disks.

RETRIEVABILITY:

The Medicare and Medicaid records are retrieved by health insurance claim number.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the NETT system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines, *e.g.,* security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

HCFA will retain identifiable data for a total period of fifteen (15) years from the date the information was last updated.

SYSTEM MANAGER AND ADDRESS:

HCFA, Director, Center for Health Plans and Providers, Program Analysis

and Performance Measurement Group, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The NETT will use Medicare enrollment records, Medicare beneficiaries or proxies, and medical providers (such as physicians, medical facilities, home health care providers) for a sample of enrollees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–18548 Filed 8–3–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, ''Explanation of Medicare Benefits Records (EOMB), HHS/HCFA/BPO, System No. 09–70–0513.'' We are proposing to change the name of the SOR to ''Medicare Benefits Notices (MBN), HHS/HCFA/CBS, System No. 09–70–0513.'' We are also proposing to add one new routine use for contractors and consultants, update any sections of the SOR that were affected by the recent reorganization, and to update language in the administrative sections to correspond with language used in other HCFA SOR. The primary purpose of the SOR to provide an explanation of Medicare claims processed and to advise beneficiaries of supplemental insurance, deductible status, appeals information and general Medicare information. Information retrieved from this SOR will be used to support regulatory and policy functions performed within the agency or by a contractor or consultant, support constituent requests made to a congressional representative, and to support litigation involving the agency related to this SOR. We have provided background information about the proposed system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: HCFA filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 18, 2000. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Maria Ramirez, Division of Contractor Customer Service Operations, Center for Beneficiary Services, HCFA, C2–02–10, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is 410–786–1122.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified SOR

Statutory and Regulatory Basis for SOR

In 1981, HCFA established a SOR under the authority of sections 205, 226, 1811, and 1832 of Title XVIII of the Social Security Act (42 U.S.C. 405, 426, 1395c, and 1395k). Notice of this system, ''Explanation of Medicare Benefits Records, (EOMB),'' HHS/HCFA/BPO, System No. 09–70–0513, was published in the **Federal Register** on October 27, 1981 (46 FR 52706). These regulations established the requirement that an explanation of Medicare benefits be sent to beneficiaries advising them of Medicare benefits remaining, and whether the various deductible requirements have been satisfied.

II. Collection and Maintenance of Data in the System.

A. Scope of the Data Collected

The system includes Medicare hospital insurance benefits records, Part B benefits records, home health benefits records, and Medicare hospital benefits records. These are notices of utilization and explanation of Medicare benefits. They also advise beneficiaries of supplementary insurance, deductible status, appeals information, and general Medicare information.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MBN information as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.''

We will only disclose the minimum personal data necessary to achieve the purpose of MBN. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.,*

provide an explanation of Medicare claims processed to beneficiaries.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all individual-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HCFA may release information from the MBN without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA functions relating to purposes for this SOR.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give contractors or consultants whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever HCFA is involved in litigation, and occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved.

IV. Safeguards

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects, *e.g.,* tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MBN system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS)

resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

• User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

• Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.

• Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged-out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Security (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the MBN system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all MBN transmission connections to the system. As a result, Netscape controls all MBN information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server is maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, Information Resource Management (IRM) Circular #10, HHS Automated Information Systems Security Program, the HCFA Information Systems Security Policy and Program Handbook, and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Proposed SOR on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this SOR.

HCFA will monitor the collection and reporting of MBN data. HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 7, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

SYSTEM NAME:

Medicare Benefits Notices (MBN), HHS/HCFA/CBS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and Medicare intermediaries and carriers and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All recipients of Medicare Part A and Part B services and supplies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the following information for each beneficiary: Name; address; health insurance claims number (HIC); dates of service; and the contractor assigned claim control number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 226, 1811, and 1832 of Title XVIII of the Social Security Act (42 USC 405, 426, 1395c, and 1395k).

PURPOSE(S):

The primary purpose of the system of records is to provide an explanation of Medicare claims processed and to advise beneficiaries of supplemental insurance, deductible status, appeals information and general Medicare information. Information retrieved from this system of records will be used to support regulatory and policy functions performed within the agency or by a contractor or consultant, support constituent requests made to a congressional representative, and to support litigation involving the agency related to this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine use in this system meets the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the

constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's health insurance claims number or a contractor assigned claim control number.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MBN system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines, *e.g.,* security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are placed in an inactive status at the close of the calendar year in which the benefit was paid, held two more years, transferred to a federal records center and destroyed after another six years.

SYSTEM MANAGER:

Director, Division of Contractor Customer Service Operations, Center for Beneficiary Services, HCFA, C2–26–21, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is 410–786–2133.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable) and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are provided by the beneficiary when applying for benefits or requesting payment, the physician or provider of services when requesting payment, and computations for amounts of payments and remaining benefits provided by the carriers and intermediaries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FR Doc. 00–18549 Filed 8–3–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Ricky Ray Hemophilia Relief Fund Program (OMB No. 0915–0244)—Extension

The Ricky Ray Hemophilia Relief Fund Act of 1998 (Pub. L. 105–369) established a trust fund to provide for compassionate payments with regard to certain individuals with blood-clotting disorders, such as hemophilia, who contracted HIV due to contaminated antihemophilic factor within specified time periods. The statute mandated payments to any individual with HIV who has any blood-clotting disorder and was treated with antihemophilic factor any time between July 1, 1982, and December 31, 1987. The Act also provides for payments to certain persons who contracted HIV from the foregoing individuals. Specified survivors of these categories of individuals may also receive payments. In order to receive a payment, either the individual who is eligible for payment, or his or her personal representative,

must file a petition for payment with sufficient documentation to prove that he or she meets the requirements of the statute. This data collection is required to provide the necessary medical and legal documentation that establishes eligibility for payment.

The estimated annual response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Petition form and Supporting Documentation	5,000	1	3	15,000
Physician Documentation	1,000	1	1	1,000
Total	6,000			16,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–19303 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL)

Program: Regulatory Requirements—00915–0108—Extension—This clearance request is for extension of approval for the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Application, Borrower Status, Loan Transfer, Contract for Loan Insurance:

Reporting

42 CFR 60.31(a), Lender annual application

42 CFR 60.38(a), Loan Reassignment Notification

42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim:

Reporting

42 CFR 60.35(a)(2), Lender skip-tracing activities

42 CFR 60.40(a), Lender documentation to litigate a default

42 CFR 60.40(c)(i), (ii), and (iii), Lender default claim

42 CFR 60.40(c)(2), Lender death claim

42 CFR 60.40(c)(3), Lender disability claim

42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0043, Repayment Schedule, Call Report

Notification

42 CFR 60.11(e), Establishment of repayment terms-borrower

42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement

42 CFR 60.34(b)(1), Establishment of repayment terms-lender

OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability

Reporting

42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

OMB Approval No. 0915–227, Refinancing Application/Promissory Note

42 CFR 60.33(e), Executed application and note to borrower

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
REPORTING			
Subpart D: Lender—22 Participating Lenders			
60.40(c)(1)(iv) Bankruptcy Report to the Secretary	139	12 min	28
60.42(d) Audit	22	240 min. (4 hrs.)	88
60.42(e) Evidence of Fraud	0	120 min. (2 hrs.)	0
60.43(b) Evidence of Cause for Administrative Hearing	0	180 min. (3 hrs.)	0
Subtotal	161		116
Subpart E: School—200 Participating Schools			
60.56(c) Biennial Audit	0	240 min. (4 hrs.)	0
60.60(b) Evidence of Cause for Administrative Hearing	0	180 min. (3 hrs.)	0
60.61(d) Bankruptcy Documentation	139	10 min	23
Subtotal	139		23
Total Reporting	300		139
NOTIFICATION			
Subpart B: Borrower—20,639 Borrowers			
60.8(a)(5) Sale or Transfer of Loan	Burden included in 60.38a		
60.8(b)(3) Status Change	20,500	10 min	3,417
60.61(d)* Bankruptcy	139	10 min	23
Subtotal	20,639		3,440
Subpart C: Loan/Lender—9 Participating Lenders			
60.18 Loan Consolidation	3,000	40 min	2,000
60.21(b)(2) Refund Check Transfer	0	30 min	0
60.21(b)(2) Refund Check Notification	0	15 min	0
Subpart D: Lender—22 Participating Lenders			
60.33(g) Denial of Loan	0	14 min	0
60.33(h) Borrower Indebtedness	3,000	1 min	50
60.34(c) Biannual Debt Status	202,126	10 min	33,688
60.35(a)(1) Delinquent Payment Notice to Borrower	11,713	30 min	5,857
60.35(c)(2) Delinquent Notice to Credit Reporting Agency.	11,713	15 min	2,928
60.35(e) Demand Letter	2,047	10 min	341
60.37(a) Right to Forbearance	4,480	5 min	373
60.37(c)(3) Reminder of Obligation to Pay	2,240	10 min	373
60.38(a) Notification to Borrower of Loan Reassignment	7,500	5 min	625
60.40(c)(1)(iv) and (c)(4) Default Notification to Courts	139	25 min	58
Subtotal	247,958		46,293
Subpart E: School—200 Participating Schools			
60.53 Change in Student Status Burden included with	Burden included with 60.61(a)(7)		
60.54 Notice of Refund Payment	0	25 min	0
60.57 Borrower Identifying Information	1,439	8 min	192
60.61(a)(1) Entrance Interview	0	35 min	0
60.61(a)(2) Exit Interview	1,439	50 min	1,199
60.61(a)(2) Student Departure Notification to Lender	200	35 min	117
60.61(a)(3) Unresolved Discrepancies to Lender	0	12 min	0
60.61(a)(7) Change in Student Address to Lender	2,878	10 min	480
Subtotal	5,956		1,988
Total Notification	274,553		51,721
RECORDKEEPING			
Subpart B: Borrower			
60.7(a)(2) Student Signed Stmt.—Gov. Debt Collection Procedures.	Burden included in 60.34(b)(2) and 60.61(a)(1)&(2)		

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
60.7(c)(2) Non-Student Signed Stmt.—Gov. Debt Collection.	0.00		0.00
Subpart D: Lender—22 Participating Lenders			
60.31(c) Procedures for Servicing & Collecting Loans	22	240 min. (4 hrs)	88
60.33(e) Promissory Note	Burden included in 60.42(a)(2)		
60.34(b)(2) Terms of Repayment Schedules	10,000	5 min	833
60.35(a)(1) Attempts to Collect Delinquent Payment	10,000	5 min	833
60.35(a)(2) Documentation of Skip-tracing	2,500	10 min	417
60.37(a)(1) Documentation of Borrower's Inability to Pay	2,500	15 min	625
60.37(c) Renewals of Forbearance	1,200	10 min	200
60.37(c)(1) Basis for Belief of Borrower Intent to Default	300	10 min.	50
60.40(a) Documentation of Insurance Claims	584	70 min.	681
60.42(a)(1) Loan Records	Burden included in 60.42(a)(2)		
60.42(a)(2) Borrower's Payment History	101,063	15 min.	25,266
Subtotal	128,169		28,993
Subpart E: School—200 Participating Schools			
60.51(f)(1) Documentation of Needs Analysis Adjustment	Burden included in 60.61(a)(5)		
60.51(f)(2) Documentation of Standard Student Budget Adjustments.	Burden included in 60.61(a)(5)		
60.56(a) Required Retention of HEAL Borrower Records 60.56(b) Five Year Retention of Student Records	Burden included in 60.61(a)(5)		
60.57 Retention of Reports to the Secretary	200	45 min.	150
60.61(a)(1) Entrance Interview.			
60.61(a)(2) Exit Interview	1,439	5 min.	120
60.61(a)(4) HEAL Check Receipt	0	300 min.	0
60.61(a)(5) Complete Records of HEAL Borrowers	50,000	15 min.	12,500
60.61(a)(6) Criteria for Student Budgets	50,000	2 min.	1,667
Subtotal	101,639		14,437
Total Recordkeeping	229,808		43,430
Total Annual Burden	504,661		95,290

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–19305 Filed 8–3–00; 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(Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 2000.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: August 13, 2000, 6 p.m.–8 p.m.; August 14 , 2000, 8:30 a.m.–5 p.m.; August 15, 2000, 8:30 a.m.–12 p.m.

Place: The Doubletree Hotel, Rockville, Maryland, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

The full Committee will meet beginning August 13 and adjourning August 15, during the hours cited above. Agenda items will include, but not be limited to: Welcome and introduction of Committee members; introduction of the Division of Interdisciplinary and Community-Based Programs (DICP), Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), staff supporting Committee activities; an overview of HRSA, BHPr, and the DICP infrastructure and missions; the election of a Committee Chair and Vice-Chair; general discussion among Committee members of its charge under Section 756 of the Public Health Service Act, to include discussion of Committee reports; and scheduling of the

next Committee meeting, which shall include but not be limited to: general discussion of topics to be addressed during the next Committee meeting.

Public comment will be permitted before lunch and at the end of the Committee meeting on August 14, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Mr. Leo Wermers, Principal Staff Liaison, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1648.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of Interdisciplinary, Community-Based Programs will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement, may register to do so at the Doubletree Hotel, Rockville, Maryland, on August 14, 2000. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Mr. Wermers, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1648.

Proposed agenda items are subject to change as priorities dictate.

Dated: July 25, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–19304 Filed 8–1–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 65 FR 45994–5 dated July 26, 2000).

This notice reflects the revised functional statement in the Division of Community and Migrant Health (RC4) in the Bureau of Primary Health Care.

Delete the functional statement for the Division of Community and Migrant Health in its entirety and replace with the following:

(1) Implements efforts to improve the organization and delivery of health services by serving as the point of accountability for Primary Health Care Services Delivery programs; (2) Provides leadership and direction for legislative activities in the program area; (3) Develops and establishes policies for such national programs and develops long and short-range program goals and objectives; (4) Is accountable for the administration of funds and other resources for grants, contracts, and clinical and programmatic consultation and assistance; (5) Ensures that assigned responsibilities are being carried out; (6) Coordinates the development and establishment of guidelines and standards for professional services and staff development; (7) Interprets policies, regulations, guidelines, standards, and priorities to higher echelons, to regionally located staff, grantee agencies, institutions and organizations; (8) Coordinates with other programs providing health services including voluntary, official, and other community agencies, and provides clinical and programmatic consultation and assistance, on request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation; (9) Establishes and provides liaison in program matters with other entities within BPHC and the Agency, within the Department and with other Federal agencies, consumer groups and national organizations concerned with health matters with State and local governments; (10) Participates in the development of forward plans, legislative proposals, and budgets; and (11) Coordinates the integration of primary care projects and services with other health care delivery systems.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: July 25, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–19778 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[0917–ZA06]

Reimbursement Rates for Calendar Year 2000

Notice is given that the Director of Indian Health Service, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calender Year 2000 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. Indian Health Service facilities that are paid the inpatient rate set forth below may also bill for Medicaid physician services to the extent that those services meet applicable requirements under an approved State Medicaid plan.

Inpatient Hospital Per Diem Rate (Excludes Physician Services)

Calendar Year 2000

Lower 48 States	$1,157
Alaska	1,428

Outpatient per Visit Rate (Excluding Medicare)

Calendar Year 2000

Lower 48 States	$172
Alaska	304

Outpatient per Visit Rate (Medicare)

Calender Year 2000

Lower 48 States	$139
Alaska	308

Medicare Part B Inpatient Ancillary per Diem Rate

Calender Year 2000

Lower 48 States	$666
Alaska	913

Outpatient Surgery Rate (Medicare)

Established rates for freestanding Ambulatory Surgery Centers

Effective Date for Calender Year 2000 Rates

Consistent with previous annual rate revisions, the Calender Year 2000 rates will be effective for services provided on/or after January 1, 2000 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is not a major notice because we have determined that the economic impact will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule will not have a significant economic effect on these governments or the private sector.

The Department has determined that this notice does not have a substantial effect on States or local governments under Executive Order 13132 and will not interfere with the roles, rights and responsibilities of States or local governments.

We are not preparing analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated: July 31, 2000.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 00–19779 Filed 8–3–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet. room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; ENERGY: Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–52, Washington, DC 20585; (202) 586–8715; (These are not toll-free numbers).

Dated: July 28, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 8/4/00

Unsuitable Properties

Buildings (by State)

Colorado

Bldgs. 111, 111B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200030001

Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Idaho

Moore Hall U.S. Army Rsve Ctr
1575 N. Skyline Dr.
Idaho Falls Co: Bonneville ID 83401–
Landholding Agency: GSA
Property Number: 21199720207
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number: 9–D–ID–544

Unsuitable Properties

Buildings (by State)

Washington

Federal Building
403 West Lewis Street
Pasco Co: Franklin WA 99301–
Landholding Agency: GSA
Property Number: 54200030003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number: 9–G–WA–1178

[FR Doc. 00–19590 Filed 8–3–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Strategic Plan

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Solicitation of Comments for Strategic Plan.

SUMMARY: Office of Federal Housing Enterprise Oversight (OFHEO) is soliciting comments as it updates its Strategic Plan. In accordance with the requirements of the Government Performance and Results Act of 1993 that agencies update their Strategic Plans every three years, OFHEO is drafting its 2000–2005 Strategic Plan and soliciting the views and suggestions of those entities potentially affected by or interested in such a plan. OFHEO's current Strategic Plan may be viewed on the OFHEO web site, *www.OFHEO.gov* in the ''About OFHEO'' section.

DATES: Written comments regarding the Strategic Plan may be received through September 13, 2000.

ADDRESSES: All comments concerning the notice should be addressed to: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Comments may also be submitted via electronic mail to: ''*StrategicPlan@ofheo.gov*''.

FOR FURTHER INFORMATION CONTACT: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3821 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress, as established in Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, with the mandate of overseeing the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, Fannie Mae and Freddie Mac (the ''Enterprises'').

Three years ago, OFHEO adopted a Strategic Plan covering FY 1998–2003. Section 306 of the Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1115 *et seq.*, requires that agencies update and revise their Strategic Plans every three years. OFHEO is currently drafting a new plan for FY 2000–2005 that will describe the agency's mission, strategic goals and objectives, and strategies to achieve them. This plan will provide a framework for the years ahead.

In today's notice, OFHEO is soliciting the views and suggestions that may be considered in the development of its plan. Additionally, OFHEO will publish a draft plan on the OFHEO web site in early September and will continue to encourage comments through the closing date of September 13, 2000. OFHEO will then submit its Strategic Plan pursuant to the statutory requirements.

Dated: August 1, 2000.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–19845 Filed 8–3–00; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Clyde Bros/Johnson Circus Corp., Seagoville, TX, PRT–683118.

The applicant requests a permit to re-export and re-import captive-born tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Fort Worth Zoological Association, Fort Worth, TX, PRT–030194.

The applicant requests a permit to import 25 Lesser Long-nosed Bats (*Leptonycteris curasoae*) to be obtained from the wild in Mexico for the purpose of scientific research.

Applicant: Daniel E. Brewster, Broomfield, CO, PRT–030849.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Donald E. Thompson Troy, MO, PRT–031023.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Terry Humphrey, Troy, MO, PRT–031025.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Karl Douglas Nielson, Provo, UT, PRT–031156.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: 777 Ranch, Inc., Hondo, TX, PRT–013008.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*), Eld's deer (*Cervus eldi*), Arabian oryx (*Oryx leucoryx*) and red lechwe (*Kobus leche*) from their captive herd for the purpose of enhancement of survival of the species. This notice covers activities for a period of three years. Permittee must apply for renewal annually.

Applicant: Wildlife Conservation Society, Flushing, NY, PRT–030897.

The applicant requests a permit to authorize interstate commerce of captive born Thick-billed parrots (*Rhynchopsitta pachyrhyncha pachyrhyncha*) for the purpose of enhancement of survival of the species through captive breeding. This notice covers activities for a period of five years.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Ceferino Machado, Hialeah Garden, FL, PRT–024024.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 31, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–19753 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–30115–0

Applicant: Bureau of Land Management (BLM)–Safford Field Office, Safford, Arizona; Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), Mexican spotted owl (*Strix occidentalis lucida*), desert pupfish (*Cyprinodon macularius*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*), and lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) on lands administered by the BLM-Safford Field Office in Arizona.

Permit No. TE–22582

Applicant: Marilyn Murov, Flagstaff, Arizona; Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the humpback chub (*Gila cypha*) within Arizona.

Permit No. TE–30902

Applicant: The Environmental Company, Inc., Santa Barbara, California; Applicant requests authorization to conduct presence/absence surveys for the northern aplomado falcon (*Falco femoralis septentrionalis*) in Arizona and New Mexico for the U.S. Air Force.

Permit No. TE–20819

Applicant: Turner Collie and Braden Inc.; Applicant requests authorization for recovery purposes to conduct presence/absence surveys and other recovery activities for the Comal Springs riffle beetle (*Heterelmis comalensis*), fountain darter (*Etheostoma fonticola*), and San Marcos salamander (*Eurycea nana*) in Hays and Comal Counties, Texas.

DATES: Written comments on these permit applications must be received on or before September 5, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Susan MacMullin,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–19757 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Zebra Mussel Coordination Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Zebra Mussel Coordination Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Zebra Mussel Coordination Committee will meet from 1 p.m. to 4:30 p.m., Monday, August 21, 2000 and 8 a.m. to 3 p.m., Tuesday, August 22, 2000.

ADDRESSES: The Zebra Mussel Coordination Committee Meeting will be held in the Magnolia Room at the Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at

703–358–2308 or by e-mail at: *sharon_gross@fws.gov* or Dr. Ed Theriot, Zebra Mussel Coordination Committee Chair, at 601–634–2678.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force Zebra Mussel Coordination Committee. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the Zebra Mussel Coordination Committee meeting include a review of the U.S. Army Corps of Engineers Zebra Mussel Research Program, an update on ANS Task Force activities, updates from each of the member agencies on agency zebra mussel activities, and a discussion of Committee actions to further coordination of zebra mussel activities.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 31, 2000.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Restoration.

[FR Doc. 00–19770 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Tuesday, Aug. 29, 2000, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 8 a.m. in the Eagle Lake Field Office Conference Room. The council will hear a report from its juniper management subcommittee and review proposed off-highway vehicle management guidelines developed by its off-highway vehicle subcommittee. At 10 a.m., the council will open the meeting to public comments on off-highway vehicle management on BLM-administered public lands. The public comments will be taken as part of a national series of BLM listening sessions on off-highway vehicle issues.

Members of the public can also comment on other public lands management issues during the public comment period. Depending on the number of persons wishing to speak, a time limit may be established.

FOR FURTHER INFORMATION: Contact BLM Alturas Field Manager Tim Burke at (530) 257–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–19756 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement Glen Echo Park, MD

ACTION: Release of Draft General Management Plan/Environmental Impact Statement for Public Review, and Announcement of Public Meetings.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service is releasing for public review the Draft General Management Plan/ Environmental Impact Statement (GMP/ EIS) for Glen Echo Park, Glen Echo, Maryland.

The GMP/EIS proposes a range of alternatives which address cultural and natural resources protection, socioeconomic concerns, traffic and pedestrian circulation, and visitor use.

Public involvement will be a key component in the preparation of the general management plan and environmental impact statement.

A public hearing is scheduled for September 7, 2000, at the Glen Echo Park Spanish Ballroom from 7 to 9 pm. Glen Echo Park is located at 7300 MacArthur Boulevard, Glen Echo, Maryland. At that time, you will have the opportunity to either present your comments in a public forum or submit them in writing. The comment period will extend for sixty (60) days, ending October 13, 2000.

The responsible official is Terry R. Carlstrom, Regional Director, National Capital Region, National Park Service. Written comments should be submitted to the Superintendent of George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 00–19727 Filed 8–3–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; nondiscrimination on the basis of disability in State and local government services (transition plan).

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This 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 October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

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 information of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Governments Services (Transition Plan).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State and Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usuable by individuals with disabilities (''program accessibility''). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a ''transition plan'' setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 6,000 respondents at 8 hours per transition plan.

(6) An estimate of the total public burden (in hours) associated with the collection: 48,000 hours annual burden.

In additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19773 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; nondiscrimination on the basis of disability in State and local government services (certification).

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This 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 October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

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 collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Government Services (Certification).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of ''places of public accommodation'' and ''commercial facilities.''

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10 respondents per year at 32 hours per certification.

(6) An estimate of the total public burden (in hours) associated with the collection: 320 hours annual burden.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, N.W., Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19774 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; Title II of the Americans with Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This 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 October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

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 collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disability Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents per year at 0.75 hours per complaint form.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 hours annual burden.

If additional information is required contact; Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, N.W., Washington, DC 20530.

Dated: July 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19775 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Disability Rights Section, Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: Notice of extension of currently approved information collection; nondiscrimination on the basis of disability in State and local government services (self-evaluation).

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction act of 1995. This 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 October 3, 2000.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information line), or write him at U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

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 collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection Is Listed Below

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 15,000 respondents at 6 hours per self-evaluation.

(6) An estimate of the total public burden (in hours) associated with the collection: 90,000 hours annual burden.

If additional information is required contact: Ms. Brenda Dyer, Deputy Clearance Officer, United States

Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: July 31, 2000.

Brenda Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–19776 Filed 8–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 28, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Ethylene Oxide.

OMB Number: 1218–0108.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 5,782.

Number of Annual Responses: 232,564.

Estimated Time Per Response: Varies from 5 minutes to provide information to the examining physician to 10 hours to develop a compliance plan.

Total Burden Hours: 49,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,056,200.

Description: The information-collection requirements specified in the Ethylene Oxide (EtO) Standard protect employees from the adverse health effects that may result from their exposure to EtO. The major information-collection requirements of the EtO Standard include notifying employees of their EtO exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Electrical Power Generation, Transmission, and Distribution.

OMB Number: 1218–0190.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion, Semi-annually, Annually.

Number of Respondents: 11,703.

Number of Annual Responses: 515,094.

Estimated Time Per Response: Varies from one minute to 15 minutes.

Total Burden Hours: 34,496.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657). Under paragraph 1910.137(a)(2)(vii), employers must certify that the electrical protective3 equipment used by their employees passed the tests specified in paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of the standard. The certification must identify the equipment that passed the test and the date of the test. This provision ensures that electrical protective equipment is reliable and safe for employee use and will provide adequate protection against electrical hazards. In addition, certification enables OSHA to determine if employers are in compliance with the equipment testing requirements of the standard.

Paragraph 1910.269(a)(2)(vii) of the Electric Power Generation, Transmission, and Distribution standard requires employers to certify that each employee received the training specified in paragraph (a)(2) of the standard. Employers must provide certification after an employee demonstrates proficiency in the work practices involved.

The training conducted under paragraph (a)(2) of the standard must also ensure that: Employees are familiar with the safety-related work practices, safety procedures, and other procedures, as well as any additional safety requirements in this standard, that pertain to their respective job assignments; employees are familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), addressed specifically by this standard that relate to their work and are necessary for their safety; and qualified employees have the skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment, can determine the nominal voltage of the exposed live parts, know the minimum approach distances specified by this standard for voltages when exposed to them, and understand the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools

for working on or near exposed and energized parts of electric equipment.

Employees must receive additional training or retraining if: The supervision and annual inspections required by paragraph (a)(2)(iii) of this standard indicate that they are not complying with the required safety-related work practices; new technology or equipment, or revised procedures, require the use of safety-related work practices that differ from their usual safety practices; and they use safety-related work practices that are different than their usual safety practices while performing job duties.

The training requirements of this standard inform employees of the safety hazards of electrical exposure and provide them with the understanding required to minimize these safety hazards. In addition, employees receive proper training in safety-related work practices, safety procedures, and other safety requirements specified in the standard. The required training, therefore, provides information to employees that enables them to recognize how and where electrical exposures occur, and what steps to take, including work practices, to limit such exposure. Accordingly, the certification requirements specified by paragraph (a)(2)(vii) of the standard permits OSHA to determine if employers provided the required training to their employees.

Type of Review: Extension of a currently approved collection.

Agency: Mine safety and Health Administration (MSHA).

Title: Ground Control Plan.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 159.

Number of Annual Responses: 159.

Estimated Time Per Response: Varies from 9 hours for new plans to 5 for revised plans.

Total Burden Hours: 1,404.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $52.

Description: Ground control plans are reviewed by MSHA to ensure that surface coal mine operators' methods of controlling highwalls and spoil banks are consistent with prudent engineering design and will ensure safe working conditions for miners.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Consumer Expenditure Surveys: The Diary and Quarterly Interview.

OMB Number: 1220–0050.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (in minutes)	Estimated total burden
Quarterly—CE–300, CE–301, CE–302	9,975	Quarterly	39,900	90 Min	59,850
Reinterview—CE–380, CE–386	2,195	Annual	2,195	15 Min	549
Diary—CE–802 Recordkeeping	8,241	2 Weeks		105 Min	28,844
Diary—CE–801	8,241	3 Visits/2 Week Period.	24,723	25 Min	10,302
Reinterview—CE–880, CE–880(N)	1,376	One-time	1,376	12 Min	275
Totals	18,216		68,194	71 Min	99,820

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income and other related subjects. These data are used to periodically update the national Consumer Price Index. In addition the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–19777 Filed 8–3–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. they specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT000001 (Feb. 11, 2000)
CT000002 (Feb. 11, 2000)
CT000003 (Feb. 11, 2000)
CT000004 (Feb. 11, 2000)
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Massachusetts
MA000001 (Feb. 11, 2000)
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MA000007 (Feb. 11, 2000)
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MA000018 (Feb. 11, 2000)
MA000019 (Feb. 11, 2000)
Vermont
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Maryland
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MD000034 (Feb. 11, 2000)
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Pennsylvania
PA000007 (Feb. 11, 2000)
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GA000033 (Feb. 11, 2000)
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GA000088 (Feb. 11, 2000)
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Mississippi
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OK000036 (Feb. 11, 2000)
OK000037 (Feb. 11, 2000)
OK000038 (Feb. 11, 2000)
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Texas
TX000003 (Feb. 11, 2000)
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UT000009 (Feb. 11, 2000)
UT000011 (Feb. 11, 2000)
UT000012 (Feb. 11, 2000)
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UT000026 (Feb. 11, 2000)
UT000028 (Feb. 11, 2000)
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Washington
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HI000001 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 27th day of July 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–19475 Filed 8–3–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (00–092)

Conduct of Employees, Notice of Waiver Pursuant to Section 207(j)(5), Title 18, United States Code

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: The Administrator of the National Aeronautics and Space Administration has determined, after consultation with the Director of the Office of Government Ethics, that it is in the national interest to waive the post-employment restrictions of Section 207, Title 18, United States Code, with respect to the former Deputy Director for Launch and Payload Processing, at Kennedy Space Center, Loren Shriver.

FOR FURTHER INFORMATION CONTACT: R. Andrew Falcon, Office of the General Counsel, NASA Headquarters, Washington, DC 20546, 202–358–2028.

SUPPLEMENTARY INFORMATION: Section 207(j)(5) of Title 18 of the United States Code authorizes the Administrator of the National Aeronautics and Space Administration to waive the post-employment restrictions of subsections 207(a)(1), 207(a)(2), and 207(c), to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications, where it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Loren Shriver, the former Deputy Director for Launch and Payload Processing at Kennedy Space Center, has outstanding technological qualifications in mission control, launch processing, and flight operations. Mr. Shriver has unique experience in the areas of Space Shuttle operations and launch integration. In his most recent position and as Space Shuttle Program Manager, Launch Integration, he acquired unique knowledge of flight hardware integration, test, and check out, and established the current standard technical determinations that are required to establish flight readiness. He headed the Program Requirements Control Board, which meets daily to enable NASA, the prime contractors, and subcontractors to resolve pre-flight anomalies related to orbiter and payload processing. In addition to his experience in Space Shuttle processing and launch, Mr. Shriver has expert knowledge of the Space Shuttle vehicle systems, flight hardware, mission integration and mission execution gained through his 15 years of service as a Space Shuttle astronaut, mission commander, and Deputy Chief of the Astronaut Office. I am satisfied that, as the Deputy Program Manager for Operations for the United Space Alliance in connection with the Space Flight Operations Contract, NAS 9–20000, he will be required to utilize these qualifications in the performance of his duties with respect to the processing and launch of the Space Shuttle and related systems, and that it will be in the national interest to permit him to appear before and communicate with Government officials on these matters.

Therefore, after consultation with the Office of Government Ethics, I have waived the post-employment prohibitions of subsections 207(a)(1), 207(a)(2), and 207(c) of Title 18 of the United States Code in order to permit direct communications between Mr. Shriver and employees of NASA and other Government agencies with respect to space flight activities.

Dated: July 27, 2000.

Daniel S. Goldin,

NASA Administrator.

[FR Doc. 00–19755 Filed 8–3–00; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company to withdraw its May 3, 1999, application, as supplemented March 16, 2000, for proposed amendment to Facility Operating License Numbers NPF–4 and NPF–7, for the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendment would have revised the Technical Specifications to ensure the emergency ventilation system is maintained operable consistent with the assumptions in the radiological dose consequences re-analysis from a large break loss-of-coolant accident, and to clearly identify that the ventilation

system is a shared system between the two units.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 16, 1999 (64 FR 32291). However, by letter dated July 25, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 3, 1999, supplement dated March 16, 2000, and the licensee's letter dated July 25, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 28th day of July 2000.

For the Nuclear Regulatory Commission.

Stephen Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19759 Filed 8–3–00; 8:45 am]

BILLING CODE 7590–01–U

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 August 28, 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:

Monday, August 28, 2000—1 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. (EDT). 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: July 26, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–19760 Filed 8–3–00; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Forms RI 20–7 and RI 30–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, 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; 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.

Approximately 12,480 RI 20–7 forms will be completed annually. Each form requires approximately 30 minutes to complete. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. Each form requires approximately 1 hour to complete. The total annual burden is 6,490.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before October 3, 2000.

ADDRESS: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19769 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement With Change of an Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reinstatement with change of information collection. SF 2823, Designation of Beneficiary: Federal Employees' Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

We estimate 40,000 SF 2823 forms are completed annually by annuitants and 1,000 forms are completed by assignees. Each form takes approximately 15 minutes to complete for an annual estimated burden of 10,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Planning & Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, AMB, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19767 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement Without Change of an Information Collection: Reemployment of Annuitants, 5 CFR 837.103

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reinstatement without change of an information collection. Section 837.103 of Title 5, Code of Federal Regulations, requires agencies to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

We estimate 3,000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 5 minutes to complete for an annual estimated burden of 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–3540

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, AMB, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19768 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on July 20, 2000 (65 FR 45117). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1, 2000, and June 30, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during June 2000.

Schedule B

No Schedule B authorities were established or revoked during June 2000.

Schedule C

The following Schedule C authorities were established during June 2000:

Department of Agriculture

Staff Assistant to the Press Secretary. Effective June 2, 2000.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective June 2, 2000.

Department of Commerce

Special Assistant to the Deputy Director, Office of Policy and Strategic Planning. Effective June 2, 2000.

Special Assistant to the Assistant Secretary for National

Telecommunications and Information Administration. Effective June 5, 2000.

Deputy Director for External Affairs to the Director of External Affairs. Effective June 5, 2000.

Confidential Assistant to the Director of External Affairs. Effective June 8, 2000.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 19, 2000.

Special Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office. Effective June 19, 2000.

Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 29, 2000.

Department of Defense

Confidential Assistant to the Assistant Secretary of Defense for Public Affairs. Effective June 8, 2000.

Foreign Affairs Specialist to the Deputy Assistant Secretary of Defense (Peacekeeping and Humanitarian Affairs). Effective June 19, 2000.

Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness. Effective June 19, 2000.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 21, 2000.

Department of Education

Special Assistant to the Director, Office of Public Affairs. Effective June 2, 2000.

Special Assistant to the Deputy Secretary. Effective June 21, 2000.

Special Assistant to the Director, Scheduling and Briefing, Office of the Secretary. Effective June 29, 2000.

Department of Health and Human Services

Special Assistant to the Chief of Staff. Effective June 29, 2000.

Department of Housing and Urban Development

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective June 2, 2000.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 2, 2000.

Special Projects Advisor to the Special Events Coordinator, Office of the Assistant Secretary for Administration. Effective June 21, 2000.

Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective June 29, 2000.

Department of the Interior

Special Assistant to the Deputy Assistant Secretary—Policy and International Affairs. Effective June 2, 2000.

Special Assistant to the Deputy Chief of Staff. Effective June 8, 2000.

Deputy Director, Office of Intergovernmental Affairs to the Deputy Chief of Staff. Effective June 21, 2000.

Department of Justice

Assistant Director to the Director, Intergovernmental Affairs. Effective June 1, 2000.

Department of Labor

Special Assistant to the Assistant Secretary of Labor. Effective June 2, 2000.

Secretary's Representative, Philadelphia, PA to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective June 2, 2000.

Special Assistant to the Deputy Secretary of Labor. Effective June 2, 2000.

Department of State

Special Assistant to the United States Representative to the American States, Bureau of Western Hemisphere Affairs. Effective June 1, 2000.

Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective June 2, 2000.

Program Officer to the Director, Foreign Press Centers. Effective June 2, 2000.

Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs. Effective June 19, 2000.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective June 21, 2000.

Department of Transportation

Special Assistant to the Associate Director for Media Relations and Special Projects. Effective June 19, 2000.

Department of the Treasury

Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective June 12, 2000.

Department of Veterans Affairs

Executive Assistant to the Assistant Secretary for Congressional Affairs. Effective June 28, 2000.

Export—Import Bank of the United States

Special Assistant to the President and Chairman. Effective June 2, 2000.

Farm Credit Administration

Secretary to the Chairman and CEO. Effective June 30, 2000.

Public Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective June 30, 2000.

Federal Maritime Commission

Counsel to a Commissioner of the Federal Maritime Commission. Effective June 19, 2000.

Federal Trade Commission

Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman. Effective June 29, 2000.

National Transportation Safety Board

Special Assistant to the Board Member. Effective June 19, 2000.

Confidential Assistant to the Chairman. Effective June 23, 2000.

Office of Management and Budget

Public Affairs Officer to the Associate Director for Communications. Effective June 23, 2000.

Office of Personnel Management

Special Assistant to the Director, Office of Personnel Management. Effective June 21, 2000.

Small Business Administration

Regional Administrator, Region VII, Kansas City, MO, to the Administrator, Small Business Administration. Effective June 5, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–19766 Filed 8–3–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27204]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 28, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the

Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 22, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 22, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Monongahela Power Company 70–9719

Notice of Proposal To Amend Articles of Incorporation; Make Cash Payments; Order Authorizing Solicitation of Proxies

Monongahela Power Company (''Monongahela Power''), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, a wholly owned combination gas and electric utility subsidiary of Allegheny Energy, Inc. (''Allegheny''), a registered holding company, has filed a declaration with the Commission under sections 6(a)(2), 7(e) and 12(e) of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 54, 62(d) and 65 under the Act.

Monongahela Power proposes to solicit proxies from the holders of its outstanding shares of preferred stock (''Proxy Solicitation'') for use at a special meeting (''Special Meeting'') of its stockholders to consider a proposed amendment to its Articles of Incorporation (the ''Articles'') that would eliminate in its entirety paragraph (a) of subdivision (11) of section 1.5 of the Articles, a provision restricting the amount of unsecured debt issuable by Monongahela Power (''Proposed Amendment'').[1]

Monongahela Power proposes that the Special Meeting take place on or about August 30, 2000. Adoption of an amendment to the Articles requires the affirmative vote at the Special Meeting by the holders of not less than two-thirds of the outstanding shares of each of (i) the preferred stock of all series (''Preferred Stock''),[2] voting together as one class, and (ii) the common stock.[3] If the Proposed Amendment receives the required number of votes, then Monongahela Power seeks authority to amend its Articles.

If the Proposed Amendment is adopted, Monongahela Power proposed to make a special cash payment of $1.00 per share (''Cash Payment'') to each preferred stockholder whose shares of Preferred Stock are properly voted at the Special meeting (in person by ballot or by proxy) in favor of the Proposed Amendment. Monongahela Power proposes to disburse Cash Payments out of its general funds, promptly after adoption of the Proposed Amendment.

Monongahela Power requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d). It appears to the Commission that Monongahela Power's declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

Allegheny states, for purposes of rule 54, that the conditions specified in rule 53(a) are satisfied and that none of the adverse conditions specified in rule 53(b) exist. As a result, the Commission will not consider the effect on the Allegheny system of the capitalization or earnings of any Allegheny subsidiary that is an exempt wholesale generator or foreign utility company, as each is defined in sections 32 and 33 of the Act, respectively, in determining whether to approve the proposed transactions.

Fees, commissions, and expenses to be incurred in connection with the transactions described in the declaration are expected not to exceed $130,000. Monongahela Power states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19732 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[1] To issue unsecured debt over the limitation set out in the Articles, Monongahela Power currently must have a majority vote of the preferred stockholders. In S.E.C. file no. 70–9625, Monongahela Power seeks authority to acquire Mountaineer Gas Company, an indirectly owned gas utility subsidiary of Energy Corporation of America (''ECA''), a Colorado public utility holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act. Monongahela Power states that at the time of financing the proposed acquisition, Monongahela Power would like the flexibility to incur unsecured debt. Monongahela Power states that elimination of the provision will allow it to be more flexible and competitive.

[2] The five series of Preferred Stock consist of the 4.40% Series, of which 90,000 shares are outstanding; the 4.50% Series C, of which 60,000 shares are outstanding; the 6.28% Series D, of which 50,000 shares are outstanding; and the 7.73% Series L, of which 50,000 shares are outstanding.

[3] Allegheny is the holder of all of Monongahela Power's outstanding shares of common stock. Allegheny has advised Monongahela Power that it intends to vote all of the outstanding shares of common stock of Monongahela Power in favor of the Proposed Amendment.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24586; 812–11946]

CompleTel Europe N.V.; Notice of Application

July 28, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF THE APPLICATION: CompleTel Europe N.V. (''CompleTel'' or ''Applicant'') requests an order exempting it from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date Applicant no longer may be deemed to be an investment company.

FILING DATES: The application was filed on January 14, 2000 and amended on July 26, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 25, 2000,and should be accompanied by proof of service on applicant 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, c/o Anthony Vertuno, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Washington, D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant, a Dutch public limited company formed in 1998, is a subsidiary of CompleTel LLC, a Delaware limited liability company. Applicant, through its wholly-owned subsidiaries, is a facilities-based provider of telecommunications services in Western Europe. As such, it owns and operates the telecommunication networks (including local fiber loops, telecommunications switches, switching facilities, network operations and customer care facilities) through which Applicant provides telecommunications services to its customers. Applicant's wholly-owned operating subsidiaries applied for and were granted telecommunications facility operator and service provider licenses for their respective markets in France, Germany and the United Kingdom and began deploying networks in its target markets.

2. To finance the acquisition, construction and deployment of its network facilities in each of its target markets, Applicant requires a significant amount of capital. In addition, as a key element of its deployment strategy, Applicant has developed a financing plan predicated on pre-funding each market's expansion to the point at which that market's operating cash flow is sufficient to fund both the operating costs (including working capital, debt service and cash flow deficits) and capital expenditures. Consistent with this financing plan, CompleTel has raised capital whenever it is available on attractive terms and may do so in the future in order to pre-fund its network construction and deployment in targeted markets in pursuit of its business plan.

3. As of April 15, 2000, Applicant had total assets of approximately $817.7 million, of which $118.5 million have been invested in property, equipment and other long-term assets, and $665.6 million in cash, ''government securities'' (as defined in section 2(a)(16) of the Act), and ''investment securities'' (as defined in section 3(a)(1)(C) of the Act) in accordance with Applicant's investment objectives of preserving principal and maintaining liquidity to meet daily cash needs and earning a competitive rate of return within the limits of these objectives. Applicant states that its investment securities may consist of money market funds or the European equivalent of money market funds and commercial paper rated A–1/P–1 denominated in U.S. dollars, euros and other Western European currencies (''Qualified Investments''). Applicant states that it holds Qualified Investments solely for the purpose of preserving capital pending the application of capital to its operations.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it ''is engaged or proposes to engage in it the business of investing, reinvesting, owning, holding or trading in securities, and owns on proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis.'' Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except government securities, securities issued by employees' securities companies and securities issued by majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicant states that, pending utilization in the construction and deployment of its networks and the development of its competitive local exchange business, the proceeds of its capital raising activities may be invested in Qualified Investments so as to cause Applicant's investment securities to exceed 40% of its total assets.

3. Section 6(c) of the Act permits the Commission to except any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date Applicant no longer may be deemed to be an investment company. Applicant believes that within this period its capital expenditures, including substantial investments in property, equipment and other long-term assets, will be sufficient to reduce its investment securities to less than 40% of its total assets.[1]

5. Applicant states that it has always been engaged primarily in the business of developing a Western European competitive local exchange carrier business. Applicant further states that its business activities to date have consisted primarily of the procurement of governmental authorizations, the acquisition of telecommunications equipment and facilities, the hiring of management and key personnel, the raising of capital, the construction and deployment of its fiber optic networks, the development, acquisition and integration of operation support systems and other back office systems, the negotiation of interconnection agreements with incumbent local exchange carriers and the development of its Internet service provider business. Applicant thus asserts that the requested relief is 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.

Applicant's Condtions

Applicant agrees that the requested exemption will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire any investment securities other than Qualified Investments.

2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

3. Applicant will allocate and utilize its accumulated cash and securities for the purpose of funding the construction and deployment of its networks and the development of its competitive local exchange business and Internet and related services.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19731 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant states that it relied on rule 3a–2 under the Act for a period that began in February 1999. Rule 3a–2 provides a one year exemption from the definition of investment company for certain transient investment companies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43086, File No. 4–429]

Joint Industry Plan; Order Approving Options Intermarket Linkage Plan Submitted by the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange LLC

July 28, 2000.

I. Introduction

On January 19, 2000, pursuant to an order issued by the Securities and Exchange Commission (''SEC'' or ''Commission''),[1] the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), International Securities Exchange LLC (''ISE''),[2] Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Commission proposed plans for the purpose of creating and operating an intermarket options market linkage (''plans''). In accordance with Rule 11Aa3–2 of the Act,[3] Amex, CBOE, and ISE filed a plan (the ''Amex/CBOE/ISE plan''). Separately, PCX and Phlx filed with the Commission proposals for alternative linkage plans. Although the three plans are identical with respect to a majority of the issues pertaining to a linkage, the exchanges were unable to reach agreement—and the plans differ—on several significant matters. Specifically, the exchanges failed to agree about whether the linkage should require that orders be routed to exchanges based on price/time priority,[4] who should have access to the linkage, and the appropriate remedy owed when one market trades at a price inferior to that displayed on another market (known as a ''trade-through'').

On March 2, 2000, a detailed summary of the Amex/CBOE/ISE plan, the PCX plan, and the Phlx plan was published for comment in the **Federal Register**.[5] The Commission received comments on the proposed linkage plans from 24 market participants.[6] This Order approves the Amex/CBOE/ISE plan, thus authorizing the Amex, CBOE, and ISE[7] to act jointly to implement an intermarket linkage as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.[8]

II. Background

In 1975, Congress directed the Commission to oversee the development of a national market system.[9] One of the principal purposes of the national market system is to assure ''the practicability of brokers executing investors' orders in the best market.''[10] In the equity and options market, price transparency and the duty of best execution owed by brokers to their customers are central to achieving this and other national market system goals. In the equity market, the Commission's Quote Rule[11] and the Intermarket Trading System[12] (which requires exchanges to avoid intentionally trading through another exchange's displayed quote) are additional components of the national market system that have assisted customers in receiving quality executions of their orders. At the time these additional national market system mechanisms were developed in the equity markets, however, the trading of standardized options was relatively new.[13] As a result, the Commission deferred applying these initiatives to the options markets to give options trading an opportunity to develop.

The absence in the options markets of firm quotes and intermarket linkages makes it more difficult for broker-dealers to ensure the best execution of customer orders for multiply-traded options. The obstacles to access between the options exchanges makes reaching any better quotes displayed on another market difficult in many cases. Moreover, other than exchange rules

[1] On October 19, 1999, the Commission issued an order under Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78k–1(a)(3)(B), directing the options exchanges to file a national market system plan within 90 days to link the options markets. *See* Securities Exchange Act Release No. 42029, 64 FR 57674 (October 26, 1999) (''October 19, 1999 Order'').

[2] The Commission's October 19, 1999 Order also requested the ISE to participate with the options exchanges in the development of an intermarket linkage plan. On January 19, 2000, ISE had not been approved as a national securities exchange. Therefore, the ISE was not able to be a signatory to a linkage plan at that time, even though it submitted a plan identical to that filed by Amex and CBOE. The ISE was subsequently registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[3] 17 CFR 240.11Aa3–2.

[4] Both PCX and Phlx proposed price/time priority as an element of the linkage. In general, a price/time priority rule would require an exchange that receives an order, but that was not the first exchange to display the best price, to route the order to the exchange that was the first to display the best price.

[5] *See* Securities Exchange Act Release No. 42456 (February 24, 2000), 65 FR 11402. At the same time, the full text of each of the plans was made available to interested persons on the Commission's website.

[6] Letters to the Commission from Salvatore F. Sodano, Chairman and Chief Executive Officer (''CEO''), Amex, dated January 19, 2000 and May 3, 2000 (''Amex Letter''); William J. Brodsky, CEO, CBOE, dated January 19, 2000, and two dated March 31, 2000 (''CBOE Letter''); U.S. Department of Justice to Commission (''DOJ Letter''); David Krell, President and CEO, ISE, dated January 19, 2000, and from Michael J. Simon, Senior Vice President and Secretary, ISE, dated April 3, 1999 (''ISE Letter''); Philip D. DeFeo, Chairman and CEO, PCX, dated April 3, 2000 (''PCX Letter''); William C. McGowan, Chairman, Options Committee, Securities Industry Association, dated April 11, 2000 (''SIA Letter''); Meyer S. Frucher, Chairman and CEO, Phlx, dated January 19, 2000 (''Phlx Letter''); Douglas J. Engmann, President and CEO, ABN–AMRO, dated March 24, 2000 (''ABN Letter''); Kevin M. Luthringhausen, Executive Managing Member, Botta Trading, LLC, dated April 10, 2000 (''Botta Letter''); George Brunelle, Brunelle & Hadjikow, dated April 25, 2000 (''Brunelle Letter''); Lon Gorman, Vice Chairman and President, Capital Markets & Trading Group, Charles Schwab & Co., Inc., dated April 18, 2000 (''Charles Schwab Letter''); Craig S. Tyle, General Counsel, Investment Company Institute, dated April 3, 2000 (''ICI Letter''); Thomas Peterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers, The Timber Hill Group, dated April 3, 2000 and April 10, 2000 (''Interactive Letter''); Peter Hajas, CEO, Knight Financial Products LLC, dated April 3, 2000 (''Knight Letter''); Samuel F. Lek, CEO, Lek Securities Corporation, (''Lek Letter''); Terry Brookshire, President, OptiMark Options/Derivatives, OptiMark Technologies, Inc., dated April 3, 2000 (''OptiMark Letter''); Richard F. Brueckner, Chief Operating Officer, Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation, dated April 5, 2000 (''Pershing Letter''); Andrew Cader, Senior Managing Director, Spear, Leeds & Kellogg, dated April 6, 2000 (''Spear, Leeds Letter''); Joel Greenberg, Managing Director, Susquehanna Investment Group, dated April 3, 2000 (''Susquehanna Letter''); Judy A. Basham, dated April 17, 2000 (''Basham Letter''); F. Steven Donahue, dated March 27, 2000 (''Donahue Letter''); P. Robert Fenwick, dated April 1, 2000 (''Fenwick Letter''); Mike Ianni, dated March 19, 2000, March 26, 2000, April 1, 2000, April 3, 2000, and April 4, 2000 (''Ianni Letter''); and Goldman, Sachs & Co. and Morgan Stanley Dean Witter & Co., dated July 20, 2000 (''Goldman/Morgan Letter''). A summary of comments received on the proposed linkage plans is available in the Commission's Public Reference Room (File No. 4–429).

[7] The Commission's Order does not require those options exchanges that are not participants in the plan to become participants in the Amex/CBOE/ISE plan. The plan does, however, include express provisions pursuant to which other options exchanges may become participants by executing the plan, paying a fee applicable to new participants, and obtaining the Commission's approval of the plan as amended to reflect the new participant. *See* Amex/CBOE/ISE plan, Sections 4(c) and 5(c)(ii).

[8] In addition, as described below, the Commission is separately proposing for comment a Trade-Through Disclosure Rule and modifications to the Commission's Quote Rule to apply to the options markets. *See infra* note 33 and accompanying text.

[9] Pub. L. No. 94–29 Stat. 97 (1975).

[10] 15 U.S.C. 78k-1(a)(1)(C)(iv).

[11] Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[12] The Intermarket Trading System (''ITS'') Plan is an effective national market system linkage plan linking the equity markets. The ITS Plan was first approved on an interim basis in 1978. Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419 (April 24, 1978).

[13] The trading of standardized options on securities exchanges began in 1973, with the organization of CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Doc.11 (February 13, 1973). Currently, Amex, CBOE, ISE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

that require members' quotes to be firm for customer orders, market makers are not subject to a firm quote obligation. Thus, market makers' quotes are not required to be firm for broker-dealers' proprietary orders, or for agency orders routed from another exchange. Instead, options exchanges have adopted ''trade-or-fade'' rules, requiring market makers to move their quote if they are unwilling to trade at that price. Accordingly, firms representing customer orders cannot be certain that a better price quoted on another exchange is actually available to them.

Since the establishment of the options exchanges, the Commission has repeatedly called for market integration facilities for the options markets to achieve the national market system goals.[14] In 1991, in response to these calls, four of the five options exchanges[15] submitted a proposal for the development of a linkage.[16] The plan was never adopted, in part, because the exchanges did not agree on the feasibility of implementing a single linkage plan. More recently, Chairman Levitt wrote to the options exchanges emphasizing the need for the options markets to develop mechanisms, such as linkages, firm quotes, and trade-through protections, to protect customer orders.[17] Finally, because of the growing practice by the options exchanges of multiply trading options classes previously listed on a single exchange, the need for measures to ensure that such customer orders are not executed at prices inferior to prices quoted on another options exchange has become more acute. For this reason, on October 19, 1999, the Commission ordered the markets to submit a linkage plan within 90 days that, at a minimum, included uniform trade-through rules and expanded firm quote obligations to cover agency orders presented by competing exchanges.[18] In response to this Order, on January 19, 2000, Amex, CBOE, and ISE submitted the Amex/CBOE/ISE plan and PCX and Phlx each filed separate plans.

III. Description of the Amex/CBOE/ISE Plan

The Amex/CBOE/ISE plan proposes an intermarket linkage for the following three types of orders:

- Customer orders, where the market maker chooses not to ''step up'' to match a better price displayed on an away market;
- Principal orders of eligible market makers [19] and
- Orders intended to satisfy trade-through liability.

The means of routing these three types of orders, along with certain limitations on their routing, are discussed below.

A. Customer Orders Where Market Makers Choose Not To Step Up

The Amex/CBOE/ISE plan would permit an eligible market maker representing a customer order to transmit through the linkage a new type of order—a principal acting as agent order (''P/A Order'').[20] If the size of the P/A Order is no larger than the Firm Customer Quote Size,[21] the Amex/CBOE/ISE plan provides that an eligible market maker that chooses to route the order away can send it through the linkage for execution in the automatic execution system of a participating exchange at the best price (''NBBO'').[22] The exchange receiving the P/A Order through the linkage must execute it in its automatic execution system, if its disseminated quote is equal to or better than the limit price attached to the P/A Order (''reference price'') [23] at the time the order arrives at the receiving exchange.

If the size of the P/A Order is larger than the Firm Customer Quote Size, the Amex/CBOE/ISE plan provides two alternatives to an eligible market maker that chooses to route the order. First, the eligible market maker can send a P/A Order representing the entire customer order through the linkage. If the receiving exchange's disseminated quote is equal to or better than the reference price of the order, the receiving exchange must execute that order for at least the Firm Customer Quote Size and, within 15 seconds of receipt of such P/A Order, inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. Second, an eligible market maker can send as a P/A Order that portion of the customer order equal to the Firm Customer Quote Size. Then, 15 seconds after reporting the execution of this P/A Order, if the receiving exchange continues to disseminate the same quote, and that quote is the NBBO, the market maker may send a second P/A Order. This second P/A Order must be for the lesser of 100 contracts or the entire remainder of the customer order the sending eligible market maker is representing. Under either alternative, if the receiving exchange does not execute the entire P/A Order, it must move its

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[14] *See* Report of the Special Study of the Options Markets to the SEC, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading); Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, ''The Effects of Multiple Trading on the Market for OTC Options'' (November 1986); Office of the Chief Economist, ''Potential Competition and Actual Competition in the Options Market'' (November 1986); and Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an intermarket linkage). In 1990, then Chairman Breeden requested that the options exchanges develop an intermarket linkage plan. *See* letter from Chairman Breeden to the registered options exchanges dated January 9, 1990.

[15] At that time, the five options exchanges were the CBOE, PCX, Amex, Phlx, and the New York Stock Exchange (''NYSE''), which later sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[16] *See* Securities Exchange Act Release No. 30187 (January 14, 1992), 57 FR 2612 (January 22, 1992) (soliciting comments on an intermarket linkage plan submitted by Amex, CBOE, NYSE, and PCX).

[17] *See* letters from Arthur Levitt, Chairman, SEC, to Richard F. Syron, Chairman and CEO, Amex; William J. Brodsky, Chairman and CEO, CBOE; Robert M. Greber, Chairman and CEO, PCX; and Meyer S. Frucher, Chairman and CEO, Phlx, dated February 10, 1999. *See also* letters from Chairman Levitt, to Salvatore Sodano, Chairman and CEO, Amex; William J. Brodsky, Chairman and CEO, CBOE; Philip D. DeFeo, Chairman and CEO, PCX; and Meyer S. Frucher, Chairman and CEO, Phlx; dated October 1, 1999.

[18] *See* note 1, *supra.*

[19] An ''eligible market maker'' is defined in the Amex/CBOE/ISE plan as a ''market maker'' that: (1) Is assigned to provide, and is providing, two-sided quotations in the eligible option class; (2) is participating in its market's automatic execution system in such eligible option class; and (3) is not prohibited from sending ''principal orders'' in such eligible option class through the linkage pursuant to the plan.

[20] A P/A Order is defined as an order for the principal account of a market maker authorized to represent customer orders, which reflects the terms of a related unexecuted customer order for which the market maker is acting as agent.

[21] Under the Amex/CBOE/ISE plan, the Firm Customer Quote Size is the lesser of: (1) The number of contracts the exchange sending the P/A Order guarantees it will automatically execute for customer orders that are entered directly in that market; or (2) the number of contracts the receiving exchange guarantees it will automatically execute for customer orders that are directly entered in that market. However, in no event, would a P/A Order be guaranteed fewer than 10 contracts.

[22] The term ''NBBO'' is defined as the national best bid and offer in a series of an eligible option class calculated by a participating exchange. Currently, a consolidated NBBO does not exist for the option markets. Instead, each options exchange separately calculates the best bid or offer for each multiply-traded options class.

[23] Except with respect to a satisfaction order, the reference price is equal to the quotation disseminated by the receiving exchange at the time the linkage order is transmitted. With respect to a satisfaction order, the reference price is the price to which the member in the sending exchange is entitled pursuant to the linkage plan. *See* Section III.C, *infra* for a discussion of satisfaction orders.

quote to a price inferior to the reference price of the P/A Order.

In addition, an eligible market maker that sends a P/A Order through the linkage and who does not receive a reply within 30 seconds may reject any response received thereafter purporting to report a total or partial execution of that order. The eligible market maker that sent the P/A Order must inform such executing exchange within 15 seconds that it is rejecting the execution.

Finally, the Amex/CBOE/ISE plan provides that the linkage should not be used as an order delivery system through which all or a substantial portion of a participant's customer orders are executed using P/A Orders routed through the linkage.

B. Principal Orders of Eligible Market Makers

The Amex/CBOE/ISE plan would allow eligible market makers to send proprietary orders through the linkage. Such orders must be at the NBBO. If the principal order is not larger than the Firm Principal Quote Size,[24] the exchange receiving such order through the linkage must execute it in its automatic execution system, if its disseminated quote is equal to or better than the reference price at the time the order arrives. If the principal order is larger than the Firm Principal Quote Size, the receiving exchange must execute the order in its automatic execution system for at least the Firm Principal Quote Size and, within 15 seconds of receipt of such order, inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. In addition, if the receiving exchange does not execute the entire principal order, it must move its quote to a price inferior to the reference price of the principal order. An eligible market maker may not send a second principal order in the same eligible option class for at least 15 seconds after it sent the first principal order, unless the receiving exchange changes its quote and that quote is the NBBO. If the receiving exchange's disseminated quote does not change for one minute after the automatic execution of the first principal order, the exchange that initially sent the principal order for automatic execution may send only principal orders for greater than the Firm Principal Quote Size.

As with P/A Orders sent through the linkage, an eligible market maker that sends a principal order through the linkage and who does not receive a reply within 30 seconds may reject any response received thereafter purporting to report a total or partial execution of that order. The market maker that sent the principal order must inform the receiving exchange within 15 seconds that it is rejecting the response.

As a limitation on eligible market makers' access to the linkage for sending principal orders, the Amex/CBOE/ISE plan would impose an ''80/20 Test.'' Under this test, a market maker that effected 20 percent or more of its market maker volume by sending principal orders through the linkage in a calendar quarter would be prohibited from sending principal orders through the linkage for the next calendar quarter (*i.e.,* would not be an ''eligible market maker'' for that period). Outgoing P/A Orders would not be included in this calculation.

C. Satisfaction of Trade-Through Liability

The Amex/CBOE/ISE plan provides that members of participant markets should avoid initiating trade-throughs, subject to certain exceptions, absent reasonable justification and during normal market conditions. Any member of a plan participant that does initiate a trade-through would be liable to the market maker who complains that its quote was traded through. Under the plan, there are a number of proposed exceptions to this trade-through liability, which include systems malfunction, failure of the receiving market to respond to a P/A or principal order within 30 seconds, complex trades, trading rotations, and non-firm quotations on the market that was traded through.

The Amex/CBOE/ISE plan provides that if a market that had its quote traded through complains within the specified time period, the member that initiated such trade-through would have to satisfy the complaining market by adjusting the price or canceling the trade. If customer orders constituted either or both sides of the transaction involved in the trade-through, each customer order would receive whichever of the following is most beneficial to the customer:

- The price of the trade that caused the trade-through;
- The satisfaction price, if the trade-through was satisfied; The satisfaction price would equal the bid or offer, unless the transaction that constituted the trade-through was a block trade,[25] in which case satisfaction would be the price of the transaction that caused the trade-through; or
- The adjusted price, if there was an adjustment.

The member initiating the trade-through is responsible for any differences.

With respect to the appropriate size of satisfaction, in the absence of disseminated size, the Amex/CBOE/ISE plan would limit the satisfaction of a trade-through to the verifiable number of customer contracts that were included in the disseminated bid or offer of each exchange that was traded through, subject to certain limitations. In particular, if the number of contracts to be satisfied in one or more exchanges exceeds the size of the transaction that caused the trade-through, satisfaction will be limited to the size of the transaction that caused the trade-through.

IV. Discussion

A. Introduction

In Section 11A of the Act,[26] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. In particular, Section 11A(a)(3)(B) of the Act[27] authorizes the Commission ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities.'' Rule 11Aa3–2 establishes the procedures for filing, amending, and approving national market system plans.[28] Pursuant to paragraph (c)(2) of Rule 11Aa3–2, the Commission's approval of a national market system plan is conditioned upon a finding that the proposed plan ''is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market

[24] Under the Amex/CBOE/ISE plan, the Firm Principal Quote Size means the number of contracts that a receiving exchange guarantees it will execute at its disseminated quote for incoming principal orders, but in no event shall this number be fewer than 10 contracts.

[25] The term ''block trade'' is defined as a trade that: (i) is of block size, defined as 500 or more contracts and a premium value of at least $150,000; (ii) is effected at a price outside of the NBBO; and (iii) involves either a cross (where a member of the exchange represents all or a portion of both sides of the trade) or any other transaction that is not the result of an execution at the current bid or offer on the exchange.

[26] 15 U.S.C. 78k–1.

[27] 15 U.S.C. 78k–1(a)(3)(B).

[28] 17 CFR 240.11Aa3–2.

system, or otherwise in furtherance of the purposes of the Act.''[29]

After carefully considering the proposed linkage plans and the issues raised by the comment letters, the Commission has determined to approve, pursuant to Section 11A(a)(3)(B) of the Act,[30] and Rule 11Aa3–2 thereunder,[31] the Amex/CBOE/ISE plan, thus authorizing the Amex, CBOE and ISE to act jointly to implement the plan's intermarket linkage.[32] In approving the Amex/CBOE/ISE plan, the Commission finds that, as discussed in greater detail below, the Amex/CBOE/ISE plan is consistent with the Act in that it provides, among other things, a mechanism for assuring price priority for published quotes and obtaining the quoted price for customer orders, and therefore, would enhance investor protections and the maintenance of fair and orderly markets.

Specifically, the Commission believes that the continuing growth in the number of options classes traded on more than one exchange has significantly increased the need for a vehicle to assure price priority for published options quotes. Without an efficient linkage between the options markets, it is difficult for one options exchange to access better prices on another exchange. Given the recent increase in multiply-traded options classes, the absence of an efficient mechanism allowing one market to access a better price displayed by another exchange heightens the Commission's concern that better priced quotes may not be honored and that investors may not receive the best price available for their orders. The Commission believes that the Amex/CBOE/ISE plan, if implemented, would help reduce the frequency of intermarket trade-throughs of published quotations.

The Commission recognizes the limited scope of the Amex/CBOE/ISE plan. Notably, the Amex/CBOE/ISE plan does not attempt, among other things, to give priority to customer limit orders across markets or to encourage quote competition by rewarding market makers who establish the NBBO. The Commission, however, believes that it would be premature at this time to require the inclusion of either customer limit order protection or price/time priority as elements of a linkage between the options markets.

Moreover, while the Commission has determined at this time to approve the Amex/CBOE/ISE plan, the Commission recognizes that there may be a number of equally acceptable means of achieving the Commission's goal of encouraging price priority by limiting intermarket trade-throughs of customer orders. To that end, the Commission has separately proposed modifications to its Quote Rule to apply to the options exchanges and options market makers the same obligations, with certain modifications, currently imposed on equity markets and market makers. The Commission is also proposing a rule that would require a broker-dealer to disclose to customers when the customer's order is executed at a price inferior to the best available quote, unless the order is routed only to options exchanges that participate in a plan that limits trade-throughs.[33] The Commission believes that its approval of the Amex/CBOE/ISE plan, coupled with the rulemaking separately proposed, should minimize the probability of intermarket trade-throughs involving customer orders.

B. Price/Time Priority

One way to encourage market makers to quote competitively is through a rule that gives priority to quotes based on price and time. Generally, priority among orders and quotes within an exchange is based on price and time.[34] A requirement that priority across markets be based on price and time has also been suggested as a way to reward market makers who are the first in time at the best quote. In general, an intermarket requirement of price/time priority would require an exchange that receives an order, but that was not the first exchange to display the best price, to route the order to the exchange that was first at the best price. The PCX[35] and Phlx[36] each incorporated price/time priority as an element of their proposed linkage plans. As discussed above, the Amex/CBOE/ISE plan does not include price/time priority and instead, would allow the exchange initially receiving an order to step up to match the better price being disseminated by another market.

In addition to the PCX and Phlx, several commenters supported the notion of price/time priority as an element of an intermarket linkage plan. One commenter noted that without price/time priority, there is no incentive

[29] 17 CFR 240.11Aa3–2(c)(2).

[30] 15 U.S.C. 78k–1(a)(3)(B).

[31] Pursuant to paragraph (c)(2) of Rule 11Aa3–2 under the Act, the Commission designates up to 180 days from the date of publication of notice of the filing of a national market system plan for its approval of the Amex/CBOE/ISE plan. The Commission finds that, due to the complexity of issues relating to an intermarket linkage between the options markets, it is necessary and appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets to designate this longer period. 17 CFR 240.11Aa3–2.

[32] The Commission's approval of the Amex/CBOE/ISE plan should not be construed as a rejection on the merits of either the Phlx or the PCX submissions. Neither of those submissions could be approved as a national market system plan pursuant to Rule 11Aa3–2 under the Act, 17 CFR 240.11Aa3–2, because neither was filed by two or more sponsors, as required by the Rule. In fact, the Commission would consider approving other national market system plans relating to intermarket linkages between the options markets, submitted by two or more markets.

[33] *See* Securities Exchange Act Release No. 43085 (July 28, 2000) (Firm Quote and Trade-Through Disclosure for Options Proposal). The Commission's proposal would require a broker-dealer to disclose to its customer when a transaction in listed options was effected at a price that trades through a better published price, and the better published price. The broker-dealer would be excepted from the disclosure requirement of the proposed rule if the transaction is effected on an options exchange that is a participant in an effective national market system options linkage plan that includes provisions to limit customer orders from being executed at a price that trades through a better published price, including prices published other than by a linkage plan participant. In addition, the Commission is proposing amendments to its Quote Rule, 17 CFR 240.11Ac1–1, to require quotes for listed options to be firm.

[34] The exchanges, however, have rules that grant certain market participants priority based on other factors. For example, exchanges' rules permit specialists, under certain circumstances, to trade ahead of others in a trading crowd with a certain percentage of every order, known as specialist guarantees. See CBOE Rule 8.87; ISE Rule 713(e); PCX Rule 6.82(d); Phlx Rule 1014(g); see also Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30). In addition, some exchanges' rules, subject to certain requirements, grant order entry firms priority over members of the trading crowd to trade as principal with up to 40% of each of their customers' orders above a certain size, known as facilitation guarantees. See Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000) (File No. SR–Amex–99–36); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR–CBOE–99–10); and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000) (File No. SR–PCX–99–18). Finally, all of the exchanges have automatic execution systems for small public customer orders that execute such orders against the accounts of market makers at each exchange's disseminated quote on a rotational basis without exposing such orders to the auction on the floor and its price/time priority rules.

[35] The PCX proposed that customer orders of 20 contracts or less would be automatically executed by the exchange that initially received the order only if that exchange was disseminating a quote with price/time priority, or if the exchange was at the NBBO (although not first in time) and provided price improvement for the order. If the exchange was not quoting at the NBBO at the time it initially received the order, it would be required to automatically generate a P/A Order and send it to the away market that was disseminating a quote with price/time priority, so long as the away exchange provided a firm customer quote of at least 20 contracts in the particular options class.

[36] The Phlx proposed a linkage plan that incorporated a strict price/time priority feature. The Phlx plan would require each exchange to build a front-end system to route all customer orders that would be eligible for automatic execution, as P/A Orders, either directly through the linkage or to the facilities manager if the exchange that initially received the order was not the first to disseminate the best price.

for market makers to show their best markets, thus making bid-ask spreads wider.[37] Other commenters argued that the best linkage plan would limit the imposition of price/time priority to small, non-contingent orders.[38]

A number of commenters stated, however, that strict price/time priority would undermine market competition by eliminating the ability of the exchanges to compete with each other on service factors, including: quick turnaround on fills, low costs, superior order handling systems, low-error rates, investor education, and enhanced liquidity and depth of the markets.[39] One commenter asserted that the price/time priority proposals were intended more to advance the perceived competitive positions of the exchanges supporting the proposals, than to benefit investors.[40] Another commenter suggested that the price/time priority proposals were actually anticompetitive because they would eliminate all forms of competition except one—the race to the quote.[41]

Other commenters contended that imposing an intermarket price/time priority rule would require the creation of a routing switch or consolidated limit order book (''CLOB'') that would consist of a single execution facility, with a single point of failure, and that such a development would reduce incentives for the markets to innovate.[42]

Several commenters argued that decimalization, which may create pricing increments as small as a penny, would undermine a price/time priority requirement.[43] These commenters suggested that if a price/time priority requirement were imposed, an exchange could easily step ahead of another exchange or customer limit order by improving the NBBO by just a penny. This ability to improve the NBBO by as little as a penny could lead to competition based on which computer could update its quotes faster.[44]

At this time, the Commission believes that the proposed options intermarket linkage, even without a price/time priority component, is consistent with the requirements of the Act. The Commission does not, however, currently have sufficient information to satisfy itself that the potential benefits of a mandatory price/time priority requirement justify the potential drawbacks.

For example, the implementation of decimals is expected to have a dramatic impact on the minimum pricing increments in the options markets and may affect the behavior of market participants. At this point, however, before the U.S. securities markets have actually begun trading in decimals, it is impossible to gauge the impact of decimalization on the options markets. Because the Commission cannot reliably predict the effect of decimals on the quoting practices in the options markets, it would be premature to mandate a requirement that dictates order execution practices based on quoting practices that have not yet developed. Further, the Commission believes that it is prudent to wait until decimals are implemented to consider whether, in a decimals environment, an intermarket price/time priority requirement would or would not reduce competition among the exchanges.

Finally, the issue of whether price/time priority could negatively impact liquidity in a given market by requiring the routing of orders based on price alone, without consideration of the size demands of the order or an exchange's ability to execute the full size of the order, should be considered. For these reasons, the Commission believes that a price/time priority requirement is not a prerequisite to approval of an intermarket linkage plan in the options market. The Commission, nevertheless, continues to consider further ways to strengthen price competition and price priority within existing market structures.[45] In addition, the Commission is concerned about the impact on quote competition of payment for order flow and other non-price competition practices. To better inform the Commission about the nature, scope, and prevalence of payment for order flow and internalization arrangements and their influence on order routing patterns, the Commission's Office of Economic Analysis along with the Office of Compliance Inspections and Examinations plans to conduct a study of the development of these practices in the options markets since multiple listing.[46]

C. Customer Limit Order Protection

In its transmittal letter, the ISE proposed an alternative approach for handling P/A Orders that would provide a means of protecting customer limit orders. Under this alternative approach, if one market executes an order at another market's quoted price without quoting at that price, and if the other market's quote was for a customer limit order, the other market can require the first market to honor its displayed customer limit order. Also, under this alternative approach, if the exchange receiving an order decides to route an order to another market instead of stepping up to match the better quote, it would be required to route the order through the linkage based on price/time priority.

The Commission received three comments in support of a customer limit order protection component to a linkage.[47] One of these commenters believed that the Commission should not approve a linkage unless customer limit orders have the opportunity to interact with the flow of orders on other markets.[48] In addition, two commenters supported a customer limit order protection rule that would protect customer limit orders while continuing to allow a market maker to step up to match the NBBO.[49]

On the other hand, seven commenters either opposed or expressed serious reservations about the potential competitive impact, cost, feasibility, or utility of a customer limit order protection rule.[50] These commenters believed that such a rule would be tantamount to a CLOB, which could eventually turn the options markets into a single execution facility, with a potential single point of failure, rather than a system of competing markets.[51] Several commenters believed that this would create a disincentive for dealers to commit capital, disrupt trading, stifle innovation, and discourage firms from offering new services.[52]

In addition, two commenters expressed concern that a customer limit order protection rule could expose market makers who step up to match the NBBO to increased risk because such market makers could have to satisfy customer limit orders on another

[37] Ianni Letter.

[38] DOJ Letter and Goldman/Morgan Letter.

[39] Amex Letter; Susquehanna Letter; Spear, Leeds Letter; Pershing Letter; SIA Letter; Charles Schwab Letter; and CBOE Letter.

[40] ISE Letter; *see also* Charles Schwab Letter.

[41] ISE Letter.

[42] Botta Letter; Charles Schwab Letter; and Knight Letter.

[43] Optimark Letter and Charles Schwab Letter.

[44] *See also* Spear, Leeds Letter.

[45] *See* Securities Exchange Act Release No. 43084 (July 28, 2000) (Disclosure of Order Routing and Execution Practices Proposal) and *supra* note 33.

[46] SEC Press Release No. 2000–97 (July 19, 2000) (Commission To Study Effect of Payment for Order Flow and Internalization in the Options Markets).

[47] Optimark Letter; Ianni Letter; and Pershing Letter.

[48] Optimark Letter.

[49] Ianni Letter and Pershing Letter.

[50] CBOE Letter; Botta Letter; Susquehanna Letter; Knight Letter; Spear, Leeds Letter; and Charles Schwab Letter; *see also* Amex Letter.

[51] CBOE Letter; Susquehanna Letter; and Charles Schwab Letter.

[52] Susquehanna Letter; Botta Letter; and Charles Schwab Letter.

market.[53] Therefore, one commenter stated, there would be less incentive for a market maker to provide liquidity, which could result in wider spreads or in market makers leaving the options exchanges' floors.[54] In addition, one commenter believed that for a customer limit order protection rule to be feasible, size would have to be disseminated to allow market makers to make informed decisions about whether to price match or route an order.[55]

Several commenters believed that the issue of limit order protection could be addressed by the exchanges imposing a customer limit order protection rule on their own members or allowing each specialist to determine the level of intermarket limit order protection it wishes to provide to limit orders sent to its market.[56] Commenters believed that, as a result of competitive pressures and exchanges' concerns about assisting firms in satisfying their best execution responsibilities, the markets would achieve the appropriate level of limit order protection without the Commission mandating it as part of a linkage.[57]

Finally, several commenters noted that adopting a customer limit order protection rule should not be allowed to delay an options market linkage.[58] In addition, some commenters believed that a customer limit order protection rule should be addressed in the context of the broader market structure debate.[59] In that regard, at least three exchanges committed to studying the idea of incorporating a customer limit order protection rule into an intermarket linkage plan.[60]

As discussed above, the Commission has determined, at this time, that a customer limit order protection requirement is not a prerequisite to approval of an options market linkage plan. While the Commission believes that such a rule could enhance limit order protections, the Commission believes that it is important not to delay the implementation of a linkage while resolving the issues raised by protecting limit orders across markets.

[53] Susquehanna Letter and Botta Letter.

[54] Susquehanna Letter.

[55] Spear, Leeds Letter. The Commission notes that, at this time, only the ISE displays customer limit orders with size.

[56] CBOE Letter; Susquehanna Letter; and Botta Letter; *see also* Charles Schwab Letter.

[57] CBOE Letter; Susquehanna Letter; and Charles Schwab Letter; *see also* SIA Letter and Amex Letter.

[58] Pershing Letter; ISE Letter; and Amex Letter; *see also* SIA Letter and CBOE Letter.

[59] SIA Letter and ISE Letter.

[60] CBOE Letter; Amex Letter; and ISE Letter.

D. Access to the Linkage

1. General Limitations

The Amex/CBOE/ISE plan provides access [61] to the linkage to eligible market makers on behalf of customer orders and by market makers and specialists on behalf of their principal accounts. Non-market maker broker-dealers would not have access to the linkage.

Several commenters supported limiting access to the linkage.[62] One commenter stated simply that access must be limited to the orders of retail customers.[63] Two commenters believed, however, that the proposed restrictions on proprietary access are not consistent with an open, accessible, and efficient marketplace and would perpetuate the current two-tiered market. These commenters noted that non-market maker broker-dealers would not have an efficient mechanism to execute orders for their proprietary accounts,[64] resulting in the use of slower, manual execution methods, which ultimately would decrease liquidity and pricing efficiency.[65] Finally, one commenter stated that the proposed distinction between broker-dealer and non-broker-dealer customers is unfair and unsupportable.[66]

Instead of implementing a new system for the linkage, one commenter proposed using existing routing systems to allow members of one exchange to access other exchanges, and permitting the exchange being accessed to charge a small fee to eliminate the concern that the linkage would allow unlimited free access to other exchanges. The same commenter argued that unlimited and unrestricted access should be available to anyone for publicly displayed bids and offers.[67] Finally, one commenter proposed that the exchanges grant access to each other's order routing systems either through private vendors or through direct linkages between markets, pursuant to accessibility standards established by the Commission.[68]

At this time, while the Commission would support broader access between options markets, the Commission does not believe it is essential that an options linkage plan provide broader access for proprietary traders. The Amex/CBOE/ISE plan eliminates barriers to routing customer orders between markets, helping to ensure that customer orders have an opportunity to access the best price available in the options market. To achieve this goal, the plan provides for routing customer orders to other markets through the linkage. The plan's approach of permitting eligible market makers, acting as agents for customer orders, to access the linkage provides customer orders with access to other markets.

The Amex/CBOE/ISE plan also allows eligible market makers to use the linkage to hit quotes on an away market, thus helping to protect the priority of the better displayed price. As discussed below, the Commission also recognizes the validity of concerns with respect to unlimited principal access.

Finally, the Commission finds that, at this time, the proposed exclusion of non-market maker broker-dealers from the linkage is not unreasonable. The Amex/CBOE/ISE plan limits access to the linkage to eligible market makers due to their affirmative obligations to the markets. The Commission believes that, by limiting who has access to the linkage, the Amex/CBOE/ISE plan reasonably attempts to address the concern that allowing broader access to the linkage could dilute the value of exchange memberships.

2. Limitation on Principal Access

As previously noted, the Amex/CBOE/ISE plan proposed to limit eligible market maker access to the linkage for sending principal orders to less than 20 percent of each market makers total volume (the 80/20 Test). A market maker effecting more than 20 percent of its volume in a calendar quarter through the linkage would be prohibited from sending principal orders through the linkage in the subsequent quarter. The PCX plan proposed to prohibit the transmission of principal orders, except to unlock or uncross markets or to satisfy trade-through liability. Under the Phlx plan, eligible market makers would be permitted to send principal orders through the linkage without limitation.

Commenters generally maintained that limited principal access should be permitted to the extent it facilitates the operation of the linkage, but that it should not become a surrogate for exchange membership.[69] Several

[61] Access would include, up to a specified size, automatic execution and firm quote treatment.

[62] Amex Letter; Susquehanna Letter; Botta Letter; and CBOE Letter.

[63] Knight Letter.

[64] Interactive Letter and Lek Letter.

[65] Spear, Leeds Letter. This commenter also opposed the limitation on market makers routing orders more frequently than every 15 seconds and routing orders for automatic execution more frequently than every minute. The commenter believed this would put competing market makers at a significant disadvantage when attempting to provide price equilibrium between markets.

[66] SIA Letter.

[67] Lek Letter.

[68] Charles Schwab Letter.

[69] Amex Letter; Susquehanna Letter; Botta Letter; and CBOE Letter.

commenters supported the Amex/CBOE/ISE plan's proposed 80/20 Test for volume restriction.[70] Another commenter argued, however, that each exchange should be permitted to independently adopt its own limitation, if any, on principal access.[71]

One commenter believed the 80/20 Test would put smaller market participants at a competitive disadvantage. This commenter preferred the PCX plan to the Amex/CBOE/ISE plan because it would allow for essentially unlimited principal trading to unlock or uncross a market.[72] Another commenter noted that the Commission and the exchanges should be mindful of the potential, practical difficulties associated with requiring a participant to unlock or uncross a market it has locked or crossed.[73]

The plan's limitation on principal access is designed to prevent the linkage from becoming a means of wide scale proprietary trading by broker-dealers on markets in which they are not members. The Commission finds that the 80/20 Test is a reasonable means to ensure that market makers use the linkage to prevent trade-throughs and honor other markets' quotes, as the plan intends, and not as a substitute for exchange membership. Otherwise, a trader on one exchange could gain virtually free access to another exchange through use of the linkage, without having to satisfy the exchange's membership requirements. The plan is not intended to displace membership in exchanges, or replace direct broker-dealer order routing connections to the exchanges. Thus, the plan does not preclude a market maker from obtaining direct access to a particular exchange by sending orders to such exchange through a member of that exchange or by becoming an exchange member itself.

The Commission recognizes that the 20 percent limitation on a market maker's principal activity in the Amex/CBOE/ISE plan is based on judgment, rather than practical experience with a linkage. The Commission believes that the 20 percent limitation is reasonable. If experience indicates that a different limit would be preferable, the percentages can be altered at a future date.

E. Trade-Through Provisions

As discussed above, the Amex/CBOE/ISE plan proposes that members in their markets should, absent reasonable justification and during normal market conditions, avoid initiating trade-throughs, subject to certain exceptions. Generally, commenters supported the trade-through protections provided for in the proposed plans.[74] One commenter noted that a linkage would enhance execution quality of customer orders by providing trade-through protection.[75] Another commenter specifically supported the Amex/CBOE/ISE plan's treatment of trade-throughs, which would limit satisfaction of a trade-through up to the verifiable number of customer contracts in the markets that were traded through, subject to the size of the transaction that caused the trade-through.[76] That commenter specifically opposed the Phlx's proposal, which would allow the total number of verifiable contracts to be satisfied to exceed the size of the transactions that caused the trade-through.[77]

One commenter believed that the trade-through provisions of the plans needed to be clarified.[78] First, this commenter noted that the proposed plans do not specify what time (*i.e.,* receipt or execution) would be used when evaluating whether a trade-through had occurred. Second, this commenter questioned whether a specialist would have to step up or send an order to a better market if the specialist had already sent that order and it had been rejected by a market that was previously at the NBBO.

One commenter noted that the plans do not provide any deterrent for initiating trade-throughs or ignoring linkage orders, other than the risk of a complaint by another market. The commenter believed that because the plans require the aggrieved party to complain about a trade-through within three minutes of the trade-through being reported by the Options Price Reporting Authority (''OPRA'') and because damages are limited to making the aggrieved party whole, violators initiating trade-throughs will reap the benefits of doing so, while only occasionally having to return any gains. The commenter encouraged the Commission to include a penalty, in addition to making aggrieved parties whole, extend the time during which complaints could be lodged to thirty minutes, and require the exchanges to bear the responsibility for detecting trade-throughs. The commenter also recommended exchange surveillance to deter participants from ignoring orders routed through the linkage.[79]

The Commission notes that trade-throughs currently can occur in the options market because there is no efficient means for accessing quotes across those markets. The Commission believes that approval of the Amex/CBOE/ISE plan will improve execution of orders and promote best execution opportunities by providing not only a linkage to send customer orders to markets if they have a better quote, but also remedies in the event that a better bid or offer is traded through. Generally, under the Amex/CBOE/ISE plan, a trade-through would be determined at the time the order is executed to avoid having an exchange become liable for a quote that did not exist in its market at the time of execution.

The rule proposed in the Amex/CBOE/ISE plan does not flatly prohibit trade-throughs and does not provide a remedy to the quotes or orders traded through unless the aggrieved party complains.[80] Because the trade-through provision depends upon the aggrieved party complaining of the trade-through within an allotted period of time, the Commission concurs with one commenter's opinion that the Amex/CBOE/ISE plan may not eliminate trade-throughs in all instances. The plan is beneficial nevertheless because it provides an efficient means, and some incentive, to avoid trade-throughs. The exchanges also have competitive incentives to avoid trade-throughs to attract broker-dealers seeking to satisfy their obligation to assess the various markets in determining how to achieve best execution of their customers' orders.[81] Moreover, the Trade-Through Disclosure Rule, proposed today in a separate release, would also give broker-dealers and exchanges a substantial

[70] Amex Letter; Susquehanna Letter; CBOE Letter; Ianni Letter; and SIA Letter.

[71] Knight Letter.

[72] Interactive Letter.

[73] SIA Letter.

[74] SIA Letter; ISE Letter; Ianni Letter; and Botta Letter.

[75] Knight Letter.

[76] SIA Letter.

[77] *Id.*

[78] Botta Letter.

[79] Interactive Letter.

[80] The Commission notes that its approval of the trade-through provision in the Amex/CBOE/ISE plan should not be interpreted to mean that unless a party initiating a trade-through is required to satisfy, cancel or adjust a trade, a trade-through has not occurred. Generally, if an order is executed in one market center at a price inferior to that available in another market center, a trade-through has occurred, regardless of whether the aggrieved party complains of the trade-through. By approving the Amex/CBOE/ISE trade-through provision, the Commission is merely approving a means to limit potential trade-throughs.

[81] In accepting orders and routing them to a market center for execution, brokers act as agents for their customers and owe them a duty of best execution. This duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. As a result, broker-dealers must periodically assess the quality of competing markets. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

incentive to avoid trade-throughs involving customer orders, because the proposed rule would require such trade-throughs to be disclosed to customers.[82] The proposed Trade-Through Disclosure Rule would except broker-dealers from the requirement to disclose trade-throughs to customers if such customers' orders are executed on markets that are participants in an effective national market system options linkage plan that includes provisions reasonably designed to limit the execution of customer orders at prices inferior to any published price, including prices published by exchanges that are not linkage plan participants. Finally, if the Commission were to apply to the options markets the execution quality disclosure rules proposed today for the equity markets, [83] the exchanges would have additional incentives to avoid trade-throughs that would impair the quality of the executions the markets would be required to disclose.

The Commission does not believe that it is appropriate to require an exchange trading through the quote or quotes on another market to satisfy such quote or quotes for a greater number of contracts than the trade causing the trade-through. The Commission believes that such a requirement may impose an excessive penalty on a market maker that may have inadvertently traded through more than one market, and could be an unjustified windfall to a market that would not have received the order because another market had priority and could have executed the order in full.

F. Governance and Voting Requirements

An Operating Committee, composed of one representative of each participating exchange, is proposed to administer the Amex/CBOE/ISE plan. The majority of commenters expressing views about the Operating Committee supported the Operating Committee's discretion to develop and implement the linkage, and to advise participants regarding deficiencies, problems, or recommendations.[84] Further, commenters agreed that this authority should include defining plan terms, such as whether a ''complex trade'' should be excepted from trade-through liability at least during the initial stages of the linkage implementation.[85] One commenter stated that the representatives of the participants would have the most familiarity with the linkage and should be able to address issues regarding the functionality and specifications of the linkage.[86] Two commenters suggested that the Operating Committee should include representatives from member firms in addition to the participating exchanges.[87]

The commenters disagreed as to whether a unanimous vote was appropriate to amend the plan. Two commenters believed that plan amendments should require a unanimous vote, while a simple-majority would be appropriate for other actions, such as plan administration.[88] The commenters opposing the unanimous vote proposal feared that improvements and innovations could be blocked by the interests of a single entity,[89] reminiscent of problems with the ITS Plan.[90] Two commenters stated their belief that only a super-majority should be required to amend the plan.[91]

The Commission finds that the governance and voting requirements proposed in the Amex/CBOE/ISE plan are consistent with the Act. The Commission concludes that the proposed discretion and authority that is granted to the Operating Committee to implement and operate the linkage is reasonable. In addition, the Commission finds that the plan provisions requiring that a Member Advisory Committee be established should enhance the operation of the linkage and the administration of the plan.

Further, the Commission finds that the unanimous voting requirement for plan amendments is consistent with the requirements of the Act. The Amex/CBOE/ISE plan differs significantly from the ITS plan because it limits the issues subject to a unanimous vote under the plan.[92] While the Commission recognizes that a unanimous voting requirement could potentially be used by one participant to block innovations that could enhance the linkage, such a provision also encourages participation in the plan by preventing the majority from forcing changes to the markets of dissenting participants.[93]

G. Dissemination of Quotations With Size

Currently, the options exchanges do not disseminate the number of contracts their quote represents. The Commission specifically requested comment on whether a linkage plan should require the options markets to disseminate quotes with size [94] and, if so, what a reasonable time frame would be for implementation. Further, the Commission asked how a quote size requirement should be balanced against concerns about options systems capacity constraints.

The majority of commenters favored the development of a system to provide the dissemination of quotes with size.[95] Some of those commenters, however, stated that quotations with size should not be required at this time or as part of the linkage plan.[96] Two of these commenters noted the desirability of disseminating quotes with size but questioned whether such modifications would ever be warranted because of the many variables associated with such an action, such as whether existing options quotation systems would be able to handle quotes with size in the near future.[97] Finally, one commenter suggested that the issue be addressed by an amendment to the OPRA plan, rather than as part of the linkage.[98]

The Commission agrees that the dissemination of quotes with size would increase transparency in the options market. The Commission notes that OPRA has already begun studying the feasibility of disseminating quotes with size. Implementing the systems changes

[82] *See supra* note 33.

[83] *See supra* note 45.

[84] Amex Letter; CBOE Letter; and SIA Letter.

[85] Amex Letter; Ianni Letter; and SIA Letter.

[86] CBOE Letter.

[87] Pershing Letter and Goldman/Morgan Letter. The Commission notes that exchange members will be represented on the Member Advisory Committee.

[88] Amex Letter and CBOE Letter.

[89] Pershing Letter; Goldman/Morgan; and SIA Letter.

[90] Interactive Letter and Charles Schwab Letter.

[91] SIA Letter; and Ianni Letter.

[91] SIA Letter, and Ianni Letter.

[92] The proposed Amex/CBOE/ISE plan has many provisions that distinguish it from the ITS plan. The Commission believes those differences should prevent the ITS plan's shortcomings from becoming a problem in the options linkage. In particular, the ITS plan requires the unanimous consent of all participants to amend the plan to permit exchanges to become new participants, while the Amex/CBOE/ISE plan allows exchanges to become participants without any action by the then-current participants. The ITS plan is also a highly detailed document that, in many ways, limits the manner in which participants can innovate. The Commission believes that the Amex/CBOE/ISE plan has been drafted in a less restrictive manner that should allow participants to independently innovate without violating plan terms.

[93] The Commission has the authority, pursuant to Rule 11Aa3–2, to initiate a national market system plan amendment. *See* 17 CFR 240.11Aa3–2(b)(2).

[94] Currently, the options exchanges generally do not disseminate quotes with size. Rather, options quotes that are disseminated by OPRA reflect only the best bid and offer from each options exchange. Each exchange has rules establishing minimum firm quote requirements. Quotes that are disseminated over OPRA, however, do not indicate the *actual* depth of a given market. Thus, if the best displayed quote is based on a customer limit order that has a size greater than an exchange's firm quote requirement, its size is not communicated to the public.

[95] Donahue Letter; Ianni Letter; Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; CBOE Letter; and Charles Schwab Letter.

[96] Amex Letter; Susquehanna Letter; Pershing Letter; SIA Letter; and CBOE Letter.

[97] Susquehanna Letter and SIA Letter.

[98] CBOE Letter.

necessary to add size to disseminated quotes, however, is a substantial undertaking and a variety of factors, including systems capacity, [99] must be considered. Therefore, the Commission has determined that the dissemination of quotes with size should not be mandated as part of the linkage plan.[100]

H. Firm Quote Size Requirements

The Amex/CBOE/ISE plan has provisions for designating the size for which a participant will be firm for its quotes. For customer orders, the Firm Customer Quote Size will be the lesser of: (1) The number of contracts the exchange sending the P/A Order guarantees it will automatically execute for customer orders that are entered directly in that market; or (2) the number of contracts the receiving exchange guarantees it will automatically execute for customer orders that are directly entered into that market. However, in no event, would a P/A Order be guaranteed for fewer than 10 contracts. For principal orders, the Firm Principal Quote Size will be the size guaranteed by a participant for incoming principal orders, but in no event, fewer than 10 contracts.

Several commenters suggested that these criteria were appropriate because: (1) They assure customer orders receive minimum guarantee execution sizes similar to those that would be in effect had the order initially been routed through the automatic execution facilities of the market displaying the best bid/offer; and (2) principal orders receive a minimum firm quote.[101] One commenter specified that the 10 contract minimum proposed in the Amex/CBOE/ISE plan was acceptable for P/A Orders executed in automatic execution systems, but the 20 contract minimum proposed in the PCX plan was unacceptable. That commenter supported the Amex/CBOE/ISE proposal to allow an exchange to elect whether to route all or part of an order through the linkage when the size of the order is larger than automatic execution eligible size.[102]

Other commenters stated that all quotes displayed by an exchange should be firm and subject to automatic execution of public orders up to the size displayed.[103] The commenters further stated that electronic access should not be halted unless a bona fide reason exists to halt all electronic trading.[104] One commenter asserted that an order that exceeds the minimum guarantee size should be filled based on the number of contracts available on the receiving exchange at receipt of the order. This commenter also stated that quotes should be firm to all market participants.[105] Finally, one commenter stated that exchanges do not currently comply with the firm quote rule and that by enforcing current firm quote obligations and eliminating rules permitting this noncompliance, the existing system would suffice to guarantee firm quote obligations.[106]

Another commenter proposed that the linkage be limited to small orders of 20 contracts or less because 20 contracts is the prevailing minimum size guarantee for automatic execution of orders. The commenter noted that this amount could be reasonably and uniformly increased.[107] Another commenter agreed with the notion of firm quote size for 20 contracts for each exchange.[108] Finally, one commenter recommended that the linkage initially be available for orders of ten contracts or fewer, but that it should over time be increased to fifty contracts or more.[109]

The Commission believes that it is important to have a firm customer quote requirement as an element of the plan to facilitate and ensure the efficient execution of customer orders.[110] The Amex/CBOE/ISE plan should ensure that a P/A Order would be treated comparably to customer orders received directly by the exchange showing the NBBO.[111] Moreover, the Commission believes that the Amex/CBOE/ISE plan allows the exchanges to continue to compete based on automatic execution size guarantees because the plan does not limit a participant's ability to increase its guarantee size.

The Commission notes that several commenters believed that quotes should be firm for greater size. The Commission believes that the plan adequately addresses this concern because there is sufficient flexibility in the Amex/CBOE/ISE plan to allow exchanges to execute orders that are greater than the firm quote customer size. For example, the Amex/CBOE/ISE plan allows an originating exchange to route an order for greater than the firm customer quote size to another exchange and permits the other exchange to execute the order in full.

I. Trade-or-Fade Provisions

Currently, options' exchanges rules do not require members' quotes to be firm for all orders. Instead, the exchanges have what are commonly known as trade-or-fade rules.[112] Generally, under the trade-or-fade rules, an order must be executed at the currently disseminated bid or offer, either by satisfying the full size of the order or by updating the disseminated quote to reflect that the previously disseminated quote is no longer available.[113] The Amex/CBOE/ISE plan continues to apply the exchanges' trade-or-fade rules in limited circumstances to both P/A Orders and principal orders.

Several commenters expressed concern that the plan did not expressly provide for the repeal of trade-or-fade rules by the options exchanges.[114] Commenters also asserted that the exchanges should provide firm quotes.[115] One commenter noted that without firm quotes, it would be difficult to determine the depth of trading interest, or the best execution price, or the best venue.[116]

The Commission has determined at this time to approve the Amex/CBOE/ISE plan, including the proposed trade-or-fade provisions. Although no exchange should be permitted to ''back away'' from its displayed quote, the Commission recognizes that there should be a mechanism that requires a

[99] The Commission notes that the level of quote message traffic generated by the options exchanges has been straining OPRA's systems capacity recently. OPRA, along with its processor, Securities Industry Automation Corporation, and the exchanges have been working to address the capacity limitations so that the systems will be able to accept and disseminate the quotes generated by the options markets in real-time. The Commission believes that, due to systems capacity limitations, it would be inappropriate to mandate size at this time because burdening the current OPRA system with modifications to add size could result in a further deterioration of options quote integrity.

[100] The amendments to the Quote Rule for options proposed today include two alternative provisions allowing markets to specify, rather than individually publish, options quote size. *See supra* note 33.

[101] Amex Letter; Susquehanna Letter; SIA Letter; and CBOE Letter.

[102] SIA Letter.

[103] Fenwick Letter and Interactive Letter.

[104] Donahue Letter and Interactive Letter.

[105] Charles Schwab Letter.

[106] Lek Letter.

[107] DOJ Letter.

[108] Ianni Letter.

[109] Goldman/Morgan Letter.

[110] In a separate release, the Commission today proposed applying the firm quote requirements of Exchange Act Rule 11Ac1–1 to the options markets. *See supra* note 33.

[111] Customer orders routed to another exchange may not receive the same guaranteed size as customer orders originating on the exchange showing the NBBO.

[112] *See generally* Amex Rule 958A, Commentary .01; CBOE Rule 8.51(b); PCX Rule 6.37(d); and Phlx Rule 1015(b).

[113] Generally, if a market maker changes its quote instead of executing an order, and then immediately re-displays its previously disseminated quote when there is no change in market conditions warranting such an action, the market maker is considered to be engaging in conduct inconsistent with just and equitable principles of trade.

[114] Ianni Letter and Interactive Letter.

[115] Donahue Letter; ISE Letter; Interactive Letter; PCX Letter; Fenwick Letter; Lek Letter; and Charles Schwab Letter.

[116] Charles Schwab Letter.

market to change its quote if it refuses to trade at its published (or implied) quote with an order for a size that exceeds its firm quote requirement. Consequently, the Commission supports the retention of trade-or-fade rules to the extent that such rules prevent markets from refusing to trade at their disseminated prices and then continuing to disseminate the same quotes.

V. Conclusion

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act,[117] and Rule 11Aa3–2,[118] that the intermarket linkage plan submitted by Amex, CBOE, and ISE is approved and the Amex, CBOE, and ISE are authorized to act jointly in planning, developing, operating, or regulating the intermarket linkage plan as a means of facilitating a national market system.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19730 Filed 8–3–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release 34–43089; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

July 28, 2000.

Notice is hereby given that on June 2, 2000, the government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a request that the Commission grant GSCC registration as a clearing agency on a permanent basis.[1] The commission is publishing this notice and order to solicit comments from interested persons and to extend GSCC's temporary registration as a clearing agency through January 31, 2001.

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 17Ab2–1 promulgated thereunder,[3] the Commission granted GSCC's application for registration as a clearing agency on a temporary basis for a period of three years.[4] The Commission subsequently has extended GSCC's registration through July 31, 2000.[5]

In the most recent extension of GSCC's temporary registration, the Commission stated that it planned in the near future to seek comment on granting GSCC permanent registration as a clearing agency. This extension of GSCC's temporary registration will enable the Commission to do so.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[6] 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 amended application for registration and all written comments will be available for inspection at the Commission's Pubic Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–23 and should be submitted by August 25, 2000.

It Is Therefore Ordered that GSCC's registration as a clearing agency (File No. 600–23) be and hereby is temporarily approved through January 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19734 Filed 8–3–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43090; File No. SR–Amex–00–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Adopting a Peer Review Requirement for Auditors of Listed Companies

July 28, 2000.

I. Introduction

On February 14, 2000, the American Stock Exchange LLC (''Exchange'' or ''Amex''), submitted to 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 amending the *Amex Company Guide* to adopt a peer review requirement for auditors of listed companies. The proposed rule change was published for comment in the **Federal Register** on May 26, 2000.[3] The Commission received one comment letter in favor of the proposal.[4] This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend the *Amex Company Guide* to require all independent public accountants auditing Exchange listed companies to have received an internal quality control review by an independent public accountant (''peer review''), or be enrolled in a peer review program that meets acceptable guidelines.[5] According to the Exchange, acceptable guidelines would include comparability to AICPA standards included in the Standards for Performing on Peer Reviews, as codified in the AICPA's SEC Practice Section Reference Manual, and oversight of the peer review program by an independent body comparable to the organizational structure of the Public Oversight Board, as codified in the AICPA's SEC Practice Section Reference Manual. Further, the proposal would require copies of peer review reports, accompanied by any letters of comment and letters of

[117] 15 U.S.C. 78k–1(a)(3)(B).

[118] 17 CFR 240.11Aa3–2.

[1] Letter from Sal Ricca, President and Chief Operating Officer, GSCC (May 30, 2000).

[2] 15 U.S.C. 78q–1(b) and 78s(a).

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; and 42335 (January 12, 2000), 65 FR 3509.

[6] 15 U.S.C. 78s(a)(1).

[7] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42803 (May 22, 2000), 65 FR 34236.

[4] Letter from Ronald Walton, Chair, American Institute of Certified Public Accountants (''AICPA'') SEC Practice Section Peer Review Committee, to Jonathan G. Katz, Office of the Secretary, Commission, dated June 16, 2000. This commenter supported the proposed rule change.

[5] The Exchange has noted that the Nasdaq Stock Market and certain banking agencies, such as the Federal Deposit Insurance Corporation, have implemented a peer review requirement.

response, to be maintained by the administering entity of the peer review program and be made available to the Exchange upon request.[6] Similarly, working papers of the administering entity and the independent oversight body would also be required to be retained for 90 days after the report is filed, and be made available to the Exchange upon request.

In addition, the Exchange believes that auditors of listed companies should be subject to a practice monitoring program under which the auditor's quality control system is reviewed by an independent peer auditor on a periodic basis. Consequently, after the initial peer review required by proposed Section 605(a) of the *Amex Company Guide,* independent auditors of listed companies would be required to receive a peer review that meets the guidelines of proposed Section 605(b) every three years pursuant to AICPA guidelines.[7]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[9] The Commission believes that the proposed rule change will protect investors by improving the reliability and effectiveness of audit committees of companies listed on the Exchange and by helping to ensure that an auditing firm's quality control systems are subject to a level of review that satisfies standards established by the accounting industry. In addition, the Commission believes that by requiring auditors to receive a peer review on a periodic basis, the proposal will help to ensure that auditors will continue to have quality control systems in place and follow independently established policies, procedures, and auditing standards. Finally, by requiring the administering entity and the independent oversight body of the peer review program to retain peer review records and to allow the Exchange access to these records, the Commission believes that the proposed rule change will help enable the Exchange to enforce the peer review requirement.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–00–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19735 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[6] The administering entity would be required to maintain the reports until the completion of the next peer review report. Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on March 28, 2000.

[7] Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on March 28, 2000.

[8] 15 U.S.C. 78f(b)(5).

[9] 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).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43087; File No. SR–CBOE–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Prohibition of Certain Electronically Generated Orders From Being Entered in the Order Routing System

July 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is given that on February 9, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 6, 2000, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.[3] On April 28, 2000, the CBOE filed with the Commission Amendment No. 2 to the proposed rule change.[4] On July 10, 2000, the CBOE filed with the Commission Amendment No. 3 to the proposed rule change.[5] the Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to prohibit certain electronically generated orders from being entered on ORS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE 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 seeks to restrict the entry of certain options orders that are created and communicated electronically, without manual input, into ORS.[6] For this purpose, the Exchange is proposing to adopt a new Rule 6.8A, *Electronically Generated and Communicated Orders.*

Proposed Rule 6.8A provides that Members may not enter nor permit the entry of, orders into ORS if those orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 3, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposed to create a new rule, ''Electronically Generated and Communicated Orders,'' rather than including the proposed rule language as a subsection in another rule.

[4] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2000 (''Amendment No. 2''). In Amendment No. 2, among other things, the Exchange proposed to prohibit electronically generated orders only if they were eligible for execution on the Exchange's Retail Automatic Execution System (''RAES'').

[5] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 6, 2000 (''Amendment No. 3''). In Amendment No. 3, among other things, the Exchange revised its statement regarding the purpose of the proposed rule change. In addition, the Exchange revised the proposed rule language to clarify that electronically created orders will be prohibited from entry into the Order Routing System (''ORS'') if they are eligible for execution on RAES at the time they are sent to the Exchange. Amendment No. 3 also clarified the types of orders that are considered to be eligible for execution on RAES at the time they are sent.

[6] ORS is the Exchange's automated order trading and routing system comprised of the options order routing system, the automatic execution system (RAES), the electronic limit order book, and other electronic delivery and acceptance systems and terminals.

are created and communicated electronically without manual input and if such orders are eligible for execution on RAES at the time they are sent. Order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent. The proposed rule states that members are not prohibited form electronically communicating to the Exchange orders manually entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.).

The proposed rule clarifies that an order is eligible for execution on RAES if: (1) Its size is equal to or less than the maximum RAES order size for the particular series; (2) the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; and (3) the order has either no contingency or has a contingency that is accepted for execution by the RAES system. A marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or if to buy is above or at the current offer. An order is tradable pursuant to the RAES auto step-up feature if the appropriate Floor Procedure Committee has designated the class as an auto step-up class and if the National Best Bid or Offer for the particular series is reflected by the current best bid or offer in another market by no more than the step-up amount as defined in Interpretation .02 of Rule 6.8.

The Exchange represents that its business model depends upon market makers for competition and liquidity. The Exchange represents that public customer orders submitted to the CBOE are provided with certain benefits pursuant to various rules of the Exchange, including Rule 6.8, *RAES Operations,* Rule 6.45, *Priority of Bids and Offers,* Rule 7.4, *Obligations for Orders,* and Rule 8.51, *Trading Crowd Firm Disseminated Market Quotes.* Allowing electronically generated and communicated customer orders to be routed directly of ORS and RAES would give customers with such electronic systems a significant advantage over market makers. The Exchange believes that this could undercut its business model. The Exchange notes that under the proposed rule change, computer generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution through ORS.

Currently, CBOE member firms and customers who are not located on the trading floor may send option orders to the trading floor in various ways. First, pursuant to the CBOE's telephone policies, a customer in some option classes may telephone an order directly to a floor broker in the trading crowd, provided the firm taking the order complies with all applicable rules for handling the customer order. In other trading crowds, a member firm representative or a customer may telephone an order into a member firm booth on the trading floor. From here the order may be taken manually into the proper trading crowd and represented; alternatively, it may be sent electronically from the booth to a floor broker in the trading crowd who will represent it. A member firm representative may also send an order to the floor of the Exchange pursuant to that firm's proprietary order routing network. The CBOE represents that almost every member firm has its own network for routing orders to the CBOE. The firm would then route the order to the trading crowd in one of the two ways described above. Finally, a member firm may send an order to the Exchange through its interface with ORS. Eligible orders sent through ORS may be: (1) Automatically executed against orders in the limit order book; (2) placed in the limit order book; (3) automatically executed via RAES; or (4) routed to a Public Access Routing (''PAR'') terminal in the trading crowd.

Under the proposed rule change, electronically generated and communicated orders that are eligible for execution on RAES at the time they are sent would be ineligible for routing through ORS. These orders could, however, be sent to the trading floor for execution as otherwise described above, *i.e.,* by telephone or through a member firm's proprietary order routing system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(5) [8] in particular by facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and promoting just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE.

All submissions should refer to File No. SR–CBOE–00–01 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19736 Filed 8–3–00; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43083; File No. SR–CHX–99–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Pre-opening Orders in Dual Trading System Issues

July 28, 2000.

I. Introduction

On January 3, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, a proposed rule change relating to the definition of preopening orders in Dual Trading System Issues. The proposed rule change was published for comment in the **Federal Register** on March 29, 2000.[3] The Commission received no comments on the proposal. On July 19, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change from interested persons, and has approved the amendment on an accelerated basis, as discussed below.

II. Description of the Proposal

The Exchange has proposed to amend its Article XX, Rule 37(a)(4), which governs guaranteed executions of preopening orders, to define what constitutes a pre-opening order in Dual Trading System Issues. A Dual Trading System Issue is an issue that is traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and that is also traded on either the New York Stock Exchange or American Stock Exchange.

Currently, CHX Rule 37(a)(4) requires that a preopening order be accepted and filled at the primary market opening trade price. Pursuant to this language, orders received at the CHX before the primary market publishes its first print [5] are customarily filled at the first print price. According to the CHX, it has applied the rule in this manner because prints are the most common way of effecting an opening in a security. Nevertheless, on occasion a primary market may open a security by disseminating a quote without a corresponding print. Thus, when a security is opened by the primary market with a published quote, orders received by the CHX after such quote has been published are not considered preopening orders.

According to the Exchange, the lack of a specific definition of what is a preopening order has caused confusion and led to unintended execution guarantees. Specifically, the Exchange stated that there has been confusion about the status of orders received on the CHX after a primary market has published a quote but before a primary market has published a print. Therefore, the Exchange's proposal would clarify that orders received after a primary market opens a security with a published quote are not preopening orders for the purposes of CHX Rule 37(a)(4). Specifically, the Exchange proposed to define a preopening order as an order received prior to a primary market's opening of a subject security, which can occur either with a trade or a quote. Thus, an order received on the CHX after the primary maket publishes a quote but before the primary market has published a print will not be considered a preopening order for the purposes of CHX Rule 37(a)(4) and therefore not entitled to be filled at a subsequent primary market print.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5),[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission believes that the proposed definition helps to clarify the Exchange's rules regarding execution guarantees for Dual Trading System Issues. According to the Exchange, the lack of a specific definition regarding which type of orders will be executed at the primary market's opening trade price has caused confusion among investors. By providing a specific definition of a preopening order, the Exchange should be able to reduce confusion on this issue among investors and Exchange specialists and provide more certainty to investors on the execution price their orders are entitled to receive. The Commission believes that eliminating this confusion about how an order will be handled should enhance the efficiency of order executions on the CHX. Moreover, investors should be able to make informed decisions on where to route their orders for execution because they should have a clearer understanding about how their order will be handled and executed.

The Commission understands that the CHX's definition is consistent with the definition of preopening orders on other markets. Further, the Commission notes that there should not be confusion as to whether a primary market opens a security with a quote as opposed to a trade because, according to information provided by the CHX, information on how a stock opens (*i.e.,* whether it opens by a quote or a trade) is widely disseminated by market data vendors. Therefore, the Commission believes that the proposal should foster just and equitable principles of trade by specifically defining which orders are designated preopening orders and thus entitled to be executed at the primary market's opening trade price.

The Commission finds that good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, the CHX amended the language of the definition of preopening order to better reflect its intent that preopening orders are orders received by the CHX before a primary market opens a subject security, which can occur by either a quote or a trade. The Commission finds that the language proposed in Amendment No. 1 further clarifies the CHX's definition of preopening orders. Therefore, because the Commission finds that Amendment No. 1 does not substantively change the meaning or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 42566 (March 22, 2000), 65 FR 16677.

[4] Letter from Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, to Kelly Riley, Attorney, Division of Market Regulation, SEC, dated July 17, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange replaced the originally proposed language defining a preopening order. As amended, CHX Rule 37(a)(4) will read: ''[f]or purposes of this rule, preopening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote.''

[5] A print is defined as an executed trade

[6] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

intent of the proposed rule, the Commission believes that good cause exists, consistent with Sections 6(b)(5)[8] and 19(b)[9] of the Act, to approve Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 CHX. All submissions should refer to File No. SR–CHX–99–31 and should be submitted by August 25, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the amended proposed rule change (SR–CHX–99–31) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19737 Filed 8–3–00; 8:45 am]

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[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78s(b)(2)

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43090; File No. SR–MSRB–00–9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules G–8 and G–15

July 31, 2000.

On July 14, 2000, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 Board has filed with the Commission a proposed rule change consisting of technical amendments to MSRB Rules G–8, on books and records to be made by brokers, dealers and municipal securities dealers, and G–15, on confirmation, clearance and settlement of transactions with customers. The proposed rule change will become operative on September 19, 2000. The text of the proposed rule change is set forth below. Additions are *italicized*; deletions are [bracketed].

Rule G–8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a)–(e) No change.

(f) Compliance with Rule 17a–3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); *and* paragraph*s* (a)(xi) [; paragraph (a)(xii), paragraph (a)(xiii); paragraph (a)(xiv); paragraph (a)(xv); paragraph (a)(xvi); paragraph (a)(xvii); paragraph (a)(xviii); and paragraph (a)(xix)] *through (a)(xx)* shall in any event be maintained.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule G–15. Confirmation, Clearance and Settlement of Transactions with Customers

(a)–(c) No change.

(d) Delivery/Receipt vs. Payment Transactions.

(i) No change.

(ii) Requirement for Confirmation/Acknowledgment.

(A) No change.

(B) Definitions for Rule G–15(d)(ii).

(1) No change.

(2) ''Qualified Vendor'' shall mean a vendor of electronic confirmation and acknowledgement services that:

(a)–(c) No change.

(d) Notifies the Commission staff immediately in writing of any material change to its confirmation/affirmation systems. (For purposes of this subparagraph *(d)*[(D)] ''material change'' means any changes to the vendor's systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/acknowledgment systems, including: (i) Affect or potentially affect the capacity or security of its electronic trade confirmation/acknowledgement system; (ii) rely on new or substantially different technology; (iii) provide a new service as part of the Qualified Vendor's electronic trade confirmation/acknowledgment system; or (iv) affect or have the potential to adversely affect the vendor's confirmation/acknowledgment system's interface with a Clearing Agency.);

(e)–(g) No change.

(3) No change.

(C) No change.

(iii) No change.

(e) No change.

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 Board 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 Board 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, Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board is proposing technical amendments to MSRB Rules G–8 and G–15 for the purpose of making the following non-substantive changes:

First, on March 16, 2000, the Commission approved amendments to MSRB Rule G–8, on books and records, MSRB Rule G–27, on supervision, and MSRB Rule G–9, on preservation of records (the ''Supervision Amendments''), relating to supervisory procedures for reviewing

correspondence with the public.[3] The Supervision Amendments become effective on September 19, 2000. Among other things, they provide for maintaining records of written supervisory procedures and correspondence relating to a municipal securities representative's municipal securities activities.

Under current MSRB Rule G–8(f), a non-bank dealer is deemed to be in compliance with its recordkeeping obligations under MSRB Rule G–8 if it is in compliance with the SEC's recordkeeping rule,[4] provided that the dealer must still maintain certain types of records identified in MSRB Rule G–8 that are specifically required under Board rules and are unique to the municipal securities market. The technical amendment to MSRB Rule G–8(f) set forth in this filing requires a non-bank dealer relying on Exchange Act Rule 17a–3 for the maintenance of its books and records to nonetheless maintain the records of supervisory procedures and correspondence required by the recent amendments.

Second, the amendment proposed to MSRB Rule G–15(d)(ii)(B)(2)(d) makes a paragraph reference consistent with the Board's general usage of such references throughout the rules.

2. Basis

The Board believes the proposed rule change is consistent with 15B(b)(3)(C) [5] of the Exchange Act, which requires, in pertinent part, that the Board's rules:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Exchange Act because it ensures that existing rule provisions are accurate, understandable and consistent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative until September 19, 2000,[6] which is more than thirty days after the date of its filing, the Board has submitted this proposed rule change to become effective pursuant to Section 19(b)(3)(A) [7] of the Exchange Act and Rule 19b–4(e)(6) [8] thereunder. In particular, the Board believes the proposed rule change qualifies as a ''non-controversial filing'' because the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–00–9 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19771 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release. No. 42538, 65 FR 15675 (March 23, 2000).

[4] Exchange Act Rule 17a–3, 17 CFR 240.17a–3.

[5] 15 U.S.C. 780–4(b)(2)(C).

[6] This date coincides with the effective date of the Supervision Amendments.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43082; File No. SR–NASD–00–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Section 4.2 of the NASD Regulation, Inc. Bylaws Relating to the Size of the NASD Regulation, Inc. Board

July 27, 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 July 21, 2000, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to change Section 4.2 of the NASD Regulation, Inc. (''NASD Regulation'') By-laws relating to the size of the NASD Regulation Board to conform to a recently approved parallel change to the Nasdaq Stock Market, Inc. (''Nasdaq'') By-laws. Proposed new language is italicized; proposed deletions are bracketed.

ARTICLE IV

BOARD OF DIRECTORS

* * * * *

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than ten Directors, the exact number to be determined by resolution adopted by the stockholder of

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b-4.

NASD Regulation from time to time. [Notwithstanding the preceding sentence, the number of Directors shall equal the number of directors on the Nasdaq Board.] Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make a conforming and technical amendment to the NASD Regulation By-Laws relating to the size of the NASD Regulation Board. On June 26, 2000, the Commission approved amendments to the Nasdaq By-Laws to facilitate the Restructuring Plan (''Restructuring'') approved by NASD members on April 14, 2000.[3]The Restructuring involves broadening the ownership of Nasdaq through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors, and strategic partners. Among other things, the amendments to the Nasdaq By-Laws deleted a requirement that the number of directors on the Nasdaq Board be equal to the number of directors on the NASD Regulation Board, and added a new requirement authorizing the non-NASD shareholders of Nasdaq to nominate at least four directors of to the Nasdaq Board.[4]

The linkage between the sizes of the NASD Regulation and Nasdaq Boards was first proposed by the NASD and approved by the Commission in 1997.[5]The Board size linkage was part of a broader set of amendments designed to create an interlocking Board structure for the NASD, Nasdaq, and NASD Regulation, and provide for more streamlined corporate governance. At that time, Nasdaq and NASD Regulation were both 100 percent owned by the NASD. The linkage in the Board sizes were not required by the Undertakings entered into by the NASD and the Commission on August 8, 1996.[6]

The purpose of the proposed rule change is to conform a provision of the NASD Regulation By-Laws to a recently approved parallel provision in the Nasdaq By-Laws, which deleted a requirement that the NASD Regulation Board have the same number of directors as the Nasdaq Board. With the Restructuring underway, the equivalence in Board size no longer serves a corporate governance purpose. Furthermore, no purpose would be served by requiring NASD Regulation to increase the size of its Board when the Nasdaq Board adds four new non-NASD directors in the near future. Therefore, the NASD proposes to delete the Board size equivalence requirement from the NASD Regulation By-Laws, thereby making the Nasdaq and NASD Regulation By-Laws consistent on this issue, and completely delinking the Nasdaq and NASD Regulation Board sizes.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. The proposed rule change simply makes the NASD Regulation and Nasdaq By-Laws consistent by not requiring the Boards of each corporation to have the same number of directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–43 and should be submitted by August 25, 2000.

[3] Securities Exchange Act Release No. 42983 (June 26, 2000 65 FR 41116 (July 3, 2000).

[4] *Id.*

[5] Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997).

[6] Securities Exchange Act Release No. 37538 (August 8 , 1996), 62 SEC Docket 1346, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 10934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056.

[7] 15 U.S.C. 78o–3(b)(96).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19738 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43081; File No. SR–Phlx–00–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of a Pilot Program Regarding Fees for Computer Equipment Services, Repairs or Replacements, and Relocation of Computer Equipment

July 27, 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 June 22, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] 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 Phlx request permanent approval of its pilot program which, requires all members on the options and equity trading floors to pay a fee for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer equipment.[4] The current pilot program is in effect from April 1, 2000 through June 30, 2000.[5]

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 purpose of the proposed rule change is to request permanent approval of Phlx's current three-month pilot program that amends Phlx's fee schedule for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer equipment.

First, pursuant to the current pilot program, the Phlx's schedule of dues, fees, and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs, or replacements on the trading floors. Specifically, the Phlx charges $100 for every service call plus $75 an hour,[6] with a minimum of two hours charged per service call.[7] The Exchange staff anticipates that the majority of computer services, repairs, or replacements will continue to be completed within two hours. Currently, notwithstanding the pilot program, members are not bill for computer services, repairs, or replacements when new or refurbished equipment fails in the normal and customary manner of usage within 30 days of installation. In addition, members are not charged for repairing system-wide problems, rebooting central processing units, and adjusting cables or replacing certain extension cables.

These changes are intended to defray the cost of servicing, repairing, or replacing computer equipment on the options and equity trading floors, as well as to encourage care in using computer equipment.[8] The Exchange receives approximately 90 percent of calls on a routine basis to repair, replace, or otherwise service keyboards, track balls, printers, and other computer equipment from options or equity floor members' work stations.

Second, the Exchange has amended its schedule of dues, fees, and charges to impose a fee for member-requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floors. Under the current pilot program, the Exchange imposes a $100 service fee plus $75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.[9]

The post/equipment relocation fee should assist in defraying the costs associated with the moving of computer equipment. Member/participant-requested relocations on the trading floors can be very time-consuming and costly because nearly all relocations take place after hours or on the weekends.

Exchange staff and trading floor members are required to complete a pre-printed form prior to requesting repair or relocation service. A notice describing the equipment repair procedures was sent to all floor members prior to the implementation of the original three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. Another notice will be sent to members and participants to inform them that these fees will be implemented on a permanent basis to members on the equity and options trading floors.

The Exchange staff has had the opportunity to review the procedures relating to computer equipment services, repairs, replacements, and relocations, which include instructions to members and Exchange staff as to where the service request forms will be located, directions as to how to

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx originally submitted the proposal on June 22, 2000. On July 19, 2000 the Phlx submitted a letter from Cynthia Hoekstra, Attorney, Phlx, to Jack Drogin, Assistant Director, Division of Market Regulation (''Division''), Commission, amending the filing (''Amendment No. 1''). In Amendment No. 1, the Phlx withdrew the portion of the filing extending the fees for computer equipment services, repairs or replacements, and member-requested relocation to the Exchange's Foreign Currency Option trading floor. Amendment No. 1 also requests that the permanent approval of the pilot program be retroactive to the date of the original filing on June 22, 2000. Because of the substantive nature of Amendment No. 1, the Commission deems the filing date to be July 19, 2000, the date Amendment No. 1 was filed.

[4] A fee will not be charged for new installation of computer equipment.

[5] *See* Securities Exchange Act Release No. 42654 (April 10, 2000), 65 FR 20500 (April 17, 2000).

[6] The computer equipment services, repairs, or replacements fee is charged per service call and per hour but not per person, unlike the computer relocation request fee. Telephone conversation between Cynthia Hoekstra, Attorney, Phlx, and Marla Chidsey, Attorney Division, Commission on July 6, 2000.

[7] Some component of this amount may reflect Pennsylvania sales tax.

[8] This proposed fee will apply to all such requests with no distinction between intentional abuse or normal wear and tear due to the difficulties associated with categorizing the types or repairs.

[9] For example, if two individuals take two hours to relocate a work station, the member will be charged $100 for the service call, plus $300 for moving the equipment ($75 four (two people x two hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

complete the form, and which department is required to forward the forms to the accounting department. The procedures also include a provision that states that members will not be billed for computer equipment services, repairs, or replacements when new or refurbished equipment fails in the normal and customary usage within 30 days of installation. The procedures described above have proven to be an effective way to administer these requests, including the billing of fees and should continue to allow for the efficient handling of computer equipment services, repairs, or replacements, and member/participant-requested relocation of computer equipment.

The Exchange has determined that the fees for computer equipment services, repairs or replacements and relocation of computer equipment that are charged are appropriate and reflect the costs for these services that are incurred by the Exchange. After reviewing the matter, it was decided that the Exchange should continue to charge a fixed rate, as opposed to different rates for different computer repairs. The minimum charge of $250 per service call for computer equipment services, repairs, replacements, or relocations reasonably approximates the average costs for these services. However, the minimum charge may not cover all the costs involved in repairing, servicing, and relocating computer equipment. Members and participants will continue to be billed on a monthly basis for these charges.

2. Statutory Basis

For these reasons, the Exchange believes that its proposal to amend its schedule of dues, fees, and charges to include a fee for computer equipment services, repairs or replacements, and a fee for member/participant-requested relocation of computer equipment is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, in that it provides for the equitable allocation of reasonable 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 Phlx represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Acts.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder because it establishes a due, fee, or other charge. Accordingly, the proposal will take effect upon filing with the Commission. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–53 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19733 Filed 8–3–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3381]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Still Lifes of Evaristo Baschenis: The Music of Silence''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Still Lifes of Evaristo Baschenis: The Music of Silence'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from November 20, 2000 thru March 4, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301—4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 25, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–19830 Filed 8–3–00; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Request for Public Comment on the Andean Trade Preferences Act: Report to Congress

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the operation of the Andean Trade Preference Act, as amended (19 U.S.C. 3201 *et seq.*) (''the ATPA''). Section 203(f) as amended requires the President to submit a report to the Congress regarding the operation of the ATPA on or before January 31, 2001, following the ninth anniversary of the enactment of the ATPA. The TPSC invites written comments concerning the issues to be examined in preparing such a report, including the considerations described in subsections 203(c) and (d) of the ATPA.

DATES: Public comments are due at USTR by September 11, 2000.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street NW., Room 523, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Western Hemisphere, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: This report is the last one required of the Administration before the program's expiration on December 4, 2001. Renewal of the program will be considered in 2001. Interested parties are invited to submit comments on any aspect of the program's operation, including the status of beneficiary countries—Bolivia, Colombia, Ecuador, and Peru—under the criteria described in subsections 203(c) and (d) of the ATPA, 19 U.S.C. 3202(c) and (d). Issues to be examined in this report include: The program's effect on the volume and composition of trade and investment between the United States and the Andean beneficiary countries; its effect on the economic growth and development of the beneficiary countries; the extent to which the program has advanced narcotics eradication through sustainable alternative development efforts in coca-growing areas; and the degree to which the program has encouraged the trade and investment policies cited in the ATPA.

Written Notice

Persons submitting written comments should provide a statement in twenty copies, no later than 5 p.m., September 8, 2000, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW., Washington, DC 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Peter F. Allgeier,

Associate U.S. Trade Representative for the Western Hemisphere.

[FR Doc. 00–19812 Filed 8–3–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7694]

Guidelines for Proficiency in Advanced Fire-Fighting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency in Advanced Fire-Fighting. A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) developed and recommended national performance measures for this proficiency. The Coast Guard has adapted the measures recommended by MERPAC.

DATES: Comments and related material must reach the Docket Management Facility on or before October 3, 2000.

ADDRESSES: Please identify your comments and related material by the docket number of this rulemaking [USCG 2000–7694]. Then, to make sure they enter the docket only once, submit them by just one of the following means:

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

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

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

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

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

The measures proposed here are also available from Mr. Mark Gould or Mr. Gerald Miante, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229.

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the national performance measures proposed here, write or call Mr. Gould or Mr. Miante where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard taking?

Table A–VI/3 of the Code accompanying the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for ensuring merchant mariners' attaining the minimum standard of competence through demonstrations of their proficiency in Advanced Fire-Fighting. The Coast Guard tasked MERPAC with referring to the Table, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has adapted the measures recommended by MERPAC and is proposing them here for use as guidelines for assessing that proficiency. Next we set forth the Four Skills by which a mariner must demonstrate that proficiency and we give an example of a Performance Condition, a Performance Behavior, and

three Performance Standards for one of the skills.

Four Skills: Control fire-fighting operations aboard ships; organize and train fire parties; inspect and service fire-detection and fire-extinguishing systems and equipment; and investigate and compile reports on incidents involving fire.

The Performance Condition for the skill entitled, ''investigate and compile reports on incidents involving fire'' is: ''In a mockup of a shipboard-fire or in a live fire-training facility, when presented with the remains of a fire in a fully involved and heavily damaged space (consistent with that of a ship of 500 Gross Tonnage (ITC) or more) for which the point(s) of origin and cause are unknown''.

The Performance Behavior for the same skill is: ''when asked, the candidate will describe the process of determining the point(s) of origin of the fire, using burn patterns; charred debris, material and structural damage, discoloration, and distortion, and other physical evidence.''

The Performance Standards for the same skill are: ''descriptions of physical evidence are relevant to determining the point of origin; process continually eliminates areas that are not points of origin; and the point(s) of origin is (are) identified correctly and completely.''

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Performance Standards, he or she fails it.

Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic law at 46 CFR parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for practical tests as part of their programs for training and assessing seafarers.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as distinct from the measures proposed here, those measures are available on the Internet at the Homepage of MERPAC, http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.) These measures are available on the Internet at http://dms.dot.gov. They are also available from Mr. Gould or Mr. Miante where indicated under **ADDRESSES.** If you submit written comments please include-

- Your name and address;
- The docket number for this Notice [USCG 2000–7694];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: July 27, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–19834 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Review and Approval From the Office of Management and Budget (OMB) of a Proposed Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the FAA is planning to submit a proposed information collection request to the Office of Management and Budget (OMB) for review and approval. Through this notice, the FAA is soliciting comment on the proposed, one-time information request of a Volcanic Ash User Needs Survey.

DATES: Comments must be received on or before October 3, 2000.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Mr. Steven Albersheim, Room 8320, Federal Aviation Administration, Aviation Weather Policy Division, ARW–100, 400, 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at 800 Independence Ave., SW., Washington, DC 20591, or on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Title: Volcanic Ash User Needs Survey.

Abstract: Volcanic activity, specifically volcanic ash, constitutes a severe hazard to aviation. Over the past 20 years there have been numerous reports and aircraft encounters with volcanic ash at cruise altitude. The FAA as part of its responsibility to safeguard the usage of the National Airspace System (NAS) has a variety of ways to alert users of the inherent dangers associated with volcanic ash. This includes surface observations, Volcanic Ash Advisories, pilot reports, volcanic ash graphics, Notice to Airmen, and significant meteorological statements. All of these products are generally available to users of the NAS during a volcanic eruption that results in an ash cloud that endangers the safety of flight or ground operations at the aerodrome. However, there is evidence that FAA needs to improve the quality of information and dissemination for products to flight crews, airline operations centers (*i.e.*, dispatchers and meteorologists), and airport managers. To accomplish this, the FAA plans to survey a variety of airline/airport service professionals and pilots to better understand their specific operational needs. The results of the survey will be used to identify the shortfalls in the existing alerting mechanism with the aim of defining firm requirements to improve the quality of information on volcanic eruptions/ash and its dissemination to users of the NAS.

The survey consists of four parts. The first part of the questionnaire identifies the respondent's function and responsibility with regard to the usage

of volcanic ash products. The second par of the survey requests participants to identify whether they have any operational experience with volcanic ash. If participants respond positively that they have had experience with volcanic ash, they are then requested to complete the third and fourth part of the survey. The third part of the survey requests participants to assess the quality of products available and means to improve them or develop any new products that may be required. The final part of the survey requests participants to describe their training needs to better understand existing products and how to improve decision making.

Description and number of proposed respondents: A survey has been designed to gather information from flight crews, dispatchers, and airport managers. It is anticipated that the FAA will survey approximately 50 flight crew members, 20 dispatchers in airline operations centers, 30 meteorologists in airline meteorological departments and 15 airport managers. The survey of these individuals is to be a one time event.

Burden hours: It is estimated that it will take about 30 to 60 minutes to answer the questionnaire. Using the higher 60 minute estimate, the total burden, if all respond, would be 115 hours for all respondents combined.

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. Therefore, the FAA is soliciting 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.

Issued in Washington, DC, on July 28, 2000.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 00–19842 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Receipt of Notice of Proposed Restriction on Stage 2 and 3 Operations at Flying Cloud Airport, Eden Prairie, MN

AGENCY: Federal Aviation Administraiton (FAA), DOT.

ACTION: Notice of proposed restrictions.

SUMMARY: The Federal Aviation Administration (FAA) has been notified by the Minneapolis-St. Paul Metropolitan Airports Commission (MAC) that it proposes to restrict jet aircraft not meeting Federal Aviation Regulations (FAR) Part 36 Stage 3 requirements from using the Flying Cloud Airport between the nighttime hours of 2200 and 0600 local time, and to restrict nighttime maintenance run-ups for all aircraft between the nighttime hours of 2200 and 0600 local time. Implementation of the proposed restrictions would be by an amendment to existing MAC Ordinance 51.

The MAC has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and FAR Part 161. Notice of the proposed restrictions and availability of the analysis was locally published by the MAC on July 11, 2000.

EFFECTIVE DATE: A public hearing on the proposed restriction will be held at 7:00 PM on August 15, 2000, in the auditorium of the Hennepin Technical College, 9200 Flying Cloud Drive, Eden Prairie, MN. The comment period ends on August 30, 2000.

ADDRESSES: Comments on the proposed restrictions may be submitted to: Mark Ryan, Metropolitan Airports Commission, 2901 Metro Drive, Suite 525, Bloomington, MN 55425; Phone: (612) 726–8129; Fax: (612) 794–4407.

FOR FURTHER INFORMATION CONTACT: For further information, copies of the complete text of the proposed restrictions, and copies of the supporting analysis, contact Mark Ryan at the address or telephone number noted above. These documents are also available for public inspection at the above address.

Issued in Minneapolis, MN, on July 25, 2000.

Nancy M. Nistler,

Manager, Minneapolis Airports District Office.

[FR Doc. 00–19840 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–03–C–00–BIL) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Billings Logan International Airport, Submitted by the City of Billings for Billings Logan International Airport, Billings, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Billings Logan International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. J. Bruce Putnam, Director of Aviation and Transit, at the following address: 1901 Terminal Circle, Room 216, Billings, MT 59105–1996

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Billings Logan International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Manager, at (406) 449–5271. Address: Federal Aviation Administration; Airports District Office; FAA Building Suite 2; 2725 Skyway Drive; Helena, MT 59602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–03–C–00–BIL) to impose and use PFC revenue at Billings Logan International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 27, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of billings, Billings Logan International Airport, Billings, MT, was substantially complete within the

requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 27, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2001.

Proposed charge expiration date: August 31, 2005.

Total requested for impose and use approval: $4,153,600.

Brief description of proposed projects: Terminal Area Improvements; Deicing Facility; Snow Removal Equipment; Electrical Improvements; Financing costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Billings Logan International Airport.

Issued in Renton, Washington on July 27, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–19843 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson, MS Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 25, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 14, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–10–C–HSV.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2000.

Proposed charge expiration date: February 1, 2004.

Total estimated net PFC revenue: $1,498,644.

Brief description of proposed project(s): Security Vehicle 2000 and Body Armour; Taxiway ''C'' Crossfield Connector; Air Cargo Apron Expansion (Phase 3); Baggage Claims Expansion/Terminal Renovation; Air Carrier Apron/Access Road Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison County Airport Authority.

Issued in Jackson, MS on July 31, 2000.

Wayne Atkinson,

Manager, Jackson, MS Airports District Office, Southern Region.

[FR Doc. 00–19839 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Solano County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

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 Solano County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Team Leader, Project Delivery Team North, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724. Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and Solano Transportation Authority, will prepare an environmental impact statement (EIS) on a proposal to construct a 12-mile-long four-lane roadway using primarily existing local roads between Interstate 80 (I–80) on the north and State Route 12 (SR 12) on the south. The project is known as the Jepson Parkway project. The Jepson Parkway project spans four jurisdictions, including (proceeding from north to south) the City of Vacaville, Solano County, the City of Fairfield, and Suisun City. The project is needed to provide an integrated and continuous route for local north/south trips between Vacaville, areas of Solano County, Fairfield, and Suisun City,

consistent with adopted local plans. Although I–80 runs east/west through this area, this interstate freeway is currently one of the few roads that spans the distance between these jurisdictions. Therefore, the project would also serve as an alternative travel route to I–80. Additionally, the project is needed to relieve existing traffic congestion, improve safety, and accommodate future traffic associated with planned growth.

Alternatives to be considered may include: (1) A limited expressway that includes grade separations at selected locations; (2) bus and high occupancy vehicle (HOV) lanes, in addition to mixed-flow lanes; (3) alternative locations for selected portions of the corridor to reduce environmental impacts associated with the project; and (4) taking no action.

Because project construction will likely require a Clean Water Act Section 404 individual permit, project planning and development will be consistent with the Memorandum of Understanding concerning the NEPA/404 Integration Process for Surface Transportation Projects.

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 previously expressed or are known to have interest in this proposal. A public scoping meeting will be held at 7 p.m. on August 9, 2000 at the Suisun City Hall, 701 Civic Center Boulevard, Suisun City, California. A public hearing will be held for the draft EIS following preparation of various technical studies and approval for public availability by the FHWA. Public notice will be given as to the time and place of this hearing, currently projected for summer 2001. The draft EIS will be available for public and agency review and comment prior to the draft EIS public hearing.

To ensure that the full range of issues related to this proposal 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 listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway and Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 31, 2000.

C. Glenn Clinton,

Team Leader, Project Delivery Team North, Sacramento, California.

[FR Doc. 00–19819 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Environmental Impact Statement on the Central Link Light Rail Transit Project

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS).

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise the public, tribes and agencies that an SEIS will be prepared to evaluate a new alternative in Tukwila, Washington for the Central Link Light Rail Transit Project. This action is a supplement to the Central Link Light Rail Transit Project Final Environmental Impact Statement (November 1999).

DATES: *Agency Scoping Meeting:* An agency scoping meeting will be held on: Thursday, August 10, 2000, from 10:30 a.m. to 12:30 p.m., Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA.

Scoping comments may be submitted after the meeting.

FOR FURTHER INFORMATION CONTACT: John Witmer, Federal Transit Administration, 915 2nd Avenue Suite 3142, Seattle, WA 98174–1002, Telephone: 206–220–7964. James Irish, Sound Transit, 401 South Jackson St., Seattle, WA 98104–2826, Telephone: 206–398–5140

SUPPLEMENTARY INFORMATION: FTA and the Puget Sound Regional Transit Authority (Sound Transit) will prepare an SEIS on a new light rail alternative route in the City of Tukwila known as the Tukwila Freeway Route. The Tukwila Freeway Route alternative was proposed by the City of Tukwila and follows East Marginal Way, State Route 509, Interstate–5, and State Route 518, mostly using an elevated configuration within existing freeway right-of-way. Stations are proposed at (1) Boeing Access Road and (2) South 154th Street, which would include a 670-stall park-and-ride lot. This 5.5 mile alternative route would bypass the adopted route along Tukwila International Boulevard (State Route 99) and be completely within exclusive right-of-way.

Issued on: August 1, 2000.

Linda M. Gehrke,

Federal Transit Administration Deputy Regional Administrator.

[FR Doc. 00–19836 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–51–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on May 26, 2000, 65 FR 34247.

DATES: Comments must be submitted on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Associate Administrator for Shipping Analysis and Cargo Preference, MAR–500, Room 8126, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number 202–366–0364 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title of Collection: Customer Service Surveys.

OMB Control Number: 2133–0528.

Type of Request: Revision of a currently approved collection.

Affected Public: Entities directly served by the MARAD.

Form(s): MA–1016; MA–1017; MA–1021.

Abstract: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of their satisfaction with existing services. This collection covers MARAD forms used to carry out such surveys covering MARAD programs and services. Responses to the ''Customer Service Questionnaire'' are needed to obtain prompt customer feedback on the quality of specific services and products

provided to the customer by MARAD. The information provided will be used to ascertain the customer's level of satisfaction. Responses to the ''Program Performance Survey'' are needed to obtain customers'' views on MARAD's major programs and activities with which the customers were involved during the preceding year. Responses to the new ''Conference/Exhibit Survey'' are needed to obtain feedback from conference attendees on the quality and success of a particular MARAD sponsored conference or event. The information provided will be used by MARAD's senior management and MARAD's program managers to monitor the overall level of customer satisfaction and to identify areas for improvement.

Annual Estimated Burden Hours: 256 Hours:

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: August 1, 2000.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 00–19810 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7522]

Receipt of Petition for Decision That Nonconforming 2000–2001 BMW Z8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000–2001 BMW Z8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000–2001 BMW Z8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 5, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2000–2001 BMW Z8 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2000–2001 BMW Z8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000–2001 BMW Z8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2000–2001 BMW Z8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000–2001 BMW Z8 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone*

Intrusion, 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 2000–2001 BMW Z8 passenger car models comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 201 *Occupant Protection in Interior Impact:* Replacement of components subject to standard with U.S. model components on vehicles that are not already so equipped.

The agency has been advised by BMW that the U.S. and European versions of the Z8 are the same with respect to their interior trim and sheet metal structure. BMW stated, however, that testing to certify the 2000 model year Z8 to the upper interior requirements of Standard 201 has not been completed as of July 12, 2000, even though the company had informed the agency in a previous submission that the vehicle met those requirements. As a consequence, the 2000 model year Z8 is not currently certified to the upper interior impact requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button.

Standard No. 214 *Side Impact Protection:* Installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–19741 Filed 8–3–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33907]

Nashville & Western Railroad Corp.—Operation Exemption—Cheatham County Rail Authority

Nashville & Western Railroad Corp. (N&WRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a line of railroad owned by the Cheatham County Rail Authority (Rail Authority). The line extends from Tennessee Central milepost 205.76, at Nashville, TN, to Tennessee Central milepost 185, at Ashland City, TN, a total distance of approximately 28.0 miles. N&WRR states that it will soon enter into agreements with the Central of Tennessee Railway & Navigation Company, Inc. (CoTRy) and the Rail Authority wherein N&WRR will succeed to the lease rights and obligations of the CoTRy under its lease and operating agreement with the Rail Authority. This change in operators is exempt under 49 CFR 1150.31(a)(3).[1]

According to the verified notice of exemption, the parties intended to finalize the transaction by August 1, 2000. This transaction is related to STB Finance Docket 33910, *William J. Drunsic—Continuance in Control Exemption—Nashville & Western Railroad Corp.*, wherein William J. Drunsic has filed a verified notice of exemption to continue in control of the N&WRR upon N&WRR's becoming a Class III carrier. While the change in operators exemption in STB Finance Docket No. 33907 will be effective on July 31, 2000 (7 days after the exemption was filed), the exemption in STB Finance Docket No. 33910 will not become effective until August 2, 2000 (7 days after the July 26, 2000 filing date of the notice for that exemption). Therefore, the change in operators transaction may not lawfully be consummated until August 2, 2000, at the earliest. Counsel for N&WRR has been contacted by telephone and has acknowledged that the transaction may not be consummated until August 2, 2000.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33907, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John F. McHugh, McHugh & Barnes, P.C., 20 Exchange Place, New York, NY 10005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 28, 2000.

[1] In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. See 49 CFR 1150.32(b). To ensure that any shippers are informed of the change of operators on the line, N&WRR is directed to provide notice of the change to all shippers on the line and to certify to the Board that it has done so.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19780 Filed 8–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33910]

William J. Drunsic—Continuance in Control Exemption—Nashville & Western Railroad Corp.

William J. Drunsic (Drunsic), an individual, has filed a verified notice of exemption to continue in control of the Nashville & Western Railroad Corp. (N&WRR), upon N&WRR's becoming a Class III railroad.

According to the verified notice of exemption, the parties expected to finalize the transaction by August 1, 2000. The earliest the exemption can be consummated is August 2, 2000, the effective date of the exemption (7 days after the exemption was filed).[1]

This transaction is related to STB Finance Docket No. 33907, *Nashville & Western Railroad Corp.—Operation Exemption—Cheatham County Rail Authority,* wherein N&WRR will succeed to the lease rights and obligations of the Central of Tennessee Railway & Navigation Company under its lease and operating agreement with the Cheatham County Rail Authority.

Drunsic currently controls the Nashville & Eastern Railroad Corp. (N&ERR), which operates in the State of Tennessee. According to Drunsic, the lines of the N&WRR and N&ERR will not connect, and no plans exist to effect such a connection. The transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

[1] Counsel for Drunsic has been contacted by telephone and has acknowledged that the transaction may not be consummated until August 2, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33910, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John F. McHugh, McHugh & Barnes, P.C., 20 Exchange Place, New York, NY 10005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–19782 Filed 8–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–35

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 Revenue Ruling 2000–35, Automatic Enrollment in Section 403(b) Plans.

DATES: Written comments should be received on or before October 3, 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 revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Enrollment in Section 403(b) Plans.

OMB Number: 1545–1694.

Revenue Ruling Number: Revenue Ruling 2000–35.

Abstract: Revenue Ruling 2000–35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 403(b) plan in the absence of an affirmative election by the employee.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hours, 45 minutes.

Estimated Total Annual Burden Hours: 175.

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: July 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–19850 Filed 8–3–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–33

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 Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

DATES: Written comments should be received on or before October 3, 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 revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

OMB Number: 1545–1695.

Revenue Ruling Number: Revenue Ruling 2000–33.

Abstract: Revenue Ruling 2000–33 specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

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: July 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–19851 Filed 8–3–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995. Today, the Office of Thrift Supervision (OTS) within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), effective with the March 31, 2001 report. The following subjects are discussed in more detail below:

(1) Nontraditional lending, namely, high loan-to-value loans and subprime loans;

(2) Mortgage-backed securities;

(3) Asset-backed securities;

(4) Definition of mortgage loans;

(5) Junior liens;

(6) Credit cards

(7) Accumulated other comprehensive income;

(8) Home equity lines of credit outstanding;

(9) Nonmortgage loan activity;

(10) Deposit information and deposit insurance premium assessment information;

(11) Reciprocal balance accounts;

(12) Adjustments to capital;

(13) Average balance sheet data;

(14) Board of directors' interest rate risk limits;

(15) IRS Domestic Building and Loan Association (DBLA) Test;

(16) Mutual fund and annuity sales;

(17) Filings under the Securities and Exchange Act of 1934;

(18) Savings association and subsidiary web-site addresses;

(19) Holding company financial information;

(20) Transactions with affiliates;

(21) Fiduciary and related services;

(22) Residual interests in financial assets sold;

(23) Federal Home Loan Bank (FHLB) structured advances and other structured borrowings;

(24) Schedule YD, Yields on Deposits;

(25) Asset maturity data in Schedule SI;

(26) Margin accounts;

(27) Estimated market value rate shocks;

(28) Multifamily mortgages;

(29) Mortgage loan activity;

(30) Hedging activity;

(31) Eliminating confidential treatment for certain interest rate risk and past due data;

(32) Reporting frequency of Schedule CSS (Subordinated Organization Schedule).

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which OTS should modify the proposed revisions prior to giving its final approval. OTS will then submit the

revisions to Office of Management and Budget (OMB) for review and approval.

DATES: Submit comments on or before October 3, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0023. Hand deliver comments to 1700 G Street, NW, from 9 A.M. to 5 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (ifthe comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room,1700 G Street, NW, from 10 A.M. until 4 P.M. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Trudy Reeves, Financial Reporting Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7317. Interested persons may also obtain additional information on the internet at www.ots.treas.gov/tfrpage.html, or by calling (202) 906–6078.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550–0023.

Form Number: OTS 1313.

Abstract: All Office of Thrift Supervision (OTS) regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter, or less frequently if so stated. OTS needs this information to monitor and supervise the thrift industry.

Current Actions: After reviewing its current supervisory and examination needs, OTS proposes to revise the Thrift Financial Report (TFR), effective with the March 31, 2001 report. These revised reporting requirements are also designed to complement the federal banking agencies' emphasis on risk-focused supervision. OTS had proposed on March 1, 2000 to collect additional information on high loan-to-value loans, trust assets, residual interests in financial assets sold, and structured liabilities beginning with the third quarter of 2000.

However, after considering comments on the proposal and other factors, OTS decided to postpone any changes to the TFR until March 2001. Comments received to the March 1, 2000 **Federal Register** Notice will also be considered as a response to this proposal.

This proposal also addresses certain aspects of Sections 307(b) and (c) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act). These sections direct the federal banking agencies to work jointly toward more uniform reporting, review the information that institutions currently report, and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

Several reporting changes being proposed will introduce more uniformity for savings associations, banks, and bank holding companies to certain aspects of regulatory reporting. In this regard, over the past several years, banking organizations have sought greater consistency among the reporting requirements imposed on savings associations, banks, and bank holding companies.

Increasing the uniformity of reporting requirements, among the different types of institutions supervised by the federal financial institution regulators, is a necessary step toward achieving the goal of a single set of reporting requirements for the filing of core information that is set forth in Section 307(b) of the Riegle Act.

1. Nontraditional Lending

OTS is proposing to add a schedule to the TFR comprised of memoranda data on high loan-to-value loans and subprime lending, Schedule NL, Nontraditional Lending. Only those savings associations making such loans would be required to file these data items.

a. High Loan-to-Value Loans

OTS has considerable supervisory interest in high loan-to-value (LTV) lending. Currently, OTS expects associations to report loans with LTV ratios in excess of supervisory limits to their board of directors quarterly (12 CFR 560.101 (Appendix A, Interagency Guidelines for Real Estate Lending Policies)). However, OTS does not require associations to report LTV data on the TFR. Due to increased supervisory concern regarding high LTV lending, coupled with OTS's need to effectively monitor potential high risk lending, OTS proposes to collect balances, originations and purchases, sales, charge-off and recovery data, and delinquency data on permanent mortgage loans secured by 1–4 dwelling units with an LTV (1) between 90 and 100%, inclusive, and (2) greater than 100%. With this change, the TFR will be more useful in promptly identifying regulated savings associations involved in this activity. OTS invites comment on all aspects of the reporting of high LTV loans and particularly on whether the proposed TFR items on high LTV loans should be treated as confidential for a limited period of time in order to give associations time to resolve any issues surrounding the reporting of these loans?

b. Subprime Loans

Subprime lending is a potentially high-risk activity that can pose increased risk to the saving associations involved and to the deposit insurance funds if appropriate safeguards are not in place. FDIC-insured institutions have increasingly entered the subprime lending market in recent years, and industry analysts predict that many nonbank subprime specialists will seek to be acquired by FDIC-insured institutions to take advantage of the relatively less expensive, more stable funding source that insured deposits provide. The exact number of savings associations involved in subprime lending is not known with certainty; however, the Federal Deposit Insurance Corporation (FDIC) has estimated that approximately 150 insured institutions, of which 24 are savings associations, currently have significant investment in the subprime lending business. Despite a favorable economic environment, a disproportionate number of insured institutions that engage in subprime lending are problem institutions. The estimated number of insured subprime lenders represents just over one percent of all insured institutions, yet they account for nearly 20 percent of all problem institutions. The actual extent of insured institutions' involvement in subprime lending is not known because there is no periodic reporting of this activity to the banking agencies. The estimates that have been made come from examination data, but the quality and timeliness of the subprime lending data gleaned from examination reports is constrained by inconsistent reporting and by the length of the examination cycle. The issue of timeliness is particularly troublesome from a safety and soundness perspective, since subprime lending tends to be a volume-oriented business that encourages rapid portfolio growth. Consequently, there is no reliable way to regularly monitor individual institutions' subprime lending programs. In several instances, this has resulted in the unexpected and severe deterioration in the condition of an institution from one examination to the next. Accordingly, OTS and the other banking agencies are proposing to collect a number of new items on subprime lending. These proposed items would make possible the early detection and proper supervision of subprime lending programs through

offsite monitoring procedures. Associations involved in subprime lending would report quarter-end data for the following eight categories of subprime loans in their loan portfolios: (1) Revolving, open-end loans secured by 1–4 family residential properties extended under lines of credit, (2) closed-end loans secured by first liens on 1–4 family residential properties, (3) closed-end loans secured by junior liens on 1–4 family residential properties, (4) loans secured by other properties, (5) credit cards to individuals for household, family, and other personal expenditures, (6) consumer loans secured by automobiles, (7) other consumer loans, and (8) other subprime loans. This information would be reported as memorandum items in the new Nontraditional Lending Schedule. Associations involved in subprime lending would also report their past due and nonaccrual subprime loans, along with charge-offs, recoveries, purchases, originations, and sales of these loans. In these areas, two broader loan categories would be used: loans secured by real estate and loans not secured by real estate.

The quality and validity of the proposed subprime lending information to be collected in the TFR hinges on a workable definition of subprime lending. Subprime loans could be defined on the basis of either (a) loan portfolios or programs that possess certain characteristics or (b) individual loans with these characteristics. Whether the portfolio or program approach or the individual loan approach ultimately is adopted, OTS and the other banking regulatory agencies are proposing the following definition of subprime loans for purposes of financial reporting information to the regulatory agencies:

Subprime loans are extensions of credit to borrowers who, at the time of the loan's origination, exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers. Risk of default may be measured by traditional credit risk measures, *e.g.,* credit/repayment history and debt-to-income levels, or by alternative measures such as credit scores. Subprime borrowers represent a broad spectrum of debtors ranging from those who have exhibited repayment problems prior to origination of their loans due to an adverse event, such as job loss or medical emergency, to those who persistently mismanage their finances and debt obligations. Subprime lending does not include loans to borrowers who have had minor, temporary credit difficulties since the origination of their loans but are now current. Subprime loans may take the form of direct extensions of credit; loans purchased from other lenders, including delinquent or credit impaired loans purchased at a discount; and automobile or other financing paper purchased from other lenders or dealers.

OTS invites comment on all aspects of the proposed new TFR items on subprime lending. In particular, OTS seeks comment on the proposed definition of subprime loans generally and on the following issues relating to this definition:

(1) Should all individual subprime loans be reported in the proposed new TFR items or should only those subprime loans that are held in a segregated portfolio or program be reported? Do you foresee any difficulties in reporting individual subprime loans or segregated groups of subprime loans?

(2) Based on the proposed definition of subprime loans above, approximately what percentage of your savings association's loan portfolio would currently be categorized as subprime? Using your association's own internal definition of a subprime loan, what percentage of your loan portfolio does your savings association currently classify as subprime? Please indicate whether these percentages are based on an individual subprime loan approach or a segregated portfolio or program approach. To the extent possible, provide percentages for your association's loan portfolio under both approaches.

(3) What criteria does your association use to determine which loans are subprime? Are the criteria the same for all types of loans, e.g., mortgage, automobile, and credit cards? If not, how do they differ?

(4) In defining subprime loans, which factor(s) listed below are the best indicators of a higher risk of default?

(a) Higher loan fees.

(b) Higher interest rates. For example, should all loans made at a contract rate 200 basis points above the rate that is offered to a traditional savings association customer for the same type of loan be included as subprime loans?

(c) Debt-to-income ratios. For example, should a loan to a borrower with a specific debt-to-income ratio above a stipulated level automatically be a subprime loan?

(d) Delinquency history. For example, if, at the time of the loan's origination, the customer had two or more payments that were 30 days past due in the last 12 months or had loans charged off in the last 12 months, would the loan be subprime? What type of delinquency history would constitute a subprime borrower in your association's view?

(e) Loan-to-value ratio. Is there a loan-to-value ratio above which a loan secured by real estate would be considered subprime?

(f) Credit scores or other ratings. If your association uses credit scoring to determine whether a loan should be categorized as subprime, are the scores custom or generic bureau scores?

(1) If generic bureau scores were used, below what score cutoff would a loan be considered subprime?

(2) Does the score cutoff differ by loan type?

(g) Bankruptcy status. For example, how far back in the customer's credit history would your association go to determine whether a bankruptcy should affect your categorization of a loan?

(h) Lack of credit history.

(i) Other factors. Please identify any other factor that should be considered an indicator of a higher risk of default and explain why it should be considered.

(5) Should the definition of subprime be identical for all types of loans, or should it differ by type of loan, *e.g.,* mortgage, automobile, and credit cards?

(6) Can your association determine from its records whether borrowers with subprime characteristics have credit support (*e.g.,* public or private guarantees, co-signers, and insurance) on specific loans? If yes, do you categorize loans with such credit support as subprime loans?

(7) The proposed subprime loan definition relies on differences between traditional and ''higher risk'' borrowers? How should the agencies take into account shifts in that difference (*e.g.,* what happens if ''traditional'' lending standards drop)?

(8) Should the subprime loan definition distinguish between institutions that target higher risk borrowers as opposed to those institutions that serve a community in an economically disadvantaged area where the repayment ability of area borrowers can be or has been adversely affected?

(9) Should there be a *de minimus* level of subprime loans below which reporting is not required?

(10) Should smaller savings associations be treated differently from larger savings associations for reporting purposes?

(11) What types of loans or lending programs, if any, should be excluded from the definition of subprime loans or, if included in the definition, reported separately from other subprime loans? Please explain the reasons for the exclusion or separate reporting.

(12) Should the proposed TFR items on subprime loans be treated as

confidential for a limited period of time in order to give associations time to resolve issues surrounding which loans should and should not be reported as subprime?

Although this proposal would create several new line items, the burden of reporting this information will fall only upon those savings associations engaged in subprime lending, as defined. If the number of associations involved in this activity is consistent with the current estimate, these proposed new reporting requirements would affect approximately two percent of the associations that file TFRs. OTS would welcome any additional information commenters can provide on the number of associations that are subprime lenders in order to improve OTS's assessment of the potential reporting burden of this proposal.

2. Mortgage-Backed Securities

OTS proposes to combine mortgage-backed pass-through securities and mortgage derivatives into one section in the balance sheet (Schedule SC). Currently, mortgage derivative securities are reported on a line under investment securities, and mortgage pool securities are reported in a separate section between investment securities and loans. OTS proposes combining mortgage-backed securities into one section, which would replace the section on mortgage pool securities, and adding two lines under mortgage derivative securities to provide (1) those issued or guaranteed by FNMA, FHLMC, or GNMA, and (2) those collateralized by securities issued or guaranteed by FNMA, FHLMC, or GNMA. This would provide consistent information with the commercial bank Call Report, would be more consistent with the presentation of mortgage-backed securities in financial statements included with 34 Act filings, and would provide information on the degree of risk of the derivative investment. Consistent with the commercial bank Call Report, mortgage-backed bonds would be reported with other investments in the balance sheet on SC185.

3. Asset-Backed Securities

OTS proposes to add a line under ''Investment Securities'' on the balance sheet (Schedule SC) to collect securities collateralized by nonmortgage loans (asset-backed securities), including all securities backed by credit cards, other consumer loans, and commercial loans. Asset-backed securities are currently reported in the miscellaneous securities category, combined with other types of investment securities. The addition of this line item will provide important information concerning the holdings of these securities and, moreover, would facilitate reconciliation between Schedules SC and CMR. The other banking agencies have proposed collecting data on asset-backed securities on the March 2001 commercial bank Call Report.

4. Definition of Mortgage Loans

OTS proposes to redefine mortgages for TFR reporting, consistent with the commercial bank Call Report, to include all loans predicated upon a security interest in real property. That is, a loan secured wholly or substantially by a lien on real property for which the lien is central to the extension of the credit. A lien is considered central to the extension of credit if the borrower would not have been extended credit in the same amount or on terms as favorable without the lien on real property. All loans satisfying this definition would be reported as mortgages, regardless of whether secured by first or junior liens, regardless of the department within the association or its subsidiary that originated the loan, regardless of how the loans are categorized in the savings association's records for HOLA investment limits, and regardless of the purpose of the financing. The only real estate secured loans that will be reported as nonmortgage loans are those that are otherwise substantially secured, where the mortgage was taken as an abundance of caution (for example, auto loans), and where the terms as a consequence have not been made more favorable than they would have been in the absence of the lien. That is, if the loan is substantially secured by a mortgage and that is the only security for the loan, the loan should be reported as a mortgage even if the loan was based primarily on the ''creditworthiness of the borrower.'' The current requirement for classification as a mortgage—that a loan be fully secured by the property and that an appraisal or other evaluation be performed—will no longer apply.

This change will put virtually all mortgages together on the balance sheet and will make the TFR definition of mortgages clearer and consistent with the commercial bank Call Report. Data item SC340, Revolving Loans Secured by 1–4 Dwelling Units in Consumer Loans would be eliminated and all revolving loans would be reported with mortgage loans.

5. Junior Liens

OTS proposes to add a breakdown between first liens and junior liens under ''Permanent Mortgages'' on 1–4 dwelling units in the balance sheet (Schedule SC) to better monitor the riskier junior lien market. Currently the TFR does not collect data on single-family residential junior liens. This change will make the TFR mortgage loan breakdown consistent with the commercial bank Call Report. This change will also be made to the breakdown of residential mortgages in the charge-off and recovery data on Schedule VA.

6. Credit Cards

OTS proposes to break out credit cards separately under the heading ''Consumer Loans.'' Currently credit cards are combined with other similar plans such as overdraft lines on checking accounts. These other similar plans would be reported with ''Other Consumer Loans.'' Because of the change in the definition of mortgage loans mentioned above and the elimination of revolving loans secured by 1–4 dwelling units from consumer loans, the distinction between closed-end and open-end consumer loans would be eliminated and the line for ''Other, Including Leases'' would contain both closed-end loans and open-end loans like those currently reported with credit cards. Credit cards would be broken out separately on the balance sheet (Schedule SC), charge-offs and recoveries (Schedule VA), and past due and nonaccrual (Schedule PD).

7. Accumulated Other Comprehensive Income

OTS proposes to add a subsection in the equity section of the balance sheet (Schedule SC) for accumulated other comprehensive income to conform the TFR to generally accepted accounting principles (GAAP). This section would include the existing line for unrealized gains (losses) on available-for-sale securities and an additional line for ''other'' that would include gains (losses) on cash flow hedges, foreign currency translation adjustments, and minimum pension liability adjustments.

8. Home Equity Lines of Credit Outstanding

OTS proposes to add a line in Schedule CC (Commitment and Contingencies) to provide data on the balance of outstanding home equity lines of credit that have not yet been drawn down; currently these amounts are included with Open-end Consumer Lines on CC410.

9. Nonmortgage Loan Activity

Because nonmortgage loans have become a larger, and, in most cases, riskier part of the industry's loan

portfolio, OTS proposes to add a line capturing sales of nonmortgage loans. Schedule CF currently reconciles the activity in mortgage loans, deposits, and mortgage pool securities; however, only one line for nonmortgage loan originations and purchases is available for nonmortgage loan activity. This line along with the proposed line would permit reconciliation of nonmortgage loans and would indicate the volume of nonmortgage loans that are originated and sold within the same quarter.

10. Deposit Information and Deposit Insurance Premium Assessment Information

OTS proposes to move the deposit data and deposit insurance premium assessment information from Schedule SI to a new schedule, Schedule DI (Deposit Information). Schedule SI was designed to contain supplementary data not collected elsewhere in the TFR. Because the number of items collected for deposit insurance premium assessment purposes has increased substantially over the past ten years, we believe it is preferable to move these data items to a separate schedule.

11. Reciprocal Balance Data for Deposit Insurance Premium Assessments

The FDIC Assessment Division has requested that OTS re-establish a line that was deleted in 1996 that collects reciprocal balance accounts deducted from insured deposits in calculating the deposit insurance premium. This line would be collected in the new Schedule DI and would be captioned: ''Adjustments to Demand Deposits for Reciprocal Demand Balances with Commercial Banks and Other Savings Associations.'' These reciprocal demand balances are currently collected along with other items in SI247. This new line item would be included in the new Schedule DI, mentioned above.

12. Adjustments to Capital

Currently SI670, Other Adjustments to Equity Capital, is made up of various items, and for most savings associations this miscellaneous data item is the largest reconciling amount to capital. To provide a better breakout of this adjustment, OTS proposes adding the following three data items in the reconciliation of equity capital in Schedule SI: (1) Other comprehensive income; (2) other capital contributions (where no stock is issued); and (3) prior period adjustments.

13. Average Balance Sheet Data

OTS proposes to add three new data items in Schedule SI to collect average asset and liability data. This information will produce more accurate data for use in ratio analysis, will avoid skewed data when restructuring and acquisitions occur, and will enable calculation of better yield/cost data. Savings associations will have the option of calculating these averages using either daily or weekly balances. The three proposed quarterly averages are average total assets, average interest-earning assets, and average interest-costing liabilities.

14. Board of Directors' IRR Limits

OTS proposes to add two lines to collect the association's interest rate risk limits as set by their Board of Directors for the plus/minus 200 basis point rate shock scenarios. This information will be used for off-site monitoring to identify saving associations that may be in excess of their Board limits. These lines will be added to Schedule SI. All savings associations would be required to complete these lines.

15. IRS Domestic Building and Loan Association (DBLA) Test

OTS proposes to add a line for those savings associations that do not use the HOLA QTL test, but instead use the IRS Domestic Building and Loan Association (DBLA) Test. The addition of this line would more exactly identify savings associations that are using the IRS DBLA test and would enable the regions to better monitor the QTL status of those associations. This line would be added in Schedule SI following the lines for QTL. It would be required only of those associations using the DBLA test.

16. Mutual Fund and Annuity Sales

OTS proposes to eliminate the collection of data on quarterly sales of annuities, mutual funds, and proprietary products, SI800 through SI850. In place of these items, each savings association would respond to a ''yes'' or ''no'' question asking whether it sells private label or third party mutual funds and annuities. In addition, savings associations would report the total assets under their management in proprietary mutual funds and annuities. The data item collecting fee income from the sale and servicing of mutual funds and annuities would be retained. For savings associations with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume for these proprietary products. run

17. Filings Under the Securities and Exchange Act of 1934

Currently the OTS can determine the number of holding companies that file under the Securities and Exchange Act of 1934 only through the examination process. Because the Securities and Exchange Commission (SEC) does not maintain a listing of savings and loan holding companies that file with them, OTS proposes to add the following questions in the TFR to provide the user with immediate information on whether there is a filing available on this savings association or its holding company with the OTS or the SEC.

Add the following two yes/no questions in Schedule SQ (Supplemental Questions):

For the current quarter, is the reporting savings association required to file periodic securities disclosure documents (for example, Form 10–Q or 10–K) with the OTS, following the rules under the Securities Exchange Act of 1934? If the reporting association is in a holding company structure, for the current quarter, is the holding company required to file periodic securities disclosure documents (for example, Form 10–Q or 10–K) with the SEC, pursuant to the Securities Exchange Act of 1934?

18. Savings Association and Subsidiary Web Site Addresses

OTS proposes the addition of Internet home page addresses to assist in monitoring the activities of savings associations on their web sites and the addition of a question asking if the savings association provides transactional Internet banking to its customers, as defined in 12 CFR 555.300(b). The data item for the savings association's web site and question on transactional Internet banking will be collected in Schedule SQ (Supplementary Questions). We also propose adding a similar data item to collect web sites of subsidiaries in Schedule CSS (Subordinate Organization Schedule).

19. Holding Company Financial Information

More complex business plans, advances in technology, increased merger and acquisition activity, and earnings pressures have changed the nature of the relationship of the thrift with its affiliates. With finite examination resources, OTS must fully leverage its ability to collect information for the purpose of off-site monitoring and more precisely scope for its onsite examinations. Therefore, OTS proposes to add a schedule to the TFR to collect data on thrift holding companies. In general, the ''top' owner (ownership

command can go no further) of the thrift would be required to file. Typically, one holding company report would be filed per savings association; however, more than one holding company report may be required when multiple top owners exist. Holding companies owning more than one savings association would be required to file only once. Bank holding companies would be excluded from reporting. In all of the above cases, the OTS Regional Director will specifically identify the holding company from which data is to be collected. The data collected would include: Total assets; total liabilities; total equity; intangible assets and deferred policy acquisition costs; debt maturing within the next 12 months (excluding deposits); all other debt (excluding deposits); net cash flow from operations; net income; and interest expense. The data will be based on holding company consolidated financial statements. The holding company would provide the data to the savings association, and the holding company schedule would be filed as part of the TFR, within the same timeframes as the TFR. As of March 31, 2000, there were 531 thrifts owned by thrift holding companies; therefore, 48% of all savings associations filing a TFR would be required to file the proposed holding company schedule.

20. Transactions with Affiliates

OTS proposes to add memoranda information in Schedule SI on certain transactions the savings association has with its affiliates. The term ''affiliate'' is defined in 12 CFR 563.41(b)(1). For purposes of the collection of this data, ''affiliate'' is defined as the holding company(s), any holding company subsidiary(s), a bank or thrift subsidiary of the savings association, and any company controlled by or for the benefit of shareholders, or which shares a majority of the same directors with the savings association or holding company. These data generally will not include transactions with subsidiaries of the savings association. Additionally, any transaction by a savings association or its subsidiaries with any person or entity is a transaction with an affiliate if the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. The items to be collected are: (1) Fees/expenses paid by the thrift to affiliates during the quarter including interest, management and service fees, tax sharing payments, and other general and administrative expenses; (2) the amount of assets sold to affiliates during the quarter; (3) the outstanding balance at the end of the quarter of: (a) Assets purchased from affiliates, (b) commitments to purchase assets from affiliates, and (c) extensions of credit to affiliates; (4) the percentage of the thrift's directors who are also directors of affiliates; and (5) the percentage of the thrift's officers who are also officers of the affiliates.

21. Fiduciary and Related Services

The OTS proposes to adopt the same schedule on trust activities that has been proposed by the other banking agencies. OTS and the other banking agencies propose to change the manner in which associations report information on their trust activities. The existing Annual Report of Trust Assets (FFIEC 001) and the quarterly TFR line SI350 (Approximate Value of Trust Assets Administered) would be replaced with a quarterly Fiduciary and Related Services Schedule (TFR Schedule FS). This new schedule would become part of the TFR and would be filed within the same timeframe as the TFR. Under this proposal, associations that have total fiduciary assets greater than $100 million or fiduciary income greater than 10 percent of their combined net interest and noninterest income, as well as all nondeposit trust companies that file TFRs, would be required to report certain trust information in Schedule FS quarterly. Less than five percent of those associations reporting to OTS would be required to file this new trust schedule on a quarterly basis. All other associations involved in trust activities would report select information at calendar year end only. The information proposed includes the number of accounts and the market value of trust assets for eight categories of fiduciary activities and a fiduciary and related services income statement. These associations would additionally report, at calendar year-end, data on corporate trust activities, collective investment funds and common trust funds, fiduciary settlements and other losses, and types of assets held in personal trust and agency accounts. The fiduciary and related services income statement and the items on fiduciary settlements and other losses would be treated as confidential information on an individual association basis, which would maintain the treatment accorded this information in the Annual Report of Trust Assets. The agencies have applied confidential treatment to this trust income and loss information because these data generally pertain to only a portion of a reporting association's total operations and not to the savings association as a whole. Collecting certain data in the new fiduciary schedule from the savings associations with larger trust activities each quarter will provide OTS with critical supervisory information relating to fiduciary activities on a timelier basis. This will enable OTS to identify trends and changing risk profiles relating to fiduciary activities more quickly.

Most of the 51 data items that would be reported quarterly in the fiduciary schedule are included in the current annual trust reports. Modifications have been made to some of the existing items to improve their value and usefulness. An additional 47 data items would only be collected annually in the December 31 report, which would be required of all associations with trust activities. The total number of separately reportable data items in the proposed fiduciary schedule represents a decrease of almost 40 percent in the number of reportable items in the current Annual Report of Trust Assets.

Although roughly half of the associations currently reporting trust activities annually would have a new quarterly filing requirement, these associations should already have a reporting system in place to track this information. In addition, savings associations with small trust activities would, at most, have to provide trust data in 36 items once each year. Thus, OTS believes this proposal should not produce a significant overall increase in reporting burden for savings associations with trust activities. OTS is proposing to add the new fiduciary schedule to the TFR instead of retaining a separate trust report in order to facilitate the timely collection and processing of the information. Savings associations filing the current annual trust reports generally must submit their reports within 45 days after year-end. Electronically submitted annual trust reports, first allowed for year-end 1998 reporting, have a 75-day filing deadline. By moving the reporting of fiduciary information into the TFR, the submission deadline for the TFR would apply to this reporting requirement. The length of time that savings associations with trust activities would have for completing the fiduciary schedule would be reduced from 75 days to 30 days. OTS invites comment on all aspects of the proposed Fiduciary Schedule. In particular, we seek comment on the following issues relating to this schedule:

(1) Do the proposed criteria for determining which savings associations should report quarterly adequately capture those savings associations that should report fiduciary activities more frequently than annually because of the extent of their involvement with these activities? If not, what should the criteria be?

(2) What types of difficulties, if any, will associations encounter in complying with the proposed reduction in the amount of time for reporting trust information in spite of the significant decrease in the amount of data that savings associations would be required to report?

(3) Are the categories of trust accounts for which asset and income information would be reported in the proposed Fiduciary Schedule an improvement over the current reporting structure of the Annual Report of Trust Assets (FFIEC 001) and are the proposed trust account categories clear? Is there an alternative categorization of trust accounts for asset and income reporting purposes that would increase the schedule's usefulness?

(4) Is net fiduciary and related services income, as it would be reported in the proposed schedule, a useful performance measure? Is the proposed single item for ''Expenses'' too broad or restrictive to allow for meaningful peer analysis? Should intracompany income credits be included, as proposed, in computing net fiduciary and related services income?

(5) Should individual association fiduciary income and loss information continue to be accorded confidential treatment with only aggregate income and loss data made available to the public, or should the agencies make some or all of this individual association data publicly available?

(6) What fiduciary-related trends and ratios should be reported in the Uniform Thrift Performance Report and how should they be presented?

(7) The FFIEC currently issues an annual publication, ''Trust Assets of Financial Institutions,'' containing data reported in the Annual Report of Trust Assets (FFIEC 001). Should the FFIEC continue to produce such a publication and, if so, which types of data from the proposed schedule should the publication contain and how often should the FFIEC publish the data?

OTS recently issued Thrift Bulletin 48–16, which addressed how OTS will compute assessments under the complexity component for trust assets administered by a savings association. See 12 CFR 502.25. The Thrift Bulletin provides different assessment rates for trust assets administered in a fiduciary and non-fiduciary capacity. OTS will use the information reported on the proposed schedule to compute assessments.

22. Residual Interests in Financial Assets Sold

OTS proposed the following in a **Federal Register** Notice, dated March 1, 2000, for implementation in September 2000. We received no comments responding to that proposal. OTS subsequently decided to defer implementation of the proposal until March 2001.

Residual interests in financial assets sold (RIFAS) are certain financial assets retained after the transfer of loans, securities, or other financial assets, where the transfer is recorded as a sale under Statement of Financial Accounting Standards (SFAS) No. 125. RIFAS represent the right to receive ''residual'' cash flows from the transferred assets. The ''residual'' cash flows are those that are available after payment of all other contractual obligations to holders of other beneficial interests in the transferred assets, and after all payments for servicing fees and other costs. RIFAS may be acquired by either origination or purchase, and may be in either security or nonsecurity form. Examples of RIFAS include, but are not limited to, interest-only strips, spread accounts, and cash collateral accounts.

Credit enhancement RIFAS are those that are structured, through subordination provisions or other credit enhancement techniques, to absorb more than a pro-rata share of credit loss in relation to the transferred assets.

Depending on their form, RIFAS may be included in Schedule SC (Statement of Condition) in four lines: Mortgage Derivatives (SC150), Other Investment Securities (SC185), Interest-only Strip Receivables and Certain Other Instruments (SC655), and Other Assets (SC690). Because three of these lines (SC150, SC185, and SC690) may contain other instruments, OTS cannot currently determine the total residual interests retained or purchased by a savings association. Therefore, OTS proposes to add two memoranda lines in Schedule SI (Supplemental Information); one to collect credit enhancement residual interests in financial assets sold and one to collect other residual interests in financial assets sold. The addition of these two items will provide OTS with more complete information for monitoring and supervisory purposes.

23. Federal Home Loan Bank (FHLB) Structured Advances and Other Structured Borrowings

OTS proposed the following in a **Federal Register** Notice, dated March 1, 2000, for implementation in September 2000. We received no comments responding to that proposal. OTS subsequently decided to defer implementation of the proposal until March 2001.

In recent years, structured borrowings (especially FHLB structured advances) have become an increasingly popular funding source for savings associations. Because such borrowings often have complex embedded options, the use of these instruments can raise safety and soundness concerns. OTS proposes to change Schedule CMR (Consolidated Maturity/Rate) to collect estimates of the market value of structured borrowings to better evaluate the interest rate risk they pose. Market value data for structured borrowings may be provided at the option of the savings association, unless otherwise directed by OTS.

A detailed description of the proposed changes follows:

(1) Variable-rate, Fixed-maturity Liabilities, Schedule CMR form, page 32: Delete all existing cells under this heading. Outstanding balances for these instruments will be reported in new fields for deposits and borrowings as described below. Additionally, detailed information will be reported on these instruments on page 36 in Supplemental Reporting for Assets/Liabilities.

(a) Delete: CMR721 through CMR748

(b) Add:

Liabilities Reported in Supplemental Reporting for Assets and Liabilities

CMR749: Outstanding Balance of Variable-Rate, Fixed-Maturity Deposits (reported under liability code 200)

CMR751: Outstanding Balance of Variable-Rate, Fixed-Maturity Borrowings (reported under liability codes 220 or 229)

CMR753: Outstanding Balance of FHLB Structured Advances (reported under liability codes 280, 281, 282, 283 or 289)

CMR754: Outstanding Balance of Other Structured Borrowings (reported under liability code 290)

(2) Delete the column for Options on Liabilities, which will be replaced by the new reporting of structured borrowings. Delete: CMR941 through CMR950.

(3) Optional Supplemental Reporting for Assets/Liabilities, Schedule CMR form, page 36:

Rename this section as ''Supplemental Reporting for Assets/Liabilities.'' The column headings in this schedule will be instrument-specific. The instrument codes that are currently reported in the Supplemental Reporting for Assets/Liabilities Schedule will use the existing column headings. New codes will be added for reporting: (a) Internal valuations of nonmortgage servicing rights (as reported on SC644); (b) certain nonsecurity financial instruments (as

reported on SC655); (c) FHLB structured advances (as reported on SC720); and (d) other structured borrowings (as reported on SC730 through SC760). For these new codes, the nine column headings will be the instrument's code, book value, and association-reported estimates of the instrument's value in the seven interest-rate scenarios (plus/minus 300, plus/minus 200, plus/minus 100, and no change). These instrument-specific fields (rather than fixed column definitions) will improve the ability of savings associations to report financial information in a more detailed manner than is currently collected and will improve interest rate risk measures produced by the OTS model. This change to the form will also facilitate the addition of future codes for new instruments with customized cell content.

24. Yields on Deposits—Schedule YD

Schedule YD contains compounded annual yields for certain new deposits. OTS proposes the deletion of this schedule in its entirety as it no longer provides sufficient use to OTS to justify its continuance.

25. Asset Maturity Data

OTS proposes to delete five lines that collect data on asset maturities on Schedule SI (Supplemental Information). Currently, only savings associations that meet the Schedule CMR (Consolidated Maturity/Rate) exemption criteria (assets less than $300 million and risk-based capital in excess of 12%) and that opt not to file Schedule CMR must provide these data. OTS no longer needs to collect these data.

26. Margin Accounts

OTS proposes to delete CMR542, Margin Accounts, as it is no longer used.

27. Estimated Market Value Rate Shocks

Thrift Bulletin 13a no longer requires associations to maintain interest rate risk limits for the plus and minus 400 basis point interest rate scenarios. Therefore, the OTS proposes deleting these fields from Schedule CMR on page 35 of the TFR form.

28. Multifamily Mortgages

OTS proposes to rename ''5 or More Dwelling Units'' to ''Multifamily (5 or more) Residential Properties'' throughout the TFR. The use of ''multifamily residential properties'' conforms to the wording in the OTS capital regulations, other OTS regulations, and in the commercial bank Call Report, clarifying that these are the same type of loans. Schedules CCR and CMR currently use the term ''Multifamily Residential Mortgages.''

29. Mortgage Loan Activity

OTS proposes to delete the breakdown of permanent mortgages between newly built and previously occupied residential property in Schedule CF (Cash Flow). OTS no longer uses this breakdown.

30. Hedging Activity

As a result of the application of Statement of Financial Accounting Standards (SFAS) No. 133, ''Accounting for Derivative Instruments and Hedging Activities,'' the OTS proposes to delete two lines for amortization of deferred gains and losses and a line for the net cost of matched interest rate swaps in the income statement (Schedule SO). SFAS No. 133 will be effective for all associations during 2001.

31. Eliminating Confidential Treatment for Certain Interest Rate Risk and Past Due Data

The TFR is widely used by securities analysts, rating agencies, and large institutional investors as sources of thrift-specific data. OTS currently accords confidential treatment to the information associations report in Schedule CMR on the maturity and rate information used in assessing interest rate risk and information reported in Schedule PD on the amounts of loans, leases, and other assets past due 30 through 89 days and still accruing. OTS publishes aggregate data derived from these confidential items but does not publish the individual association data. In contrast, the information associations report on the amounts of their loans, leases, and other assets that are 90 days or more past due and still accruing or that are in nonaccrual status has been publicly available since 1990. Nevertheless, OTS has not precluded associations from publicly disclosing the data that OTS treats as confidential, provided individual borrower information is not released. In order to give the public, including thrifts, more complete information on the level of and trends in interest rate risk and asset quality at individual associations, OTS proposes to eliminate the confidential treatment for Schedule CMR beginning with the amounts reported as of March 31, 2001. Comment is requested from both voluntary and required filers of Schedule CMR on whether it will pose a hardship on savings associations if all or part of the data is made publicly available.

32. Reporting Frequency of Schedule CSS (Subordinate Organization Schedule)

In 1996, OTS reduced the reporting frequency of Schedule CSS from quarterly to annually in order to reduce reporting burden of the industry. While annual reporting of subordinate organizations was adequate at that time, we now have a need for more frequent reporting and propose to collect Schedule CSS on a semi-annual basis. In addition, as mentioned above, we propose to collect the web site addresses of subsidiaries in Schedule CSS to assist in monitoring the activities of subsidiaries on their web sites.

Type of Review: Revision.

Affected Public: Business or For Profit.

Estimated Number of Respondents and Recordkeepers: 1100.

Estimated Time Per Respondent: 33 hours average.

Estimated Total Annual Burden Hours: 145,200 hours.

Because these some of the proposed changes will not affect all savings associations that file the TFR, the burden hours reflected above are unchanged from the current burden. We invite comment on how savings associations think the burden will change given these form changes.

Request for Comments: In addition to the issues presented above, comments are invited on: (a) Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including whether the information has 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 information collections on respondents, including through the use of automated collection techniques, the Internet, or other forms of information technology; and (e) estimates of capital or sta rt up costs and costs of operation, maintenance, and purchase of services to provide information. OTS will summarize or include comments submitted in response to this notice with the request for OMB approval, and will include these comments in the public record.

Dated: July 31, 2000.

John E. Werner,

Director, Information Services.

[FR Doc. 00–19803 Filed 8–3–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday,
August 4, 2000

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86

Control of Emissions of Hazardous Air Pollutants from Mobile Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS–FRL–6839–2]

Control of Emissions of Hazardous Air Pollutants from Mobile Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: A range of compounds known as hazardous air pollutants are emitted from motor vehicles and fuels and are known or suspected to have serious health impacts. This document describes EPA's program to address emissions of hazardous air pollutants from mobile sources. In this document, we develop a framework to construct a national mobile source air toxics program and propose additional controls on gasoline to prevent increases in emissions of benzene. We also describe a plan to continue to conduct research and analysis on mobile source air toxics and make a commitment to revisit the issue of mobile source air toxics controls in a 2004 rulemaking.

More specifically, we look at the various compounds that are emitted by motor vehicles and identify those compounds that should be considered Mobile Source Air Toxics (MSATs). Our list of 21 MSATs includes various volatile organic compounds (VOCs) as well as metal compounds and diesel exhaust. We then evaluate the effectiveness of current controls in reducing on-highway emissions of these MSATs. Our analysis shows that the programs we currently have in place or have recently proposed are expected to yield significant reductions of mobile source air toxics. Between 1990 and 2020, these programs are expected to reduce on-highway emissions of benzene, formaldehyde, 1,3-butadiene, and acetaldehyde by 75 percent or more. In addition, we expect to see on-highway diesel PM emission reductions of over 90 percent.

We then consider whether there are additional air toxics controls that should be put in place at this time to further reduce on-highway MSAT inventories. With regard to fuels-based controls, we are proposing a gasoline benzene control program that requires refiners to maintain the current levels of over-compliance with RFG and anti-dumping toxics requirements. Because the proposed standard for each refinery is the same as the 1998–1999 average gasoline benzene level for that refinery, EPA currently anticipates that the proposed standards would impose only negligible costs, if any. With regard to additional vehicle-based controls, we conclude that it is not appropriate at this time to propose more stringent standards than the technology forcing standards found in our recently adopted Tier 2 and recently proposed HD2007 rule standards.

Finally, because of our concern about the potential future health impacts of exposure to the public of air toxics from the remaining emissions from mobile sources in the future, including emissions from nonroad equipment and fuels, we propose to continue our toxics-related research activities, in conjunction with other activities currently being conducted by the Agency. These include our National Air Toxics Activities (NATA) and the National Air Toxics Program: The Integrated Urban Strategy (UATS). Under this strategy, EPA will continue to improve our understanding of emissions inventories, assessments of exposure, and the need for and appropriateness of additional mobile source air toxics controls for on-highway and nonroad sources. Based on the information developed through this research, EPA is proposing to conduct a future rulemaking to evaluate whether such additional mobile source air toxic controls should be adopted. This rulemaking would be completed no later than 2004.

DATES: *Comments:* We must receive your written comments on this document by September 20, 2000.

Hearings: We will hold a public hearing on August 21, 2000, in Romulus, Michigan. The hearing will begin at 10 am and will continue until all testifiers have spoken.

ADDRESSES: *Comments:* You may send written comments in paper form and/or by e-mail. We must receive them by the date indicated under **DATES** above. Send paper and/or e-mail copies of written comments (in duplicate if possible) to the contact person listed below.

Docket: EPA's Air Docket makes materials related to this rulemaking available for review in Public Docket No. A–2000–12 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500 (on the ground floor in Waterside Mall), 401 M Street, S.W., Washington, D.C. 20460 between 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548, and by facsimile (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearings: We will hold a public hearing at the Crowne Plaza Detroit-Metro Airport Hotel, 8000 Merriman Road, Romulus, Michigan 48174. We request that parties who want to testify at a hearing notify the contact person listed below ten days before the date of the hearing. Please see section IX, ''Public Participation'' below for more information on the comment procedure and public hearings.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4349; FAX: (734) 214–4816; E-mail: connell.carol@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It would also affect you if you produce, distribute, or sell gasoline motor fuel.

The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [1]	SIC codes [2]	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Motor Vehicle Manufacturers.
Industry	336311 336312 422720 454312 811198	3592 3714 5172 5984 7549	Alternative Fuel Vehicle Converters.

Category	NAICS codes [1]	SIC codes [2]	Examples of potentially regulated entities
	541514	8742	
	541690	8931	
Industry	811112	7533	Commercial Importers of Vehicles and Vehicle Components.
	811198	7549	
	541514	8742	
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents through the Internet: Today's document is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of the preamble, regulatory language and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

Federal Register Web Site:
http://www.epa.gov/docs/fedrgstr/epa-air/
(Either select a desired date or use the Search feature)

Office of Transportation and Air Quality (OTAQ) Web Site:
http://www.epa.gov/otaq
(Look in ''What's New'' or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Outline of this Preamble

I. Introduction

A. Background

The 1990 Clean Air Act Amendments provide a key part of the foundation for our current national air toxics program. The Act provides a statutory framework designed to characterize, prioritize, and address the serious impacts of hazardous air pollutants (HAPs) on the public health and the environment through a strategic combination of regulatory approaches, partnerships, ongoing research and assessments, risk initiatives, and education and outreach.

Since 1990, our national air toxics control program for stationary sources has consisted primarily of technology-based emissions standards to reduce emissions of toxic air pollutants from major stationary sources, as required in section 112(d) of the Act. These actions have resulted, or are projected to result, in substantial reductions in HAP emissions.

Mobile source regulatory actions have also resulted in significant reductions of air toxics since 1990. In general, these mobile source air toxic reductions have been achieved through the implementation of controls put in place primarily to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, particulate matter (PM), and carbon monoxide (CO). For example, hydrocarbon controls for motor vehicles to reduce ozone formation also reduce emissions of gaseous air toxics such as benzene, 1,3-butadiene, and formaldehyde. Mobile source PM controls on diesel engines have considerably reduced diesel exhaust emissions as well. Additional toxics reductions have been achieved through fuel controls, including the federal reformulated gasoline (RFG) program, and through refiner over-compliance with toxics requirements of our RFG and conventional gasoline programs.

Today's proposal takes our mobile source toxics control program a step further by considering more specifically the contribution mobile sources make to national inventories of specific air toxics and by evaluating the appropriateness of setting additional standards to reduce contributions from on-highway vehicles. In performing our analysis of additional controls, we will follow the requirements specified in section 202(l)(2) of the Act: these motor vehicle or motor fuel standards must ''reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under [section 202(a)], the availability and costs of the technology, and noise, energy, and safety factors, and lead time.'' Our program is also consistent with the National Air Toxics Program: The Integrated Urban Strategy (also called the Urban Air Toxics Strategy, or UATS) published July 19, 1999 (64 FR 38706).

With this background, we now turn to an overview of today's proposal. Section I of this preamble will give you a brief overview of our proposal and the rationale for proposing it. Subsequent sections expand on the identification of mobile source air toxics (MSATs), the impact of current and proposed motor vehicle emission control programs on MSAT emissions, and the evaluation of additional control programs for motor vehicles and their fuels. Additional sections deal with the contribution of nonroad engines to MSAT inventories and our plan to continue to evaluate MSAT emissions and evaluate the appropriateness of setting additional air toxics control standards in the future. The final sections deal with several subjects, including opportunities for public participation.

B. Brief Overview of Air Toxics

Before proceeding to a summary of today's action, we want to provide a brief overview of air toxics: what they are, their general health and environmental effects, and their sources. Today's action addressing motor vehicle air toxics occurs in the context of extensive earlier air toxics work, primarily relating to stationary sources of these pollutants. These topics are discussed in more detail later in this proposal and in the draft TSD.

• What are air toxics?

Air toxics, which are also known as ''hazardous air pollutants'' or HAPs, are those pollutants known or suspected to cause cancer or other serious health or environmental effects. They include pollutants like benzene found in gasoline, perchloroethylene emitted from dry cleaners, methylene chloride used as an industrial solvent, heavy metals like mercury and lead, polychlorinated biphenyls (PCBs), dioxins and some pesticides. While the harmful effects of air toxics are of particular concern in areas closest to where they are emitted, they can also be transported and affect other geographic areas. Some can persist for considerable time in the environment and/or bioaccumulate in the food chain.

• What are the sources of air toxics?

There are literally millions of sources of air toxics, including: major stationary sources [1] such as large industrial complexes like chemical plants, oil refineries and steel mills; small (area) stationary sources [2] such as dry cleaners, gas stations, and small manufacturers; and mobile sources such as cars, trucks, buses, and nonroad vehicles such as construction and farm equipment.

• What health and environmental effects do air toxics cause?

Hazardous air pollutants can cause many ill health effects. Many of these substances are known or suspected to be human carcinogens. Some of these chemicals are known to have negative effects on people's respiratory, neurological, immune, or reproductive systems. Some chemicals pose particular hazards to people with preexisting illnesses, or those of a certain age or stage in life, such as children or the elderly.

• What are mobile source air toxics?

We use the term ''mobile source air toxics,'' or ''MSATs,'' to signify those air toxics are emitted by nonroad engines and motor vehicles. Section 202(l) of the Act, which addresses controls for hazardous air pollutants from motor vehicles and motor vehicle fuels, does not specify which pollutants are to be evaluated as air toxics, other than benzene, formaldehyde, and 1,3-butadiene. As a result, the first thing a mobile source air toxics control program must do is develop a list of compounds to be addressed. Using the methodology described in section II of this proposal, we have identified 21 mobile source air toxics (MSATs), listed in Table I–1 below.

Of our 21 MSATs, thirteen (those marked with an asterisk in Table I–2) are also included on the list of urban HAPs for the Urban Air Toxics Strategy (see below). Of the remainder, all but one are specifically identified in the CAA section 112(b) HAP list. Diesel exhaust is not included in these other two lists because this pollutant was not included by Congress in the section 112(b) HAP list and, consequently, was not included in the group of pollutants that were considered for inclusion in the urban HAP list. It is, however, a pollutant that we identified in the UATS as a concern in urban areas.

TABLE I–1.—LIST OF MOBILE SOURCE AIR TOXICS (MSATS)

Acetaldehyde [a]	Diesel Exhaust	MTBE.
Acrolein [a]	Ethylbenzene	Naphthalene.
Arsenic compounds [a]	Formaldehyde [a]	Nickel compounds. [a]
Benzene [a]	n-Hexane	POM (Sum of 7 PAHs)[a]

[1] Major stationary sources are sources that emit, or have the potential to emit, 10 tons per year or more of any one HAP or 25 tons per year or more of a combination of HAPs.

[2] Area sources are those stationary sources that are not major sources.

TABLE I–1.—LIST OF MOBILE SOURCE AIR TOXICS (MSATS)—Continued

1,3-Butadiene [a]	Lead compounds [a]	Styrene.
Chromium compounds [a]	Manganese compounds [a]	Toluene.
Dioxin/Furans [a]	Mercury compounds [a]	Xylene.

[a] Also on the list of urban HAPs for the Urban Air Toxics Strategy.

• How are air toxics from mobile sources formed?

Mobile source air toxics come from four sources. First, some air toxics are present in fuel and are emitted to the air when it evaporates or passes through the engine as unburned fuel. Benzene, for example, is a component of gasoline. Cars emit small quantities of benzene in unburned fuel, or as vapor when gasoline evaporates. Second, mobile source air toxics are formed through engine combustion processes. A significant amount of automotive benzene comes from the incomplete combustion of compounds in gasoline such as toluene and xylene that are chemically very similar to benzene. Like benzene itself, these compounds occur naturally in petroleum and become more concentrated when petroleum is refined to produce high octane gasoline. Diesel exhaust emissions, as well as formaldehyde, acetaldehyde, and 1,3-butadiene, are also by-products of incomplete combustion. Third, some compounds, like formaldehyde and acetaldehyde, are also formed through a secondary process when other mobile source pollutants undergo chemical reactions in the atmosphere. Finally, metal air toxics result from engine wear or from impurities in oil or gasoline. They can also be present in fuel additives.

• What are the Urban HAPs?

The urban HAPs are the 33 compounds that have been identified by the Agency in the Urban Air Toxics Strategy (UATS) [3] as those HAPs posing the greatest threat to human health in the largest number of urban areas. These compounds are a subset of the 188 compounds listed in section 112(b) of the Clean Air Act. The 33 urban HAPs are as follows:

TABLE I–2.—LIST OF URBAN HAPS FOR THE URBAN AIR TOXICS STRATEGY

Acetaldehyde	Coke oven emissions	Mercury compounds
Acrolein	1,2-dibromomethane	Methylene chloride (dichloromethane).
Acrylonitrile	1,2-dichloropropane (propylene dichloride)	Nickel compounds.
Arsenic compounds	1,3-dichloropropene	Polychlorinated biphenyls (PCBs).
Benzene	Ethyl dichloride (1,2-dichloroethane)	Polycyclic organic matter (POM).
Beryllium compounds	Ethylene oxide	Quinoline.
1,3-Butadiene	Formaldehyde	1,2,7,8-tetrachlorodibenzo-p-dioxine (and cogeners and TCDF cogeners).
Cadmium compounds	Hexachlorobenzene	1,2,2,2-tetrachloroethane.
Carbon tetrachloride	Hydrazine	Tetrachloroethylene (perchloroethylene).
Chloroform	Lead compounds	Trichloroethylene.
Chromium compounds	Manganese compounds	Vinyl chloride.

C. Basic Components of Today's Proposal

Many motor vehicle and fuel emission control programs of the past have reduced air toxics. EPA has recently created or proposed several programs that further reduce air toxics emissions from a wide variety of mobile sources. These include our reformulated gasoline (RFG) program, which has substantially reduced mobile source air toxics in certain areas of the country, our national low emission vehicle (NLEV) program, our Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements, and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements. In addition, certain other mobile source control programs have been specifically aimed at reducing toxics emissions (*i.e.*, our lead phase-out programs).

While these mobile source standards were put in place primarily to reduce ozone and particulate matter inventories through VOC and diesel PM controls, and thereby to help states and localities come into attainment with the National Ambient Air Quality Standards (NAAQS), they have reduced and will continue to reduce on-highway emissions of gaseous air toxics very significantly.[4] By 2020, these programs are expected to reduce 1990 levels of on-highway emissions of benzene by 75 percent, formaldehyde by 87 percent, 1,3-butadiene by 75 percent, and acetaldehyde by 82 percent.

In addition, we have issued or proposed regulations to control diesel particulate matter (diesel PM) emissions from mobile sources, including the recent light- and heavy-duty vehicle programs mentioned above. By 2020, we expect to see on-highway diesel PM emission reductions of 94 percent from 1990 levels.

Nevertheless, there is a continuing public health concern about the ambient levels of several key air toxics. Today's proposal therefore contains a plan to address mobile sources of these air toxics. We begin by considering the different kinds of emissions from motor vehicles and identifying a list of compounds that should be considered Mobile Source Air Toxics (MSATs). We then evaluate the effectiveness of current and proposed controls in reducing on-highway emissions of these MSATs. We then consider whether there are additional air toxics controls that should be put in place at this time to reduce on-highway MSAT inventories even more. Based on this assessment, we are proposing standards that will require individual refiners to maintain their current gasoline benzene content levels. Finally, we describe a

[3] National Air Toxics Program: The Integrated Urban Strategy; Notice (64 FR 38706–38740 (19 July 1999)).

[4] Included among the numerous chemicals that make up total VOC emissions—that thus are reduced when VOCs are reduced—are several gaseous toxics (*e.g.*, benzene, formaldehyde, 1,3-butadiene, and acetaldehyde).

process to conduct research and analysis to continue to assess the need for and feasibility of additional mobile source air toxics controls. We are proposing to conduct another rulemaking to be completed by December 2004, based on the additional research and analysis we conduct and any additional information that becomes available in that timeframe. That future rulemaking would re-evaluate the various decisions on motor vehicle and fuel air toxics controls made in this rulemaking.

1. Identification of Mobile Source Air Toxics

There are hundreds of different compounds and elements that are known to be emitted from passenger cars, on-highway trucks, and various types of nonroad equipment. Today's action identifies a list of pollutants known to be emitted from motor vehicles or their fuels and considered by EPA to pose potential adverse human health risks. This list is not intended to be a fixed one; additional compounds may be added to the list, in a future rulemaking, as we learn more about the pollutants emitted from mobile sources and the health effects of those pollutants. Similarly, compounds may be removed from the list if new information on the pollutants emitted by mobile sources or their health effects supports a different conclusion. Based on the available data, we are proposing a list of 21 mobile source air toxics (MSATs). We are requesting comment both on the list we have developed and on our approach to developing that list.

2. Assessment of Emission Benefits From Current Standards

Once we identified the MSATs, we were able to assess the impact that current and future mobile source controls will have on national emissions inventories of these pollutants. Today's action describes how our current mobile source emission control programs are expected to reduce these emissions. The very good news is that, by 2020, we expect existing programs like the reformulated gasoline (RFG) program, national low emission vehicle (NLEV) program, Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements (Tier 2), and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule), to significantly reduce on-highway emissions of key air toxics. Between 1990 and 2020, these programs are expected to reduce on-highway emissions of benzene by 75 percent, formaldehyde by 87 percent, 1,3-butadiene by 75 percent, and acetaldehyde by 82 percent. In addition, we expect to see on-highway diesel PM emission reductions of 94 percent.

3. Consideration of Additional Controls at This Time

Although we anticipate substantial reductions in emissions of key toxic pollutants by 2020, the serious health effects associated with many of these compounds lead us to evaluate whether additional controls are appropriate at this time. For the purpose of our analysis, we divide potential control measures into two broad categories: vehicle-based controls and fuel-based controls. Vehicle-based controls include programs that would reduce evaporative and exhaust emissions from vehicles and engines. Fuel-based controls explore how changing fuel formulation can reduce air toxic emissions.

The only toxics control program we are proposing today is fuel-based. Specifically, we are proposing to require refiners and importers to maintain the gasoline benzene content of the fuel they produce or import at the current benzene levels of such gasoline for the foreseeable future. We are also seeking comment on whether additional volumes of gasoline produced above the volumes produced in a baseline year should be subject to a different benzene standard. The overall goal of this program is to ensure that benzene emissions due to gasoline fuel benzene do not increase above current emission levels. The details of this program are discussed in section V below, as well as the various vehicle and fuel controls EPA has considered.

With regard to vehicle-based air toxics controls, EPA believes that it is not appropriate at this time to propose additional motor vehicle or fuel based controls under section 202(l)(2), beyond the controls currently adopted or proposed by the Agency. This is based on consideration of the technical feasibility, cost, and other factors relevant to a proposal of further controls at this time. EPA is also proposing a regulatory provision providing for a future rulemaking that would determine, based on the information available at that time, whether additional motor vehicle or fuel controls would be appropriate under section 202 (l)(2) to control emissions of hazardous air pollutants from motor vehicles and their fuels. Finally, the rulemaking would consider the contribution of nonroad engines to emissions of air toxics and whether controls that reduce these emissions along with motor vehicle emissions are appropriate under the Act.

4. Technical Analysis Plan and Future Rulemaking

We believe our evaluation to date of the need for, and appropriateness of, additional mobile source toxics control measures provides adequate support for today's proposal. At this time, EPA is also engaged in other toxics-related research activities through the NATA activities and the UATS described below. This emerging information will help us in further evaluating potential additional mobile source air toxics controls in the future.

In light of this ongoing work, we are proposing to conduct a Technical Analysis Plan as described in section VII below. This Plan would coordinate work within the Agency in several key areas, including development of emission factors for nonroad sources, analysis of toxics exposures in microenvironments, and examination of additional fuel- and vehicle-based air toxics controls for both motor vehicles and engines and nonroad engines. This work would be fully coordinated with the new work with NATA and the UATS. This will allow us to take full advantage of what is collectively learned and provide a solid basis for future rulemaking. The results of this research and analysis would form the basis of a future rulemaking, as discussed below.

5. Nonroad Air Toxics

While section 202(l)(2) of the Act specifies that we set standards to control hazardous air pollutants from motor vehicles and motor vehicle fuels, we believe it is also necessary to discuss nonroad sources in today's proposal, making it a comprehensive mobile source air toxics program, for two important reasons. First, today's proposal is intended to be a companion piece to EPA's Urban Air Toxics Strategy. As described above, the Urban Air Toxics Strategy is intended to address air toxics inventories in urban areas. Because both on-highway and nonroad engines contribute to those inventories, it is important to address both categories in a comprehensive strategy to reduce urban air toxics. Second, currently available data suggests that nonroad sources contribute approximately the same amount to national inventories of key air toxics as on-highway sources. Therefore, a comprehensive control strategy must include nonroad sources. Section 213 of the Act allows us to control emissions from those classes or categories of new nonroad engines that cause or contribute to air pollution which may reasonably be anticipated to endanger

public health or welfare. To the extent emissions of MSAT from these engines is found to cause or contribute to air pollution problems, EPA may decide to adopt further nonroad controls in the future, as specified in section 213 of the Act.

At the same time, while we are including nonroad sources in our discussions of inventory impacts and expected reductions from current nonroad emission control strategies, we are not proposing new emission control standards for these engines in this proposal. This is because we are lacking relevant data that are required to assess the appropriateness of additional MSAT controls. These include speciation data for some categories of nonroad engines, geographic dispersion of emissions, and information, including cost information, about technologies that can reduce these emissions further. Our Technical Analysis Plan, described below, would help us obtain the data we need to consider and in the future evaluate whether additional nonroad air toxics controls are needed and appropriate.

D. EPA's Statutory Authority for Proposing Today's Action

We are proposing today's action under the authority of section 202(l) of the Clean Air Act. The gasoline benzene standards in today's action are proposed under section 211(c) of the Clean Air Act.

Section 202(l) of the Act consists of two parts. Section 202(l)(1) calls on EPA to study the need for and feasibility of controlling toxic air pollutants associated with motor vehicles and motor vehicle fuels. That study is to focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain. The Act specifies that, at a minimum, the study focus on emissions of benzene, formaldehyde, and 1,3-butadiene.

Section 202(l)(2) instructs us to set standards to control hazardous air pollutants from motor vehicles, motor vehicle fuels, or both. These standards, which may be revised from time to time, are to reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the motor vehicle standards established under section 202(a) of the Act, the availability and cost of the technology, and noise, energy and safety factors, and lead time. The regulations are to apply, at a minimum, to benzene and formaldehyde emissions.

We completed the study required under section 202(l)(1) in April 1993. The report, entitled ''Motor Vehicle-Related Air Toxics Study,'' is available on our website (http://www.epa.gov/otaq/toxics.htm). Specific pollutants or pollutant categories discussed in this report include benzene, formaldehyde, 1,3-butadiene, acetaldehyde, diesel particulate, gasoline particulate, gasoline vapors, and selected metals. The emissions and exposure aspects of this report were recently updated in November 1999 for several of the air toxics covered in the 1993 study. That report, entitled ''Analysis of the Impacts of Control Programs on Motor Vehicle Toxics Emissions and Exposure in Urban Areas and Nationwide,'' is also available on our website, and is described in more detail in section I.E., below. We sought peer review comments on both the 1993 and 1999 studies. We considered the 1993 comments in developing the 1999 document and will consider the 1999 comments in developing our future activities (e.g., in the development of version 4 of the Hazardous Air Pollutant Exposure Model, HAPEM4).

Today's action is pursuant to section 202(l)(2). In this action, we identify a list of MSATs and discuss the impacts of existing mobile source emission control programs on their emissions. In a separate rulemaking, the HD2007 rule, we are proposing stringent emission standards that would lead to significant reductions of the gaseous and PM components in diesel exhaust emissions. In today's proposal, we are proposing standards to maintain the benzene content of gasoline fuel at 1998–1999 levels for volumes produced in that time period. We are also seeking comment on whether additional volumes of gasoline produced above the volumes produced in a baseline year should be subject to a different benzene standard.

Today's proposal is based on all the information EPA has available at this time. EPA recognizes that there are various gaps in the data, and that further analysis and evaluation would be useful in evaluating the appropriateness of and need for additional future controls on motor vehicles or their fuels. Given the important contribution of mobile sources to the national inventory of air toxics, we are proposing a plan to conduct this additional work in the near future. The results of this additional research would form the basis for a future rulemaking to re-evaluate the question of whether additional controls on motor vehicles and nonroad engines or their fuels are appropriate under the Act based on all of the information available to the Agency at that time.

E. Motor Vehicle Air Toxics Studies

In 1993, EPA released a study of motor vehicle-related air toxics in compliance with section 202(l)(1) of the Clean Air Act.[5] The study provided estimates of motor vehicle emissions of several pollutants believed to pose the greatest risk to public health. Using these estimates of emissions, the study modeled the exposure and risk attributable to motor vehicle emissions and projected emissions, exposures, and risk for the year 2010.

Peer review of this study was completed in 1994.[6] The comments from the peer review included suggestions for improving EPA's exposure modeling and risk assessment methodology. In response to these comments, EPA updated its exposure model for motor vehicle-related air toxics. Also, since 1993, significant new information on vehicle emission rates has been developed as part of the Auto/Oil program, the development of the Complex Model for reformulated gasoline, CARB test programs, and other sources, and much more is known about the impact of fuel properties on toxic emissions. Furthermore, EPA has developed new programs, such as the NLEV and Tier 2 standards, which have significant effects on projections of toxic emissions and exposure. Finally, EPA has released an updated cancer risk assessment for benzene, a draft reassessment for 1,3-butadiene, and a draft assessment for diesel exhaust emissions.[7, 8, 9,]

In light of all of this new information that has been developed since 1993, and in response to peer review comments, EPA has updated the estimates of emissions and exposure contained in

[5] EPA, 1993. Motor Vehicle-Related Air Toxics Study. Report No. EPA 420–R–93–005. This report can be accessed at http://www.epa.gov/otaq/toxics.htm.

[6] Peer review comments on the 1993 study can be accessed at http://www.epa.gov/otaq/toxics.htm.

[7] EPA 1998. Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. 1998. This report can be accessed at http://www.epa.gov/ncea/benzene.htm.

[8] EPA 1998. Environmental Protection Agency, Health Risk Assessment of 1,3-Butadiene. EPA/600/P–98/001A, February 1998. This report can be accessed at http://www.epa.gov/ncea/butadiene.htm.

[9] EPA 1999. Health Assessment Document for Diesel Emissions: SAB Review Draft. EPA/600/8–90/057D Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/diesel.htm.

[10] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030.

[11] For an explanation of the connection between diesel exhaust, which is one of our MSATs, and diesel PM, see section II.F.

the 1993 study.[10] The Agency is making further efforts to improve its understanding of toxic emissions, exposure, and risk associated with on-highway vehicles, nonroad equipment, and other sources as part of the National Air Toxics Assessment (NATA) process discussed below.

In the above air toxics studies, there are limitations in how ranges of exposures are modeled or characterized. For instance, the screening models the Agency has used do not consider ''hotspots'' for elevated air toxics concentrations. For this reason, EPA has not been able to conduct a complete exposure assessment. The Agency also needs to do more work on considering the costs and performance levels of pollution controls on air toxics. These activities would be included in the proposed Technical Analysis Plan discussed later in this preamble.

F. Other Air Toxics Activities

As we developed and prepared today's mobile source air toxics program, we worked in the context of two other important activities that are ongoing at the Agency. These are EPA's Integrated Urban Air Toxics Strategy (UATS) development and the National Air Toxics Assessment (NATA) activities. Because these two programs are also important parts of our efforts to reduce toxic emissions from all sources, this section contains a brief summary of their key components. Interested readers are encouraged to visit EPA's Toxics website for more information about these programs (www.epa.gov/otaq/toxics.htm).

1. Integrated Urban Air Toxics Strategy

EPA's Urban Air Toxics Strategy (the UATS) focuses on reducing the human health threats of air toxics in urban areas. In urban areas, toxic air pollutants raise special concerns because sources of emissions and people are concentrated in the same geographic areas, leading to large numbers of people being exposed to the emissions of many HAPs from many sources. In the UATS, EPA outlines future actions that we plan to take to reduce emissions of air toxics and improve our understanding of the health threats posed by air toxics in urban areas. The over-arching goal for the UATS is to reduce cancer and noncancer risks associated with air toxics in urban areas. Also, because air toxics in urban areas may threaten the health of some people more than others, depending on factors such as where they live in relation to toxic sources, we intend to characterize exposure and risk distributions both geographically and demographically. This will include particular emphasis on highly exposed individuals (such as those in geographic hot spots) and specific population subgroups (e.g., children, the elderly, and low-income communities).

The overall UATS goals are: (1) To reduce by 75 percent from 1990 levels the risk of cancer associated with air toxics from stationary sources (both large and small commercial and industrial sources); (2) to substantially reduce the noncancer health effects (e.g., birth defects and reproductive effects) associated with air toxics from small commercial and industrial sources; and (3) to address disproportionate impacts in certain areas (e.g., highly-exposed individuals in toxics ''hot spots'') or experienced by certain populations (e.g., children, the elderly, or minority and low-income communities).

As a first step in the UATS, EPA identified 33 of the 188 Section 112(b) toxic air pollutants that EPA concluded pose the greatest threat to public health in the largest number of urban areas (see Table I–2, above). It should be noted that while diesel exhaust emissions are not included as a specific pollutant in the list of 33 urban HAPs, many of the hazardous constituents of diesel exhaust emissions are included among them, and it is a pollutant that we identified in the UATS as a concern in urban areas.

The UATS outlines several steps that EPA will take to reduce urban air toxics and address risks, and as a part of the UATS, EPA has prepared an Action Plan. The key components of the Action Plan are as follows:

- Achieve reductions through regulatory actions and related projects. The strategy presents a framework for reducing air toxic emissions from all types of sources found in urban areas, including mobile sources, major industrial sources, and smaller stationary sources. Today's proposal contains mobile source-specific toxics regulations. We are also developing programs to reduce emissions from several area source categories (i.e., smaller commercial and industrial operations), and plan to complete regulations to address the new 13 sources identified in the UATS by 2004. Regulations are already under development or exist for the 16 other area source categories listed in the UATS.
- Collaborate with interested parties. We are working with state, local, and tribal agencies, environmental groups, environmental justice communities, and affected industries, including small businesses, to assure that any actions under the UATS are responsive to health concerns while promoting fairness, encouraging urban redevelopment, and minimizing regulatory burdens.
- Education and outreach efforts. We will make an effort to inform stakeholders about the UATS and get their input into designing programs to implement it.

2. National Air Toxics Assessment

National Air Toxics Assessment (NATA) activities are an important component of the UATS and EPA's overall goal of reducing exposure to air toxics. These assessment activities include air toxics monitoring, emissions inventory development, exposure modeling, research activities, and risk assessment. Over time, these activities will help us set program priorities, characterize risks, and track progress toward reducing exposure to air toxics. Specifically, our current NATA activities include expanding air toxics monitoring, improving and periodically updating emissions inventories, periodically conducting national- and local-scale air quality, multimedia and exposure modeling, characterizing risks associated with air toxics exposures, and continued research on health and environmental effects and exposures to both ambient and indoor sources of air toxics.

As part of these NATA activities, EPA is now conducting an initial national screening-level assessment to demonstrate our approach to characterizing air toxics risks nationwide. This initial screening-level assessment will help to characterize the potential health risks associated with inhalation exposures to the 33 urban HAPs and diesel exhaust emissions.[11] While such a broad-scale assessment is necessarily limited in the scope of the risks that it can assess quantitatively, and by the uncertainties inherent in the various types of data and methods currently available, it represents an important step in characterizing air toxics risks nationwide. Our initial national, screening-level air toxics assessment includes four major steps:

- Compiling a national emissions inventory of 1996 air toxics emissions from outdoor sources of air toxics emissions.

[10] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030.

[11] For an explanation of the connection between diesel exhaust, which is one of our MSATs, and diesel PM, see section II.F.

• Estimating 1996 air toxics ambient concentrations across the continental United States (and Puerto Rico and the Virgin Islands) for the 33 urban HAPs and diesel PM.

—Model evaluation comparing ambient concentrations with available monitored values.

• Estimating 1996 population exposures across the continental United States (and Puerto Rico and the Virgin Islands) to the 33 urban HAPs and diesel PM.

• Characterizing potential public health risks due to inhalation of these 33 urban HAPs.

In describing what NATA will include, it is also important to note the potentially important sources and pathways of risks to public health that are beyond the scope of this quantitative assessment. For example, while we recognize that indoor sources of air toxics emissions likely contribute substantially to the total exposures that people experience for a number of these HAPs, assessing these indoor sources of exposure cannot be done on a national scale at this time. Further, for a subset of these HAPs (*i.e.,* those that persist and bioaccumulate in the environment), dietary exposures (e.g., eating contaminated fish) likely contribute much more to the total risk associated with exposure to these pollutants than do the inhalation exposures that will be addressed in this assessment. These and other important aspects of total population exposures to air toxics will be addressed more fully over time as part of our NATA activities as more comprehensive data and assessment tools become available.

Additionally, NATA activities include other key activities that will support further risk characterizations on the local and national level in the future. These include:

• Developing and implementing a plan to characterize the concentrations of ambient air toxics through an expanded monitoring network. Data from existing state and local air monitoring programs will be compiled to summarize our current knowledge about ambient concentrations of air toxics. Existing ambient air toxics monitoring data will be compiled and summarized and then used as a ''reality check'' on model output.

• Improving existing monitoring networks, guided by data analysis and model predictions, to improve the collection of ambient concentration data for future model evaluations. As the monitoring program matures, trend sites will be established to assess the effectiveness of all of our air toxics control programs.

• Evaluating air toxics on a more local scale (e.g., an urban area) using more refined air quality modeling tools that factor in specific local information such as terrain (e.g., mountainous or flat) and local weather patterns. The results of national and local-scale modeling can be compared to provide a more complete context for the evaluation of air toxics.

• Comparing air toxics inventories from 1990 and 1996 on a toxicity-weighted basis to help inform future assessments of progress toward meeting the risk reduction goals.

• Recommending tools to state, local and tribal regulatory agencies for evaluating air toxics concentrations, exposures and risk. This will include a comparison of the results from national-scale models to those from more local-scale models.

While there continue to be significant uncertainties and gaps in methods, models, and data that limit our ability to assess risks to public health and the environment associated with exposures to air toxics, continued research will enable future assessment activities, both at the national screening-level and at more local refined levels, to yield improved assessments of cumulative air toxics risks.

II. What Are the Mobile Source Air Toxics?

A. Introduction

There are hundreds of different compounds and elements that are known to be emitted from passenger cars, on-highway trucks, and various nonroad equipment. Several of these compounds may have adverse effects on human health and welfare. In recognition of this fact, Congress instructed EPA, in section 202(l)(2) of the Act, to set emission control standards for hazardous air pollutants from motor vehicles and their fuels. Except for benzene and formaldehyde (specifically mentioned in 202(l)(2)), the Act does not specify the compounds that should be included in such a control program. Therefore, the first step in developing a mobile source air toxics control program is to identify the compounds that should be treated as hazardous air pollutants for purpose of section 202(l)(2). Since EPA data suggests that nonroad engines and vehicles emit the same pollutants, EPA will identify this list as a list of mobile source air toxics (MSATs).[12] EPA has used the methodology described below to develop this list of MSATs.

B. The Methodology Used To Identify Our List of Mobile Source Air Toxics

EPA developed the list of MSATs by first compiling all available recent (i.e., less than 10 years old) studies which speciated emissions from motor vehicles and their fuels. We then compared the list of compounds in EPA's Integrated Risk Information System (IRIS) database to the speciated lists of compounds in these studies. IRIS is a database of compounds that identifies EPA's consensus scientific judgment on the characterization of the potential adverse health effects that may result from a lifetime or acute exposure to various substance. IRIS may also indicate that based on the current data a compound can be found to have ''evidence of noncarcinogenicity'' i.e., the compound does not cause cancer.

By comparing the list of compounds in IRIS to these emission speciation studies, we generated a list of 21 compounds. An evaluation of the potential for adverse health effects reflected in IRIS and in the ongoing agency scientific assessments of these compounds indicates that the potential for adverse health effects from exposure to these compounds warrants inclusion as a MSAT.

It is important to note that inclusion on the list is not itself a determination by EPA that emissions of the compound in fact present a risk to public health or welfare, or that it is appropriate to adopt controls to limit the emissions of such a compound from motor vehicles or their fuels. The purpose of the list is more as a screening tool—it identifies those compounds emitted from motor vehicles or their fuels, and where the available information about their potential for adverse health or welfare effects indicates that further evaluation of emissions controls is appropriate. In conducting any such further evaluation, pursuant to sections 202(a) or 211(c) of the Act, EPA would consider whether emissions of the compound cause or contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare. Such an evaluation would also consider the appropriate level of any controls, based on the criteria established in section 202(l)(2). Inclusion of a compound on the MSAT list does not decide these issues, but instead identifies those compounds for which such an

[12] We have chosen to call our list of toxics a mobile sources list to acknowledge that nonroad sources may also contribute emissions of these pollutants. For purposes of section 202(l)(2), each of the MSATs would be considered a ''hazardous air pollutant from motor vehicles and motor vehicle fuels.''

evaluation would appear to be warranted.

EPA also compared its universe of known compounds emitted from motor vehicles against other lists or sources of information on toxic substances, and did not identify any additional substance that we believe should be listed at this time. EPA believes this process allows for re-evaluation of the MSAT list in the future, as information is learned about additional compounds or new information is learned about the 21 compounds. Compounds may be added to or removed from the list in a rulemaking.

EPA invites comment on an alternative listing approach whereby any compound emitted from motor vehicles or their fuels that is listed under section 112(b) would be considered a MSAT. Additional compounds not on the section 112(b) list, such as diesel exhaust, would be considered a MSAT where EPA has sufficient scientific evidence, such as an EPA health assessment or similar analysis, indicating a potential for adverse effects on public health or welfare that would warrant inclusion on the list.

1. Identifying Pollutants Emitted From Mobile Sources

In identifying a list of MSAT, EPA first compiled all available recent studies which speciated emissions from motor vehicles and their fuels. To do this, EPA reviewed a number of databases that contain information on the various species of compounds emitted from motor vehicles and their fuels. It is difficult to get a precise picture of these emissions due to the variety and number of databases in the literature. This is particularly true for hydrocarbon (HC) speciation databases. Most toxic air pollutants are hydrocarbons by their chemical nature and thus will be detected only if the HCs are chemically separated and identified (speciated). Many test programs that characterize vehicle emissions identify only total hydrocarbons (THC) without separating out the individual species of hydrocarbons and many use different test methods. The issue is further complicated by the limited availability of these databases for certain vehicle classes.

We have recent (less than ten years old) speciation profiles for emissions from light-duty gas vehicles (LDGV), heavy-duty diesel vehicles (HDDV), heavy-duty gasoline vehicles (HDGV), gasoline powered nonroad engines, and turbine engine aircraft.[13] Data for other vehicle and engine types (e.g., light-duty diesel engines and nonroad diesel engines) either do not exist or are outdated (more than 10 years old) and thus are judged not to be representative of current emissions. However, it is unlikely that the lack of recent data for these vehicle and engine types would result in the absence of compounds from the list, since the combustion process is similar to vehicle and engine types for which we do have data. Forty-four speciation studies were found that met this age criteria. All of these speciation profiles attempt to accomplish more or less the same objective: separating and identifying the compounds that comprise the hydrocarbon portion and particulate phase of mobile source emissions.

With regard to alternative-fueled vehicles, most of the compounds included in their exhaust are included on our list of MSATs (e.g., formaldehyde, acetaldehyde). It should be noted that, depending on their fuel, these vehicles may also emit unburned ethanol and methanol, which were not included in our speciation data.

Low level ethanol mixtures (10% ethanol and 90% gasoline) are widely used in the United States. Higher level ethanol mixtures (e.g., 85% ethanol) are used as alternative fuel sources in a small number of flexible fuel vehicles. However, there is a paucity of data on potential inhalation effects of ethanol, and the compound is not listed in IRIS. Thus it is not included on the list of MSATs. EPA requests comment on whether it should be included.

Methanol is also a promising alternative fuel for motor vehicles, and a small number of flexible fuel vehicles operate on a methanol mixture (e.g., 85% methanol). Inhalation of methanol at high concentrations (greater than 1000 ppm) has caused birth defects in rats and mice and at low levels can cause symptoms such as eye irritation, headaches, dizziness, and nausea. Methanol is highly toxic by oral exposure routes and is listed in IRIS. Because of the small numbers of vehicles using methanol currently in use, EPA requests comment on whether this compound should also be included in our MSAT list.

EPA requests comment on our list of compounds associated with motor vehicles and their fuels provided here.

2. Using IRIS To Identify Pollutants With Potential Adverse Health Effects

The Integrated Risk Information System (IRIS) is an EPA database of scientific information that contains the Agency consensus scientific positions on potential adverse health effects that may result from lifetime (chronic) or short-term (acute) exposure to various substances found in the environment.[14] IRIS currently provides health effects information on over 500 specific chemical compounds. The information contained in the IRIS database includes an EPA finding for each compound that: (1) there is a health hazard, either cancer or noncancer, associated with exposure to the compound, (2) the compound is noncarcinogenic based on current data, or (3) the data is insufficient to determine if the compound is a hazard.

IRIS contains chemical-specific summaries of qualitative and quantitative health information. IRIS information may include the reference dose (RfD) for noncancer health effects resulting from oral exposure, the reference concentration (RfC) for noncancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with information on specific exposure situations, the summary health hazard information in IRIS may be used in evaluating potential public health risks from environmental contaminants.

Before a substance is listed on the IRIS database, it goes through a thorough scientific evaluation. This consensus and review process, managed by EPA's Office of Research and Development (ORD), consists of (1) an annual **Federal Register** announcement of the IRIS agenda and a call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessment and draft IRIS summaries, (4) internal EPA peer review, (5) external peer review, (6) Agency consensus review and management approval within EPA, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS database.

C. List of Mobile Source Air Toxics

By comparing the list of compounds in IRIS to the motor vehicle emissions identified in the speciation studies, we identified 21 MSAT. This list is set out in Table II–1. Each of these pollutants are known, probable, or possible human carcinogens (Group A, B or C) or were considered by the Agency to pose a risk

[13] See appendix I, chapter 2 of the TSD.

[14] EPA IRIS Database, http://www.epa.gov/ngispgm3/iris/index.html

of adverse noncancer health effects.[15] EPA requests comment on the appropriateness of the compounds on the list of compounds associated with motor vehicles and their fuels provided here as well as the need to consider other hazardous or toxic air pollutants for inclusion on the list.

It is difficult to identify the specific form of metals being emitted in motor vehicle exhaust because the databases only report the total amount of metal compound identified. As a result, we have chosen to list the entire group of metal compounds if any compound of the metal has been detected in motor vehicle exhaust and any compound of the metal is listed in IRIS as potentially causing adverse human health effects. For example, if we assume most chromium (Cr) emissions for mobile sources are unidentified as to the species, we would present the emissions as total chromium and not attempt to allocate these emissions because of the lack of accurate metal speciation information in most cases. When we assess the range of potential health impacts associated with exposure to chromium compounds, we consider the health effects associated with each compound for which we have information. For chromium, the most toxic form in IRIS is Cr+6; hence the health impacts described for chromium compounds include these most serious effects even though it is highly unlikely that all motor vehicle emissions are Cr+6. EPA believes this listing approach is a reasonable, health-protective way to handle the uncertainty surrounding motor vehicle emissions of metals. We also recognize that this is not an appropriate methodology for assessing the actual health risks of the entire group of metal compounds emitted from motor vehicles.

TABLE II–1.—PROPOSED LIST OF MOBILE SOURCE AIR TOXICS (MSATS)

Acetaldehyde	Diesel Exhaust	MTBE.[c]
Acrolein	Ethylbenzene	Naphthalene.
Arsenic Compound[a]	Formaldehyde	Nickel Compounds.[a]
Benzenen	n-Hexane	POM.[d]
1,3-Butadiene	Lead Compounds[a]	Styrene.
Chromium Compounds[a]	Manganese Compounds[a]	Toluene.
Dioxin/Furans[b]	Mercury Compounds[a]	Xylene.

[a] Although the different species of the same metal differ in their toxicity, the onroad mobile source inventory contains emissions estimates for total compounds of the metal identified in particulate speciation profiles (*i.e.,* the sum of all forms).

[b] This entry refers to two large groups of chlorinated compounds. In assessing their cancer risks, their quantitative potencies are usually derived from that of the most toxic, 2,3,7,8-tetrachlorodibenzodioxin.

[c] MTBE is listed due to its potential inhalation air toxics effects and not due to ingestion exposure associated with drinking water contamination.

[d] Polycyclic Organic Matter includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees centigrade. A group of seven polynuclear aromatic hydrocarbons, which have been identified by EPA as probable human carcinogens (benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, 7,12-dimethylbenz(a)anthracene, and indeno(1,2,3-cd)pyrene) are sometimes used as a surrogate for the larger group of POM compounds.

D. How Our List of MSATs Compares to Other Lists or Sources of Data on Toxics

There are other sources that provide information characterizing the cancer and noncancer health effects associated with exposure to air toxics. In identifying our MSAT list we relied upon the health effects data from the EPA IRIS database because it represents EPA's scientific consensus opinion on the health effects associated with exposure to various pollutants.

We also compared our emissions speciation data to four other lists of toxic air pollutants to confirm that our MSAT list is reasonable. The four lists of toxic air pollutants are: the Clean Air Act (CAA) section 112(b) list of hazardous air pollutants; California EPA (CalEPA) list of toxic air contaminants (TAC); U.S. Department of Health and Human Service Agency for Toxic Substances and Disease Registry (ATSDR) list of Minimal Risk Levels (MRLs); and International Agency for Research on Cancer (IARC) monographs on cancer.

Comparing these four lists against the emissions speciation studies, we identified two additional compounds not included on our list of 21 MSAT '' propionaldehyde and 2,2,4-trimethylpentane. Both the Cal EPA TAC list and the CAA section 112(b) HAP list contain these compounds.

At this time EPA is not including propionaldehyde or 2,2,4-trimethylpentane in the list of MSATs because EPA has not drawn a conclusion on the potential adverse health effects associated with exposure to these pollutants. We request comment on whether these two compounds should be included on our MSAT list and, if so, why. Comments should include scientific information on the potential health effects of these pollutants.

E. Diesel Health Assessment Document

One of the key features of today's program is that we are proposing to designate diesel exhaust as a mobile source air toxic. The following paragraphs describe the most current information regarding the EPA's assessment of the health effects of exposure to diesel exhaust and provide information regarding actions by other agencies to evaluate the hazard associated with exposure to diesel exhaust.

EPA determined a reference concentration in 1993 to minimize noncancer health effects resulting from exposure to diesel exhaust. EPA has summarized available information to characterize the cancer and noncancer health effects from exposure to diesel exhaust emissions in the draft *Health Assessment Document for Diesel Emissions* (the Assessment). This information is also presented in the TSD.

The key components of the current draft Assessment are: (1) information about the chemical components of diesel exhaust and how they can influence toxicity, (2) the cancer and noncancer health effects of concern for humans, and (3) the possible impact or risk to an exposed human population. EPA is currently revising the Assessment based on a February 2000 review by the Agency's Science Advisory Board (SAB) Clean Air Scientific Advisory Committee (CASAC). A revised Assessment is expected to be available for peer review and public comment in late July 2000. The Assessment will be reviewed by

[15] A further discussion of the potential cancer and noncancer risks, and other dose-response information for each MSAT can be found in chapter 3 of the TSD.

CASAC late in 2000. The updated Assessment will inform the Technical Analysis Plan described in today's proposed program.

The proposed finding in EPA's draft Health Assessment Document, under review by CASAC, is that diesel exhaust is a likely human carcinogen in the lung at environmental levels of exposure and that exposure to diesel exhaust can pose a noncancer health hazard.

The concern for the cancer and noncancer health hazard resulting from diesel exhaust exposure is widespread. Several national and international agencies have designated diesel exhaust or diesel particulate matter as a ''potential'' or ''probable'' human carcinogen. The International Agency for Research on Cancer (IARC) considers diesel exhaust ''probably carcinogenic to humans''. Based on IARC findings, the State of California identified diesel exhaust in 1990 as a chemical known to the State to cause cancer and has listed diesel PM as a toxic air contaminant. The National Institutes for Occupational Safety and Health has classified diesel exhaust a ''potential occupational carcinogen.'' The Department of Health and Human Services (DHHS) recently designated diesel exhaust particulates as ''reasonably anticipated to be a human carcinogen'' in its Ninth Report on Carcinogens.

F. Diesel Exhaust and Diesel Particulate Matter

Diesel exhaust include gaseous and particulate components. Gaseous components of diesel exhaust include organic compounds, nitrogen-containing compounds, sulfur compounds, carbon monoxide, carbon dioxide, water vapor, and excess air (nitrogen and oxygen). Among these gaseous organic compounds are benzene (a known human carcinogen), formaldehyde, acetaldehyde, and 1,3-butadiene (possible or probable human carcinogens). Particulate components include many organic compounds that are mutagenic as well as several trace metals (including chromium, manganese, mercury and nickel) that may have general toxicological significance (depending on the specific species). In addition, small amounts of dioxins have been measured in diesel exhaust, some of which may partition to the particle phase.

Because diesel exhaust is a mixture of particles and gases, the choice of a measure of exposure (*i.e.,* dosimeter) is important. EPA believes that exposure to whole diesel exhaust is best described, as many researchers have done over the years, by diesel particulate concentrations expressed in units of mass concentration (*e.g.,* μg/m^3). The choice of this dosimeter implies that the contribution of the gaseous components and diesel particulate constituents to toxicity are related by diesel particulate mass. This assumption is consistent with historic practice, but can only be validated when there is a better understanding of the toxicological mode of action for diesel exhaust.

While some of the cancer and noncancer hazard may be associated with exposure to the gaseous component of diesel exhaust, studies suggest that the particulate component plays a substantial role in carcinogenicity and noncancer effects. Investigations show that diesel particles (the elemental carbon core plus the adsorbed organics) induce lung cancer at high doses and that the particles, independent of the gaseous compounds, elicit an animal lung cancer response. The presence of non-diesel elemental carbon particles, as well as the organic-laden diesel particles, correlate with an adverse inflammatory effect in the respiratory system of animals. Additional evidence suggesting the importance of the role of particulate matter in diesel exhaust includes the observation that the extractable particle organics collectively produce cancer and adverse mutagenic toxicity in laboratory experiments.

Given the available information, we are proposing to list diesel exhaust as a mobile source air toxic pollutant. We invite scientific and policy rationales for listing only the particulate component of diesel exhaust as an MSAT.

III. How Are Motor Vehicle Emission Control Programs Reducing MSAT Emissions?

In the previous section we identified the 21 MSATs. We now turn to an evaluation of the impact of existing and planned controls on inventories of those air toxics by examining the emissions inventories and estimated reductions expected to be achieved by our various mobile source control programs.

The data and information available on emissions of these 21 MSATs vary considerably. While we have baseline inventory data for all of the MSATs except napthalene, we do not have inventory projections for all of them. Therefore, we are examining the projected impacts of our current and proposed mobile source control program by groupings of air toxics. More specifically, we have projections of future emissions for five gaseous toxics (benzene, formaldehyde, 1,3-butadiene, acetaldehyde, MTBE) and for diesel PM[16] and we present these in this section. However, we do not have emissions projections for the remaining gaseous toxics (acrolein, POM, styrene, toluene, xylene, ethylbenzene, naphthalene, and n-hexane), but because these compounds are part of VOCs, we believe it is reasonable to utilize VOC emissions inventory projections to track the expected impact of our control programs on these other gaseous MSATs. Finally, we also do not have emissions inventory projections for the metals on the MSAT list (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxins/furans. While metal emissions and dioxin/furans emissions are associated with particles, and it is possible that they track PM emissions to some extent, we do not have good data on these relationships. Therefore, we are not presenting emission projections for these compounds in this document.

As we describe in the following discussion, there have been and will continue to be significant reductions in MSAT emissions as a result of implemented, promulgated, and proposed regulations. By 2020, we project on-highway emissions of gaseous toxics such as benzene, formaldehyde, 1,3-butadiene, and acetaldehyde, to decrease by 75 percent or more from 1990 levels as a result of our mobile source control programs up to and including our Tier 2 control program and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule). Under these current and proposed controls we expect on-highway diesel PM emissions to be reduced by more than 90 percent by 2020, as compared with 1990 levels. Nonroad engines and equipment also contribute substantially to levels of MSAT emissions and have only in recent years been subject to emission standards. Since nonroad engines are not subject to the same stringent controls as on-highway vehicles, the reductions from these sources are more moderate than those for on-highway sources.

The discussion in this section consists of two parts. First, we describe current inventories of MSAT emissions. Next, we describe how our on-highway emission control programs will reduce them. Interested readers should refer to

[16] In this notice the emissions inventory for diesel exhaust is looked at in terms of diesel PM, as that is what we have measured to date. Thus, even though we are proposing to list diesel exhaust as an MSAT, all emissions inventory and trends numbers are stated in terms of diesel PM.

chapter 4 of our Technical Support Document for more detailed information about the methodology we used to compile these inventories and the results of our analysis. We consider the impacts of our nonroad engine control programs on MSAT emissions in section VI of this preamble.

A. Baseline Inventories

We developed inventory estimates for several gaseous MSATs (acetaldehyde, benzene, 1,3-butadiene, formaldehyde, MTBE) and also for diesel PM as part of the 1999 study, ''Analysis of the Impacts of Control Programs on Motor Vehicle Toxic Emissions and Exposure in Urban Areas and Nationwide,'' described in Section I.E, above (hereafter referred to as the 1999 EPA Motor Vehicle Air Toxics Study, or the 1999 Study).[17] We addressed these five gaseous MSATs and diesel PM because we had detailed information on the emission impacts of emission control technologies, fuel properties, and other parameters for these compounds.

The 1999 EPA Motor Vehicle Air Toxics Study provides 1990 and 1996 estimates of emissions for these compounds. The 1990 baseline represents estimated emissions before any of the programs added by the 1990 Clean Air Act Amendments were implemented. The 1996 estimates reflect toxics emissions with some of the new Clean Air Act programs in place, such as Phase 1 of the RFG program. We present emission estimates for these years in Table III–1. Note that since completion of the Study, we have updated our estimates of diesel PM emissions; these updated estimates are presented in Table III–1. It should also be noted that these estimates are only for on-highway vehicles.

TABLE III–1.—ANNUAL EMISSION SUMMARY FOR THE TOTAL U.S. FOR SELECTED AIR POLLUTANTS, ON-HIGHWAY VEHICLES ONLY

[Short tons[a] per year]

Compound	1990 baseline emissions	1996 emissions
1,3-butadiene	36,000	22,000
Acetaldehyde	41,000	27,000
Benzene	257,000	165,000
Formaldehyde	139,000	80,000
Diesel PM[b]	235,000	180,000
MTBE	55,000	65,000

[a] In this notice we report emissions in terms of short tons as opposed to metric tons. One short ton is 2,000 pounds. To convert to metric tons, multiply short tons by 0.9072. Note that all emissions and percentages in this and subsequent tables are rounded.

[b] The 1996 diesel PM estimate is based on the Tier 2 rulemaking inventories, updated to reflect the Updated Tier 2 Emissions Inventory for light-duty diesel exhaust and the proposed 2007 heavy-duty engine rule for heavy-duty diesel exhaust. For 1990, we used estimates from EPA's Trends Report for that year, as described below.

The 1996 National Toxics Inventory (NTI) prepared in connection with the Agency's NATA [18, 19] activities, described above, also contains emission estimates for 1,3-butadiene, acetaldehyde, benzene, formaldehyde and MTBE. The 1996 NTI emission estimates for these compounds differ slightly from those generated in the 1999 Study, due largely to revisions made to the NTI based on state comments. Since diesel exhaust are not included on the list of 112(b) hazardous pollutants, which is the focus of the 1996 NTI, diesel PM estimates have not been compiled there.

The 1996 National Toxics Inventory (NTI) prepared in connection with the Agency's NATA activities, described above, also contains emission estimates for 1,3-butadiene, acetaldehyde, benzene, formaldehyde and MTBE. The 1996 NTI emission estimates for these compounds differ slightly from those generated in the 1999 Study, due largely to revisions made to the NTI based on state comments. Since diesel exhaust are not included on the list of 112(b) hazardous pollutants, which is the focus of the 1996 NTI, diesel PM estimates have not been compiled there.

The 1996 NTI also contains 1996 emissions estimates for several other MSATs, and includes data for nonroad [20] as well as on-highway sources. We present these data in Table III–2. We also indicate the on-highway and nonroad percentages of the national inventories for these MSATs (the total national inventories include emissions from on-highway and nonroad mobile sources, major and area stationary sources, and other sources such as forest fires). Between the 1999 EPA Motor Vehicle Air Toxics Study and the 1996 NTI, we have baseline inventory data for all of the 21 MSATs except mercury compounds and naphthalene.[21] [22]

[17] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030. This report can be accessed at http://www.epa.gov/otaq/toxics.htm.

[18]–

[19] [Reserved].

[20] The nonroad inventory in the 1996 NTI includes emissions data for aircraft, commercial marine vessel, locomotives, and other nonroad engines. Note that under the Clean Air Act definition, nonroad does not include aircraft. For convenience, in this notice the term ''nonroad'' will include aircraft except where otherwise noted. It should be noted that the NONROAD model, on which the estimates for nonroad engines other than locomotive, commercial marine vessels, and aircraft are based, is still draft, and the emissions estimates based on this model are subject to change.

[21] [Reserved].

[22] Naphthalene emissions are not reported in the 1996 NTI separately from 16–PAH. Since diesel exhaust emissions are not included in the list of 112(b) hazardous pollutants that is the focus of the 1996 NTI, diesel PM emissions estimates have not been compiled there. See Chapter 3 of the TSD for the explanation of the linkage between diesel exhaust and diesel PM.

TABLE III–2.—1996 ON-HIGHWAY AND NONROAD EMISSION INVENTORIES OF PROPOSED MSATS 1996 NTI (SHORT TONS)

Compound	On-Highway		Nonroad		Mobile sources	
	Tons	Percent of total national emissions (percent)	Tons	Percent of total national emissions (percent)	Tons	Percent of total national emissions (percent)
1,3-Butadiene [a]	23,500	42	9,900	18	33,400	60
Acetaldehyde [a]	28,700	29	40,800	41	69,500	70
Acrolein [a]	5,000	16	7,400	23	12,400	39
Arsenic Compounds [a]	0.25	0.06	2.01	0.51	2.26	0.57
Benzene [a]	168,200	48	98,700	28	266,900	76
Chromium Compounds [a]	14	1.2	35	3	49	4.2
Dioxins/Furans [a, b]	0.0001	0.2	N.A.	N.A.	0.0001	0.2
Ethylbenzene	80,800	47	62,200	37	143,000	84
Formaldehyde [a]	83,000	24	86,400	25	169,400	49
Lead Compounds [a]	19	0.8	546	21.8	565	22.6
Manganese Compounds [a]	5.8	0.2	35.5	1.3	41.3	1.5
Mercury Compounds [a]	0.2	0.1	6.6	4.1	6.8	4.2
MTBE	65,100	47	53,900	39	119,000	86
n-Hexane	63,300	26	43,600	18	106,600	44
Napthalene	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Nickel Compounds [a]	10.7	0.9	92.8	7.6	103.5	8.5
POM (as sum of 7 PAH) [a]	42.0	4	19.3	2	61.3	6
Styrene	16,300	33	3,500	7	19,800	40
Toluene	549,900	51	252,200	23	802,100	74
Xylene	311,000	43	258,400	36	569,400	79

[a] Indicates also on the list of urban HAPs for the Integrated Urban Air Toxics Strategy.

[b] Mass given in tons of TEQ (toxic equivalency quotient). The EPA Office of Research and Development (ORD) has recently developed an inventory for dioxin and dioxin-like compounds using different methods than those used in the NTI. For 1995, the EPA-ORD estimate of on-highway emissions of dioxin compounds is 0.00005 tons TEQ, comprising 1.5 percent of the national inventory in that year.

The above inventory data reflect certain interesting characteristics of mobile source air toxics emissions. First, mobile sources account for the majority of the national inventory of three of the gaseous MSATs that are included on the urban HAP list. These three are 1,3-butadiene (60 percent), acetaldehyde (70 percent), and benzene (76 percent). Mobile sources account for 39 percent of the national inventory of acrolein, and 49 percent of the national inventory of formaldehyde, two other gaseous urban HAPs. All of these MSATs are formed as part of the combustion process. In addition, benzene is also released through evaporative emissions from gasoline.

Second, with regard to the other MSATs that are included on the urban HAP list, the mobile source contribution generally is small (arsenic compounds, chromium compounds, manganese compounds, nickel compounds, POM, and dioxins/furans). The sole exception is lead compounds. Mobile sources contribute 23 percent to national inventories of lead compound emissions, due primarily to nonroad sources and, more specifically, to the use of a lead-additive package used to boost the octane of aviation gasoline.[23] The mobile source contribution to the other metals on the urban HAP list comes primarily from engine wear, some fuel additives, or impurities in engine oil.

With regard to the gaseous MSATs that are not included on the urban HAP list (ethylbenzene, MTBE, n-hexane, styrene, toluene, and xylene), mobile source contributions are high because of the presence of these compounds in gasoline.

In addition, mobile sources account for almost all of diesel PM emissions. As shown in Table III–1, above, we estimate that 1996 on-highway diesel PM emissions are approximately 180,000 tons. We estimate that 1996 nonroad diesel PM emissions are approximately 346,000 tons, as discussed in section VI of this document.[24]

B. Impacts of Motor Vehicle Emission Controls on Emission Inventories

1. Description of Emission Control Programs

Many of the programs that we have put in place since the passage of the 1990 Clean Air Act Amendments to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, PM and CO have also reduced MSAT and diesel PM emissions. For example, measures to control hydrocarbons from motor vehicles are also effective in controlling gaseous toxics. In addition, certain programs address air toxics directly, such as the RFG program and the gasoline lead phase-out. In this section we briefly describe several categories of mobile source emission control measures that have helped reduce inventories of these harmful compounds. These programs include:

- More stringent vehicle standards and test procedures. The 1990 Clean Air Act Amendments set specific emission standards for hydrocarbons and for PM. Air toxics are present in both of these pollutant categories. As vehicle manufacturers develop technologies to comply with the hydrocarbon and particulate standards (e.g., more efficient catalytic converters), we expect air toxics to be reduced as well. Since 1990, we have developed a number of programs to address exhaust and evaporative hydrocarbon emissions and PM emissions. Some of the key programs are the Tier 1 and NLEV standards for light-duty vehicles and trucks; enhanced evaporative emissions standards; the supplemental federal test procedures (SFTP); urban bus standards;

[23] Aviation gasoline is used by a relatively small number of aircraft, those with piston engines, which are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

[24] Note that the nonroad diesel PM emissions estimate is still draft and is subject to change.

and heavy-duty diesel and gasoline standards for the 2004/2005 time frame.

• Recent motor vehicle/fuel control initiatives. Two of our recent initiatives to control emissions from motor vehicles and their fuels are the Tier 2 control program and our recently proposed 2007 heavy-duty engine rule. Together these two initiatives define a set of comprehensive standards for light-duty and heavy-duty motor vehicles and their fuels. In both of these initiatives, we treat vehicles and fuels as a system. The Tier 2 control program establishes stringent tailpipe and evaporative emission standards for light-duty vehicles and a reduction in sulfur levels in gasoline fuel beginning in 2004. The proposed 2007 heavy-duty engine rule proposes stringent exhaust emission standards for heavy-duty engines and vehicles for the 2007 model year as well as reductions in diesel fuel sulfur levels starting in 2006.

• Limits on gasoline volatility. Volatility is a measure of how easily a liquid evaporates. As described earlier, some toxics such as benzene are present in gasoline and get into the air when gasoline evaporates. We imposed limits on gasoline volatility in the early 1990s to control evaporative emissions of both hydrocarbon and toxic compounds (most air toxics are hydrocarbons, so programs designed to reduce hydrocarbon emissions also reduce air toxics).

• Reformulated gasoline. The 1990 Clean Air Act Amendments required reformulated gasoline to be introduced in the nation's most polluted cities beginning in 1995. From 1995 through 1999, these gasolines were required to provide a minimum 16.5 percent reduction in air toxics emissions over typical 1990 gasolines, increasing to a 21.5 percent minimum reduction beginning in the year 2000. The air toxics reductions have been achieved mainly by further reducing gasoline volatility and by reducing the benzene, aromatics, sulfur, and olefin content of the gasoline.

• Phase-out of lead in gasoline. One of the first programs was the removal of lead from gasoline. The lead phase out began in the mid-1970s. It was completed January 1, 1996 when lead was banned from motor vehicle gasoline. The removal of lead from gasoline has essentially eliminated on-highway mobile source emissions of this highly toxic substance.

• Ensuring emissions are controlled while vehicle actually used. Many of our vehicle standards require certification of new engines and vehicles, but ensuring continued performance of emission controls can be difficult. The Clean Air Act establishes several programs to make sure vehicle emission controls are functioning properly in actual use. These programs include requirements for periodic emission inspections (I/M, or inspection and maintenance programs) and for computerized diagnostic systems that alert drivers and mechanics to malfunctioning emission controls.

We encourage the interested reader to refer to chapter 1 of our TSD for more detailed information about these programs.

2. Emission Reductions From Control Programs

We expect the mobile source emissions control programs described above to have beneficial impacts on the national inventories of MSATs. The remainder of this section summarizes our MSAT inventory projections. First, we present an overview of our inventory methodologies. Next, we present the results of our inventory projections. We encourage interested readers to refer to chapter 4 of our TSD for a more detailed discussion of these projections and how we developed them. The inventory projections in this section are for on-highway vehicles only, since we have the most complete information for this category of mobile sources. Projections of nonroad MSAT emissions are included in section VI of this preamble.

a. Overview of Inventory Sources

We have developed inventory projections for five gaseous MSATs, for VOC, and for diesel PM for the years 2007 and 2020 under our current and proposed control programs. These programs include the national low-emission vehicle (NLEV) program, the reformulated gasoline (RFG) program, the 2004 heavy-duty diesel and gasoline engine standards, the Tier 2/Sulfur controls, and our recently proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule).

The inventory projections for the five gaseous toxics are based on the 1999 EPA Motor Vehicle Air Toxics Study, and data from a spreadsheet model developed in support of the proposed 2007 heavy-duty engine rule. [25] The 1999 Study estimated on-highway motor vehicle air toxics emissions for ten urban areas (Atlanta, Chicago, Denver, Houston, Minneapolis, New York City, Philadelphia, Phoenix, Spokane, and St. Louis) and 16 geographic regions. These areas were selected to reflect the range of potential fuels, temperatures, and I/M programs observed in the U.S. The estimation methodology used in the 1999 Study was similar to that used in our original 1993 Motor Vehicle Related Air Toxics Study. In our approach, the MOBILE model is used to generate total organic gas (TOG) emissions from on-highway motor vehicles by vehicle class and model year. Toxics fractions, developed as a percentage of the toxic compound of interest contained in TOG emissions, are then applied to the MOBILE-based TOG emission rates (reported in grams per mile) to arrive at toxics emission rates (reported in grams per mile or milligrams per mile). These toxics fractions are developed as a function of vehicle class (*e.g.*, light-duty, heavy-duty), fuel type (*e.g.*, gasoline or diesel), fuel composition, and technology type (*e.g.*, non-catalyst, catalyst).

We do not have detailed emissions data for gaseous MSATs other than the five gaseous MSATs examined in the 1999 Study. However, we expect the trend for other gaseous MSATs, including acrolein, POM, styrene, xylene, toluene, ethylbenzene, naphthalene, and n-hexane, to follow that of VOC, since all of these compounds are VOCs. Therefore, to estimate projected inventory impacts from mobile source emission control programs, we use VOC inventories.

We believe this is appropriate because all of these compounds are constituents of VOCs, and we expect their inventories to decrease in proportion to decreases in overall VOC emissions. We recognize that some gaseous MSATs may not decrease at the same rate as VOCs overall. Without having more detailed emission data for each of the MSATs, however, we are unable to project how those rates may differ. We request comment on this approach, and on how to develop inventory projections for the other gaseous MSATs.

Our VOC and diesel PM emission estimates are derived from several sources. The 1996 and later values for light-duty vehicles are based on the Tier 2 rulemaking inventories, updated to reflect the Updated Tier 2 Emissions Inventory spreadsheet.[26] The 1996 and later values for heavy-duty engines and vehicles are based on data from a spreadsheet model developed in support of the proposed 2007 heavy-

[25] This spreadsheet model can be found in EPA Air Docket A–99–06, Item II-B–31.

[26] Details of this approach can be found in a memorandum by Harvey Michaels to Docket A–2000–12 titled ''Adjustment to the Tier 2 Air Quality Inventory for the Mobile Source Air Toxics Proposed Rule''.

duty engine rule.[27] The 1990 VOC emission estimate is based on the 1999 EPA Motor Vehicle Air Toxics Study,[28] and the 1990 diesel PM is from EPA's Trends Report.[29]

We are not reporting inventory trends for the metals on our list of MSATs (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxins/furans. Metals in mobile source exhaust can come from fuel, fuel additives, engine oil, engine oil additives, or engine wear. Formation of dioxin and furans requires a source of chlorine. Thus, while metal emissions and dioxin/furan emissions are associated with particles, there are a number of other factors that contribute to emission levels. While it is possible that these compounds track PM emissions to some extent, we do not have good data on these relationships.

b. Emission Reductions

Table III–4 presents the annual emission projections for on-highway vehicles in the years 2007 and 2020 for five gaseous toxics, VOC, and diesel PM with our current and proposed on-highway control programs.

TABLE III–4.—ANNUAL FIFTY-STATE EMISSIONS SUMMARY FOR SELECTED AIR POLLUTANTS WITH TIER 2 AND PROPOSED HEAVY-DUTY 2007 CONTROLS ON-HIGHWAY VEHICLES ONLY FROM 1990 TO 2020

[Thousand short tons per year]

Compound	1990	1996	2007	2020
Benzene	257	165	86	65
Acetaldehyde	41	27	14	8
Formaldehyde	139	80	35	17
1,3 Butadiene	36	22	11	9
MTBE[a]	55	65	25	18
VOC	7,585	4,819	2,662	1,838
Diesel PM	235	180	82	15

[a] These estimates do not include consideration of EPA's examination of options to phase down or otherwise control the use of MTBE under the Toxic Substances Control Act, or legislative authority that EPA has asked Congress to provide the Agency to address MTBE use in gasoline.

Table III–5 summarizes the percent reductions we expect in on-highway emissions of gaseous MSATs, VOC, and diesel PM from 1990 and 1996 levels in 2007 and 2020 as a result of our current and proposed on-highway control programs.

TABLE III–5.—SUMMARY OF FIFTY-STATE PERCENT EMISSION REDUCTIONS WITH TIER 2 AND PROPOSED HEAVY-DUTY 2007 CONTROLS ON-HIGHWAY VEHICLES ONLY IN 2007 AND 2020 FROM 1990 OR 1996

Compound	Reduction in 2007		Reduction in 2020	
	From 1990	From 1996	From 1990	From 1996
Benzene	67	48	75	61
Acetaldehyde	65	47	82	73
Formaldehyde	75	55	87	78
1,3 Butadiene	69	49	75	60
MTBE[a]	54	61	67	72
VOC	65	45	76	62
Diesel PM	65	48	94	92

[a] These estimates do not include consideration of EPA's examination of options to phase down or otherwise control the use of MTBE under the Toxic Substances Control Act, or legislative authority that EPA has asked Congress to provide the Agency to address MTBE use in gasoline.

The results of this analysis show that on-highway emissions of the five gaseous MSATs examined are expected to decline by approximately 75 percent by 2020 from 1990 levels with our existing and proposed controls. For some gaseous MSATs, the reductions are even greater. For example, we project both formaldehyde and acetaldehyde emissions will decrease by over 80 percent by 2020 from 1990 levels with our current and proposed controls. Likewise, VOC inventories from on-highway vehicles are projected to decrease as much as 75 percent between 1990 and 2020 and we assume that other gaseous toxics would decrease by approximately 75 percent as well. Finally, diesel PM emissions are expected to decline by over 90 percent by 2020 from 1990 levels.

Though these air toxics emissions reductions are substantial, we are not certain whether or not more control in the future is warranted for the remaining emissions from these air toxics. They have the potential to present serious health impacts to the public under certain circumstances that we have not been able to investigate fully. We also believe there is merit in considering further vehicle and fuel controls for both highway and nonroad sources for addressing the remaining emissions given the ever-changing nature of pollution control technology. These controls would be considered as part of our proposed Technical Analysis Plan outlined in section VII.

C. Summary

In this section, we presented our inventory projections for MSATs. These projections, which are limited to on-highway mobile sources, show that with

[27] This spreadsheet model can be found in EPA Air Docket A–99–06, Item II–B–31.

[28] The analysis methodology is described in a memorandum from Meredith Weatherby, Eastern Research Group, to Rich Cook, EPA, entitled ''Estimating of 1990 VOC and TOG Emissions'' in EPA Air Docket A–2000–12.

[29] EPA, 2000. National Air Pollution Emission Trends, 1900–1998 (March 2000). Office of Air Quality Planning and Standards, Research Triangle Park, NC. Report No. 454/R–00–002.

our current and proposed emission control programs up to and including Tier 2 and our recently proposed 2007 heavy-duty engine rule, on-highway emissions of gaseous MSATs are expected to decline by approximately 75 percent by 2020 from 1990 levels, and on-highway emissions of diesel PM are expected to decline by over 90 percent by 2020 from 1990 levels. These reductions will result from the more stringent VOC and PM controls that we have put into place over the last decade or have recently adopted (Tier 2) or proposed (HD2007).

IV. Evaluation of Additional Motor Vehicle-based Controls

This section discusses the relationship between EPA's vehicle-based control programs and the control of MSATs, the impact of our most recent efforts to control VOCs, and the need for additional control of MSATs.

A. MSATs and Motor Vehicle-based Controls

The majority of gaseous MSATs are hydrocarbons that are primarily the result of incomplete combustion of petroleum fuels (a small amount of raw fuel may also pass through the engine unburned). Technologies used to reduce exhaust hydrocarbons also reduce MSAT hydrocarbon species. This is true whether control is achieved through engine or component modifications, add-on devices, or the use of aftertreatment devices such as oxidation or three-way catalysts. We are not aware of vehicle or engine technologies that selectively reduce MSATs without reducing other hydrocarbons to a similar degree.

The other major source of hydrocarbon emissions from motor vehicles are fuel vapors. These emissions occur when components of the liquid fuel (gasoline or diesel) evaporate when onboard the vehicle. The emissions are normally separated into refueling emissions and evaporative emissions (hot soak, diurnal, and running losses). The nature and amount of potential MSATs associated with fuel vapors depend primarily on the fuel composition and the temperatures involved. Gasoline is volatile and evaporates at normal ambient temperatures, while diesel fuel is relatively non-volatile. Thus evaporative emissions are only an issue for gasoline-fueled vehicles (or vehicles using volatile alternative fuels such as methanol). Evaporative and refueling emissions are controlled by eliminating sources of potential liquid and vapor leaks within the vehicle fuel system and venting any vapors to an activated carbon canister or similar device. Activated carbon effectively adsorbs most hydrocarbon compounds, including the common evaporative-related MSATs.

Particulate matter emissions from motor vehicles are primarily composed of partially burned carbon and hydrocarbons from the fuel and engine oil, and to a lesser degree, metals and other inorganic compounds from contaminants or additives in the fuel or engine oil, or products of engine wear in the oil. Since our PM exhaust emission standards apply without regard to the source of the PM, manufacturers must account for all of these emissions. Manufacturers have significantly reduced PM emissions associated with unburned fuel and engine oil through combustion system and engine modifications.

B. EPA's Motor Vehicle-Based Emission Control Program

To understand the relationship between the Agency's current emission control program for on-highway vehicles and the control of MSATs, it is important to first understand the structure and scope of our current emission control programs. EPA's emission control program for on-highway vehicles has historically been divided into two broad vehicle/engine categories that we regulate: ''light-duty'' (vehicles 8,500 pounds gross vehicle weight rating (GVWR) or less) and ''heavy-duty'' (vehicles above 8,500 pounds GVWR).[30] Within these light-duty and heavy-duty categories, we further distinguish vehicles and sometimes establish different emission limits based on vehicle size or other factors. For example, within the light-duty category, in the past we have often had different programs for light-duty vehicles and light-duty trucks.

1. Light-Duty Vehicles

Before our regulations, cars emitted more than 9 grams per mile (gpm) HC in exhaust emissions. Our HC emission standards in the 1970s and 1980s cut these levels by more than an order of magnitude, to a level of 0.41 gpm in 1980. In 1991, we finalized Tier 1 controls for light-duty vehicles and light-duty trucks to be phased in from 1994 to 1996 (56 FR 25724). In 1998, we developed an innovative, voluntary nationwide program to make new cars, called National Low Emission Vehicles (NLEV), significantly cleaner than Tier 1 cars (63 FR 926). The NLEV program went into effect in the Northeast states in 1999 and will go into effect in the rest of the country in 2001. Table IV–1 illustrates the declining exhaust standards through the NLEV program that have resulted in HC reductions in the 1970s through the 1990s and are expected to result in future reductions.[31] In December 1999, the Agency finalized the Tier 2/sulfur rule establishing light-duty requirements that will be phased-in beginning with the 2004 model year. A more detailed discussion of the Tier 2 program follows in section C.

TABLE IV–1. HYDROCARBON (HC) EXHAUST EMISSION STANDARDS FOR LIGHT-DUTY VEHICLES (GPM)

Year	1970	1972	1975	1980	1994	2001
HC	2.2	3.4	1.5	0.41	0.31[1]	0.09[2]

[1] The 1994 standard is an nonmethane hydrocarbon (NMHC) standard.
[2] The 2001 standard is an nonmethane organic gas (NMOG) standard.

Our existing regulations contain test procedures to measure evaporative hydrocarbon emissions during a simulated parking event (diurnal emissions) and immediately following a drive (hot soak emissions). In 1993, we finalized more stringent evaporative emission test procedures which apply to light-duty and heavy-duty gasoline vehicles. These procedures were fully phased in by 1999 (58 FR 16002). The 1993 rule also addressed fuel spitback during refueling with a vehicle test to ensure that no spillage occurs when a vehicle is refueled at a rate of up to 10 gallons (37.9 liters) per minute. The Tier 2 rule included even more stringent requirements.

[30] EPA recently created the new category of ''medium-duty passenger vehicles'' (MDPVs) that includes passenger vehicles over 8,500 pounds GVWR.

[31] Our programs achieve VOC reductions through standards that limit HC, NMHC, or NMOG.

We have also finalized on-board refueling vapor recovery (ORVR) requirements for light-duty gasoline vehicles (59 FR 16262, April 6, 1994), and proposed to extend ORVR to heavy-duty gasoline vehicles between 8,500 and 10,000 lbs GVWR (64 FR 58471, October 29, 1999). ORVR is a nationwide program for capturing refueling emissions by collecting vapors from the vehicle gas tank and storing them in the vehicle during refueling. The fuel vapors are then purged into the engine air intake to be burned while the vehicle is being driven.

2. Heavy-Duty Vehicles

Table IV–2 summarizes the hydrocarbon and PM standards for heavy-duty engines. Also shown in the table are estimates of emission rates from uncontrolled engines. Not shown in the table are the standards in our recently proposed 2007 heavy-duty rulemaking.[32] In that NPRM we proposed exhaust emission standards of 0.14 NMHC and 0.01 PM for all heavy-duty engines.

TABLE IV–2.—HC AND PM EXHAUST EMISSIONS AND STANDARDS FOR HEAVY-DUTY ENGINES

	Gasoline (Otto-Cycle)	Diesel	
	Exhaust HC	Exhaust HC	Exhaust PM
Uncontrolled Emissions	10–13 g/bhp-hr	4 g/bhp-hr	0.7 g/bhp-hr
Current Standards	1.1 g/bhp-hr[a]	1.3 g/bhp-hr	0.10 g/bhp-hr
2004/5 Standards	0.25 g/bhp-hr[b]	0.4 g/bhp-hr[c]	0.10 g/bhp-hr

[a] Current standard is 1.9 g/bhp-hr for Otto-cycle vehicles over 14,000 GVWR.
[b] Standard has been proposed as a 2005 NMHC+NOx standard; level shown is estimated equivalent NMHC standard.
[c] Standard is a 2004 NMHC+NOx standard; level shown is estimated equivalent NMHC standard.

C. Feasibility of More Stringent Vehicle-Based Standards To Reduce MSATs

Section III of this proposal highlights the very significant reduction in toxics emissions that have been achieved as a result of EPA's on-highway emission control programs. Most recently, the Agency has finalized the Tier 2/sulfur requirements which will require manufacturers to incorporate the latest light-duty emission controls. EPA has also proposed new heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements that would also result in large emission reductions.[33] This section summarizes these two new technology-forcing programs.

1. Light-Duty Vehicles

Finalized in December 1999, the Tier 2/sulfur requirements phase-in a single set of tailpipe emission standards that will, for the first time, apply to all passenger cars, light-duty trucks (LDTs), and larger passenger vehicles. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, nationwide gasoline sulfur requirements were also put into place. The Tier 2 program begins in 2004 for passenger cars and light LDTs (LDTs up to 6,000 pounds GVWR), while an interim program begins in 2004 for heavy LDTs (LDTs over 6,000 pounds GVWR). For heavy LDTs and MDPVs (medium-duty passenger vehicles), the Tier 2 standards will be phased in beginning in 2008, with full compliance in 2009. Thus, when fully implemented all vehicles designed for passenger use will have to meet the stringent new emission standards.

The Tier 2 program is designed to focus on reducing the ozone and particulate matter air quality impact for these vehicles. Ozone reductions will be achieved through control of nitrogen oxides and non-methane hydrocarbons. As discussed above, it is the control of NMHC through the NMOG standards that results in the control of the gaseous toxics. Control of PM emissions will occur through reductions in sulfur. The Tier 2 rule also established stringent PM standards. Because all Tier 2 standards are fuel neutral, the PM standards apply to both gasoline and diesel vehicles.

The Tier 2 standards will reduce new vehicle NO_X levels to an average of 0.07 grams per mile. The NMOG standards vary depending on which of the various ''bins'' (*i.e.*, certification categories) the manufacturers choose to use in complying with the average NO_X standard. However, we expect significant reductions in NMOG emissions from these vehicles as a result of the more stringent NMOG standards in the bins and the need to select bins to meet the NO_X average. When fully phased-in, we expect fleet average NMOG levels below the 0.09 g/mi level. The Tier 2 rule also finalized formaldehyde standards that harmonize federal standards with the California's LEV II program. The standards are primarily of concern for vehicles fueled with methanol because formaldehyde is chemically similar to methanol and is likely to be produced when methanol is not completely burned in the engine.

In order to meet strict Tier 2 standards on a fleet-wide average, manufacturers will have to use a combination of sophisticated calibration changes and emission system hardware modifications to increase and maintain high control system efficiency. They will be challenged to maintain tight air-fuel control and improved catalyst performance, especially achieving better catalyst thermal management. Minimizing the time necessary for the catalyst to reach its operating temperature will be especially critical, since the vast majority of emissions occur in the minute or less which passes before the catalyst ''lights off.'' Many manufacturers are going to have to depend more on the precious metal palladium for oxidation of NMOG and CO emissions, as well as the reduction of NO_X, because palladium is more tolerant to high temperatures to increase in-use efficiency.

The Tier 2 standards for evaporative emissions represent, for most vehicles, more than a 50-percent reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. These standards should achieve similar reductions in gaseous MSATs, especially since activated carbon preferentially absorbs larger organic molecules. Under these requirements, it is likely that manufacturers will also need to upgrade materials and both increase the reliability of fuel/vapor hose connections and fittings and reduce the number used in the system.

[32] 65 FR 35429, June 2, 2000.

[33] 65 FR 35429, June 2, 2000.

Taken as a whole, the Tier 2 program presents the manufacturers with significant compliance challenges in the coming years. It will require the use of hardware and emission control techniques and strategies not used in the fleet today. Bringing essentially all passenger vehicles under the same emission control program regardless of their size, weight, and application is a major engineering challenge. While there may be other prototype technologies on the horizon which could potentially reduce cold-start emissions and therefore air toxics, given the cost and engineering burden associated with Tier 2, it is not appropriate to propose standards based on these technologies. We are not convinced that these technologies would be feasible and cost effective on a fleet-wide basis at this time. This is discussed in more detail in the TSD.

2. Heavy-Duty Vehicles

With regard to exhaust emission standards, the 2007 heavy-duty engine standards would reduce hydrocarbon emissions to levels approaching 0.1 g/bhp-hr for both gasoline and diesel. This would result in a significant reduction even when compared to the 2004 standards. Similarly, the proposed exhaust PM standard for heavy-duty diesel engines is very stringent. The proposed value of 0.01 g/bhp-hr is a 90-percent reduction from current standards which are currently being achieved with significant combustion chamber and engine modifications. Achieving a 0.01 g/bhp-hr standard will require the use of particulate trap-oxidizers. This technology will also result in HC emission reductions. It is further worth noting that the 2007 proposal includes provisions for a closed crankcase for turbocharged diesel engines. Crankcase emissions from these engines are a significant source of MSATs (PM and hydrocarbons) which has previously remained uncontrolled.

For chassis-certified gasoline-powered heavy-duty vehicles, EPA proposed that beginning in 2007 they meet exhaust hydrocarbon standards of similar stringency to those discussed above for Tier 2. These include hydrocarbon standards of 0.195 g/mi for vehicles of 8,500–10,000 lbs GVWR and 0.23 g/mi for vehicles of 10,001–14,000 lbs GVWR.

Fuel quality changes will enable gasoline and diesel-powered vehicles/engines to meet the more stringent standards over their full life. As part of the Tier 2 rule, EPA promulgated provisions limiting gasoline sulfur levels to 30 ppm average and 80 ppm cap. This program phases in beginning in 2004, and will enable a new generation of vehicle emission control for heavy-duty gasoline vehicles and also improve the emission performance of the current fleet. Sulfur is a fuel contaminant, and controlling sulfur will also reduce sulfate PM emissions. The 2007 heavy-duty proposal mentioned above also includes provisions to greatly reduce the sulfur content of current on-highway diesel fuel. Not only will this reduction enable the emission control technology now under development, but it will also reduce sulfate PM emissions as was the case for gasoline.

We have also proposed more stringent evaporative standards, which would force even further refinements in fuel/vapor systems. Onboard refueling vapor control is proposed to be effective for 2004 for all heavy-duty gasoline-powered vehicles. This would reduce emissions from current uncontrolled levels by 95 percent. In addition, as part of the 2007 proposal, evaporative emission standards are proposed to be reduced by 50 percent over current standards. Both refueling controls and further evaporative controls would reduce evaporative emissions of air toxics from heavy-duty vehicles even further.

The proposal for 2007 heavy-duty engine and vehicle standards contains extensive analysis and discussion of the technological feasibility. This analysis demonstrates that the proposed heavy-duty standards reflect the greatest degree of emission reduction achievable through the application of technology that will be available considering costs and other relevant factors. EPA expects that the recently proposed rulemaking to establish 2007 model year standards for heavy-duty diesel engines will satisfy the criteria in section 202(a) as well as 202(l)(2) and therefore defers to the technical decisions that will be made in that rulemaking. For further information on the diesel engine proposal see 65 FR 35430 (June 2, 2000).

3. Conclusion

The Tier 2 program represents a comprehensive, integrated package of exhaust, evaporative, and fuel quality standards. The Tier 2 program will achieve significant reductions in NMHC, NO_X, and PM emissions from all light-duty vehicles in the program. Emission control in the Tier 2 program will be based on the widespread implementation of advanced catalyst and related control system technology. The standards are so stringent that they will require the maximum level of control technology be used. To illustrate this point, it is worth noting that about 80 percent of all emissions from a Tier 2 vehicle will occur in the first 60 seconds of operation, before the catalyst ''lights-off.'' Manufacturers will have to optimize their cold-start strategies and the efficiency of warmed systems to achieve the Tier 2 levels. Compliance with the Tier 2 standards will require the application of emission technology not widely used in the light-duty fleet today and in some cases the use of technological approaches still under development. Meeting the Tier 2 requirements will significantly reduce air toxics as a result of reductions in NMHC.

The emission control program for heavy-duty engines and vehicles has achieved major reductions in the emissions of criteria pollutants and their precursor emissions. New stringent emissions were established for heavy-duty diesel engines in a final rule promulgated in the fall of 1997 that will take effect in 2004. In October of 1999, we published a notice proposing to reaffirm the 2004 heavy-duty diesel engine emission standards. The notice also proposed new 2004 model year emission standards and related requirements for heavy-duty Otto-cycle vehicles/engines and supplemental test requirements for heavy-duty diesel engines.

We also recently announced a further initiative in control of heavy-duty vehicle/engine emissions in May 2000. This was done in the proposal to establish new heavy-duty diesel and Otto-cycle engine standards and vehicle emission standards for 2007. It also proposed new on-highway diesel fuel sulfur control requirements.

V. Evaluation of Additional Fuel-based Controls

In previous sections, we showed that the mobile source toxics inventory will continue to decline through 2020 due to existing programs. In this section we consider the role of fuels programs in reducing toxics emissions from mobile sources. Fuels contribute to air toxics emissions in two ways: evaporative emissions of the fuel, and exhaust emissions due to combustion of the fuel. One means of controlling toxics emissions from motor vehicles is to change the benzene content of the fuel.

In this section, we discuss our investigation of additional fuel-based controls for reducing toxics emissions. We begin with a discussion of the current gasoline-based toxics control programs, including a presentation of the over-compliance arising under the federal reformulated gasoline (RFG) and anti-dumping programs. This is followed by a discussion of why we believe that gasoline benzene control is

an appropriate initial focus for additional fuel controls to reduce MSATs. Next, we present our proposed anti-backsliding program for fuel benzene in both RFG and conventional gasoline (CG). As part of this discussion we address the issue of state controls of benzene levels in gasoline. We discuss potential future benzene controls that would be included as part of the investigation in our proposed Technical Analysis Plan. Finally, we discuss other fuel controls considered in EPA's development of this proposal.

A. What Current Gasoline Programs Control Toxics Emissions?

Current federal gasoline programs that control toxics emissions include the prohibition on leaded gasoline for highway use, the summertime volatility requirements, and the reformulated gasoline and anti-dumping programs. The first of these programs, the prohibition on leaded gasoline for use in motor vehicles, is a Clean Air Act requirement adopted in 1990 that was designed to complete the phase-out of leaded gasoline because of its contribution to national ambient lead levels. Lead is a probable human carcinogen with a variety of serious non-cancer health effects at low dose levels. The transition to unleaded gasoline began in 1974, and leaded gasoline has been banned for highway use since 1996 (see CAA Section 211(n)).

Under the second program, the federal volatility requirements, every area of the continental U.S. has a maximum summertime gasoline Reid vapor pressure (RVP). RVP is a volatility measurement of gasoline. Generally speaking, a fuel with a higher RVP evaporates more quickly than a fuel with a lower RVP. Thus, by instituting a maximum summertime RVP for each area, we control evaporative emissions of the volatile components of gasoline, including benzene and other gaseous toxics.

The federal reformulated gasoline (RFG) program includes, in addition to standards on VOC and NO_X emissions, several requirements related to toxics. Specifically, the RFG program (covering about one-third of the gasoline sold in the country) includes standards on the benzene content of fuel as well as standards governing the overall toxics emissions associated with evaporation and combustion of the fuel. Toxics emissions covered under the RFG program include exhaust and evaporative benzene, formaldehyde, acetaldehyde, 1,3-butadiene and polycyclic organic matter (POM). Under the Phase II RFG program which began in January 2000, a refinery's or importer's annual average total toxics emissions, as measured by the Complex Model,[34] must be 21.5 percent less than the toxics emissions attributable to the statutory baseline fuel. Additionally, a refinery's or importer's annual average RFG benzene content cannot exceed 0.95 percent by volume, and no batch may exceed 1.3 percent by volume. Alternatively, no batch of RFG may have a benzene content exceeding 1.0 percent by volume. Each refinery and importer must choose annually whether to comply with the average benzene requirement (0.95 volume percent) or the ''per-gallon'' benzene requirement (1.0 volume percent); essentially no refinery/importer chooses the latter compliance method.

EPA has also adopted standards to cover all fuel used outside of the RFG areas. These ''anti-dumping'' standards[35] include requirements for NOx performance and exhaust toxics performance. Exhaust toxics performance is measured using the Complex Model with all of the toxic compounds mentioned above except for evaporative benzene emissions. On a mass basis, exhaust benzene emissions comprise approximately 67 percent of total exhaust toxics emissions. Regarding exhaust toxics performance, the anti-dumping program requires that a refinery's or importer's total exhaust toxics emissions, as predicted by the Complex Model, not exceed that refinery's or importer's individual exhaust toxics emissions baseline, which is their 1990 performance level. Unlike the RFG program, the anti-dumping program does not specifically regulate the benzene content of conventional gasoline.

Based on 1998 compliance reports from refineries, average national compliance with the toxics portion of the reformulated gasoline and anti-dumping programs, including benzene requirements, exceeds the basic requirements. In other words, on average, refineries and importers produced gasoline in 1998 which over-complied with the applicable toxics and fuel benzene requirements. Table V–1 compares required levels or baseline levels, as applicable, of toxics emissions and fuel benzene under EPA's RFG and anti-dumping regulations with the actual levels achieved in 1998.

TABLE V–1.—OVER-COMPLIANCE WITH EXISTING BENZENE AND TOXICS STANDARDS

Type of gasoline	Reformulated	Conventional
Actual 1998 toxics performance (volume weighted)	30.3 percent reduction[a]	44 mg/mile.[b]
Required or baseline Phase I toxics performance	16.5 percent reduction	47 mg/mile.[c]
Actual 1998 benzene (volume weighted)	0.65 vol%	1.1 vol%.
Required or baseline benzene (annual average)	0.95 vol%	1.3 vol%.[d]

[a] For RFG, toxics performance is measured on the basis of *total* toxics with respect to the statutory baseline.
[b] For CG, toxics performance is measured on the basis of *exhaust* toxics with respect to an individual refinery's 1990 baseline.
[c] Under anti-dumping for CG, exhaust toxics in mg/mi per the Complex Model can be no higher than a refiner's 1990 annual average exhaust toxics emissions. The value of 47 mg/mi is the volume-weighted average of the standards applicable to all individual refineries.
[d] EPA does not currently regulate the fuel benzene level of CG. The value of 1.3 vol% is the volume-weighted average of the 1990 baseline levels for all refineries.

Thus RFG produced in 1998 exhibited an average total toxics emissions reduction which was nearly twice that required, and had average gasoline benzene levels which were approximately one-third less than the

[34] The Complex Model is a regulatory tool for estimating emissions for the reformulated gasoline and anti-dumping programs. The Complex Model inputs are eight specified fuel parameters: benzene, oxygen content (by oxygenate type), sulfur, RVP, aromatics, olefins, and the percents evaporated at 200F and 300F (E200 and E300). Complex Model outputs are the estimated emissions (VOC, toxics, NO_X) resulting from the fuel parameters specified. The Complex Model also calculates percent reductions of the input slate of fuel parameters and resulting emissions compared to a base set of fuel parameters and the resulting base emissions.

[35] The conventional gasoline standards are often referred to as the anti-dumping requirements because they prevent refiners from merely directing the clean gasoline to RFG areas and ''dumping'' the dirtier fuel in all other areas.

maximum average allowed. For CG, the over-compliance was less dramatic, amounting to approximately six percent for exhaust toxics. Although there is currently no standard for the benzene content of CG, in 1998 the CG benzene levels were approximately 15 percent lower than the average of benzene levels for individual 1990 refinery anti-dumping baselines.

Note that the information contained in Table V–1 reflects industry averages. In fact, not all refineries and importers over-comply. Approximately 90 percent of RFG refineries and importers over-complied in 1998. Most refineries and importers in over-compliance for RFG benzene are also in over-compliance for CG benzene. EPA believes that this over-compliance, particularly with respect to benzene, is due to a number of factors, including:

(1) *Benzene extraction for the petrochemical industry.* For certain refineries geographically located near petrochemical plants, it is profitable to remove benzene from reformate, a gasoline blending component, and sell it for petrochemical uses.

(2) *Dilution with oxygenates.* The oxygenate requirement of the RFG program, and refineries' and importers' use of oxygenates in conventional gasoline as gasoline extenders or for octane, reduce and dilute overall aromatics (*e.g.*, benzene, toluene and xylene, all of which are gaseous MSATs).

B. Why Is EPA Focusing on Benzene?

Benzene is an aromatic hydrocarbon that is present in gasoline as well as in exhaust and evaporative emissions. Benzene is also emitted from diesel engines, but at levels approximately one-fortieth that coming from gasoline vehicles. Emissions from gasoline-powered vehicles and engines contain several different toxic pollutants, including the following MSATs: benzene, 1,3-butadiene, acetaldehyde, formaldehyde, polycyclic organic matter (POM), and MTBE. However, on a mass basis, benzene makes up about 70 percent of the total amount of these gaseous toxics.[36] Thus if toxics emissions are going to be controlled through mobile sources, the benzene content of gasoline is an obvious area for priority consideration.

In addition to concerns about the sheer mass of benzene emissions, we are focusing on the benzene content of gasoline in this proposal because benzene emissions are one of two toxic compounds that section 202(l) of the Act indicates must be evaluated for control. We believe that individual States and environmental organizations will support this direction since they have expressed concerns specifically about fuel benzene content and ambient benzene concentrations.

We do not believe that it is appropriate at this time to propose controls on MSATs other than benzene through fuel modifications. Our reasons for this proposed determination follow.

Benzene is one of several toxic compounds that are part of vehicle emissions as well as a component of the fuel. Because refiners are able to directly control fuel benzene levels, benzene offers refiners the greatest degree of control over a specific toxic fuel component that is also present in emissions at substantial levels.

There are, however, some gaseous toxic components of vehicle emissions which, although not components of the fuel, can be controlled through fuel property limits. These include 1,3-butadiene, formaldehyde, acetaldehyde, and polycyclic organic matter (POM). Along with benzene, all of these compounds are currently controlled under the RFG program via a toxic emissions performance standard, and are prohibited from increasing above 1990 levels under the anti-dumping program for CG. As discussed previously, we are requesting comment on a toxics performance standard as an alternative to the proposed benzene anti-backsliding program. Since a performance standard necessarily allows refiners to trade off increases in one toxic compound with decreases in another, a new toxics emissions performance standard would not necessarily result in a reduction in benzene. In fact, an emissions performance standard could actually allow increases in benzene emissions. As discussed above, we believe that benzene should be the toxic pollutant targeted for control in this rulemaking. Still, benzene emissions do constitute up to 70 percent of total toxics emissions from gasoline, such that costs to control the non-benzene toxic emissions could be significant. As a result, we would expect refiners to aim for benzene control even under a new toxics performance standard, suggesting that the fuel benzene controls we are proposing today may be equivalent to the emission reductions that would be produced under a toxics performance standard. Control of these other toxics would most likely occur collectively through an emissions performance standard, and benzene would remain the primary means of toxics control in this case.

Formaldehyde is specifically listed in the CAA, along with benzene, as an MSAT that we must evaluate for control. We believe that additional controls on formaldehyde are not appropriate for today's proposal, though we will conduct further evaluation under our Technical Analysis Plan before making a determination. Formaldehyde control would require control of bulk fuel properties such as olefins or aromatics which could significantly affect octane and cost. Formaldehyde emissions are also expected to go down in the future. This means that any controls on formaldehyde may not be cost-effective, and EPA does not have enough information at this time to resolve this issue. Formaldehyde actually constitutes a significantly larger fraction of total hydrocarbons for diesel vehicles. Unfortunately, we do not have the data that would allow us to correlate individual diesel fuel properties with formaldehyde emissions. The alternative to controlling formaldehyde through diesel reformulation would be to set diesel engine standards for formaldehyde. As described above, our recently finalized Tier 2 rule and our proposed rulemaking to set new standards for 2007 model year heavy-duty engines and vehicles in fact address formaldehyde emissions from motor vehicles and heavy-duty trucks.

A number of other MSATs do not fall under the RFG or anti-dumping programs, and we do not currently have sufficient information on how changes in fuel properties affect emissions of these compounds. These include acrolein, styrene, dioxin/furans, xylene, toluene, ethylbenzene, naphthalene, and hexane. We are not aware of any model that would allow us to quantify how fuel controls could affect emissions of these compounds. We request comment or information about the effect of fuel controls on the aforementioned MSATs. We do know that bulk fuel aromatics control would reduce emissions of some of these compounds, but we are currently unable to quantify this effect. The relationship between other fuel properties and emissions of these compounds is even less clear. As a result, we cannot estimate the costs associated with controlling these compounds via fuels.

There are a number of metals that are emitted from motor vehicles, but these toxic compounds are being addressed in other actions. For instance, these metals generally arise from contaminants in lube oils. The recent rulemaking proposing new standards for heavy-duty engines and vehicles beginning in model year 2007 also proposes controls

[36] Per EPA's Complex Model (40 CFR 80.45).

on the use of used oil as a diesel fuel additive/extender. Finally, lead is no longer allowed to be used as an additive in motor gasoline.

We are not proposing controls to address emissions of MTBE in this rulemaking, even though MTBE is on our proposed list of MSATs. The primary mechanism for controlling MTBE emissions would be to limit the use of MTBE in gasoline. The Agency is currently pursuing a separate rulemaking under the Toxic Substances Control Act (TSCA) to consider the phase down or phase out the use of MTBE. We believe it is reasonable to defer consideration of MTBE controls to that rulemaking, which will address the important concerns of preserving water resources, as well as any air pollution impacts. In addition, the EPA and the United States Department of Agriculture jointly announced, on March, 2000, the Administration's legislative principles for protecting drinking water supplies, preserving clean air benefit and promoting renewable fuels and urged Congress to take action consistent with these principles, including providing EPA the authority to significantly reduce or eliminate the use of MTBE in gasoline.

Finally, changes to diesel fuel could result in reductions in a variety of toxic compounds, including aldehydes, dioxins/furans, POM, and of course diesel PM. At this time, however, there is insufficient data to allow us to quantify how changes in individual diesel fuel properties would affect emissions of these compounds. As a result, we cannot specify how refiners might change their operations or what capital equipment they might need to install in order to reformulate their diesel fuel, and thus we cannot estimate costs associated with this type of control. We request comment or information regarding the effect of diesel fuel reformulation on toxics emissions.

C. Given the Existing Over-Compliance, Why Is EPA Considering Additional Gasoline Benzene Controls?

Absent regulatory changes affecting toxic emissions and/or oxygenates, or reduction in the petrochemical demand for benzene, EPA expects that this average level of over-compliance will continue. Benzene emissions are critically dependent upon exhaust VOC control, which should continue to improve over the next 4–5 years due to the introduction of NLEV and Tier 2 vehicles. However, current benzene emission reductions are not guaranteed to continue. Therefore, because of the potential for serious health effects associated with air toxics from gasoline, EPA is proposing a toxics control program to maintain current benzene levels by creating an anti-backsliding program. Because it is an anti-backsliding program, it is not designed to reduce gasoline benzene content or benzene emissions beyond today's levels. However, it would prevent benzene emissions from increasing during the time period that we will be considering the need for and appropriateness of additional fuel-based toxics control programs.

D. What Type of Gasoline Control Program Is EPA Proposing Today?

The program EPA is proposing today focuses solely on gasoline benzene control and would require that a refinery's annual average gasoline benzene content not exceed the refinery's average gasoline benzene content during a baseline time period. We consider this approach to be an ''anti-backsliding'' measure, in that it does not allow gasoline benzene levels to increase, or ''backslide,'' relative to the baseline. This section provides an overview of our proposed benzene control program while section H provides a more detailed discussion of the specific requirements of the program. We are also taking comment on an alternative approach involving a toxics emissions performance standard, which is described more fully in section I.

We are proposing that the benzene control program would begin in 2002. We believe this is an appropriate start date because refiners already have all of the information needed to establish their benzene baselines (see the baseline time period discussion below). Also, since the standards are intended to maintain 1998–1999 levels of over-compliance with benzene standards for RFG, and 1998–1999 benzene levels in CG, and thus are not technology-forcing, no lead time for capital equipment installation is necessary. As a result, gasoline benzene levels can be controlled at the earliest practical date. While we considered other effective dates, we believe the 2002 date is most practical. This is because the standards will not be finalized until December 2000, it will take several months for refiners to have their baselines approved, and it is desirable to have the program start on January 1. Therefore, 2002 is the earliest practicable effective date. We request comment on a start date of 2002.

We are also proposing that these benzene requirements would apply separately to federal RFG and CG. This is consistent with the separate treatment of these two gasoline types under the RFG and anti-dumping programs, and ensures that the benzene is not ''moved'' from one pool to the other to achieve compliance. As described more fully in section V.F.1 below, the proposed benzene anti-backsliding standards would apply only to a volume equal to the average of volume of gasoline produced during the baseline years (*i.e.*, 1998–1999). The Agency is taking comment on the appropriate standard to apply to any incremental gasoline that a refinery may produce beyond the amount of gasoline produced as an annual average in 1998–1999.

We are proposing a baseline time period of January 1, 1998 through December 31, 1999 (''1998–1999''). Thus, a refinery's baseline benzene content would be the average benzene content of all the gasoline produced during the two-year time period from 1998–1999. As an alternative, we could also choose a different pair of baseline years, such as 1999–2000, or a longer time frame, such as 1997–1999. Phase II RFG went into effect in January of this year, and the Agency is interested in public comment on the appropriateness of using the year 2000 as part of its benzene baseline. We request comment on the proposed baseline period (1998–1999), on alternative baseline periods, and specifically ask commenters to address the Agency's concerns pertaining to using the year 2000 in an alternative baseline.

Substantial emissions reductions have accrued as a result of the RFG program, and more are expected with the introduction of Phase II RFG. EPA has a significant interest in ensuring the continued production of RFG by domestic and foreign refineries. The proposed anti-backsliding standards for RFG and CG may have an impact on the future production of RFG, particularly for those refiners that are interested in expanding production or entering the RFG market for the first time. The Agency as described more fully in section V.F.1 below, is requesting comment on separate treatment of incremental volumes of RFG above baseline volumes based on 1998–1999 production.

Despite the fact that our proposed anti-backsliding program uses a two-year averaging period to establish baselines, we have chosen to propose a one-year averaging period for compliance purposes. The one-year averaging period is consistent with that used in the RFG, anti-dumping, and upcoming gasoline sulfur programs. It therefore represents a minimal additional reporting burden for refineries and importers. It also ensures

that temporal variations in ambient benzene concentrations due to varying fuel benzene content are kept to a minimum; a two-year averaging period, for instance, might allow fuel benzene levels in one year to be significantly higher than in the following year. Nonetheless, we request comment on the two-year averaging period option for compliance purposes, and on any other options which will maintain the anti-backsliding benefits of the proposed program.

EPA recognizes that some fluctuations in benzene levels may occur from one year to the next for a given refinery even if no long-term trend upward or downward is evident for that refinery. We are proposing that the baselines be applied to every single year after 2001 even though year-to-year fluctuations might push some refiners' benzene levels above their applicable standard in any given year. In response to this possibility, we are proposing a one-year deficit carryover provision. This provision would ensure that a refinery can meet its benzene standard while still allowing for the year-to-year fluctuations that may arise in the course of gasoline production. Therefore, our proposed program would give refineries maximum flexibility to comply with our anti-backsliding program. We request comment on this proposed approach.

Finally, we have chosen to propose an anti-backsliding program which controls gasoline benzene levels instead of a control which focuses on air toxics performance for two reasons. First, total benzene emissions constitute up to 70 percent of total toxics emissions (exhaust benzene emissions constitute roughly 65 percent of total exhaust toxics emissions). As a result, refineries would most likely focus on gasoline benzene control even if we proposed an equivalent toxics emissions performance standard. Second, gasoline benzene control also avoids the potential for offsetting benzene emissions increases with decreases in some other toxic pollutant such as 1,3-butadiene, formaldehyde, sulfur, or acetaldehyde. At the same time, there are a number of reasons why a toxics performance standard approach may also be desirable, and therefore, we are taking comment on it as an alternative anti-backsliding approach. This alternative toxics performance standard approach is described in more detail in section I.

E. Will the Proposed Benzene Standards Pre-Empt State Benzene Controls?

As EPA has explained in its federal fuel rulemakings, including in the preambles to the Tier2/sulfur gasoline rule and 1994 RFG rules, where EPA has adopted controls under section 211(c)(1) on the characteristics or components of gasoline provided to a particular area, section 211(c)(4)(A) of the Clean Air Act generally prohibits States from adopting their own controls respecting those characteristics or components unless the State controls are identical to EPA's.[37] Thus, EPA recognizes that by adopting specific controls on benzene content, as is proposed today, there is little question that States would be preempted pursuant to section 211(c)(4)(A) from adopting their own benzene controls for gasoline subject to the federal benzene standard.

EPA recognizes the concerns associated with the potential disruption caused by numerous ''boutique'' fuels (*i.e.*, state- and area-specific fuel types). In most situations, EPA believes that a uniform national program best balances protection of public health and protection of an efficient fuel distribution network. As the number of boutique fuels increases the less efficient the distribution system become. Therefore EPA's general expectation is that State fuels that differ from federal standards should be limited to situations where local or unique circumstances warrant control.

Today's proposal, however, is different from our previous fuel controls in two important respects. First, today's proposal, unlike many of our controls such as the federal sulfur regulations and the benzene standard for RFG, would not impose a uniform national standard that ensures significant emissions reductions in all areas of the country. EPA expects that under the proposed refinery-by-refinery standards, gasoline benzene levels around the country would not change from where they are today. This is particularly significant for areas receiving conventional gasoline where the average benzene levels are higher. In addition, several conventional gasoline areas in the country currently receive gasoline with benzene levels well above the national average.

Today's proposal also differs from many of our federal fuel controls such as the Tier 2/sulfur rule and our gasoline volatility program, in that it addresses a toxic component of gasoline, as compared to a fuel component that adversely affects efforts to achieve a NAAQS. This is important because section 211(c)(4)(C) of the Act allows for a waiver of preemption of state standards only where necessary to achieve a NAAQS. A similar mechanism is not clearly provided for States seeking to control ambient concentrations of toxics in their areas.

Thus, without some regulatory mechanism, this proposal could have the effect of preventing States from addressing local toxics concerns under all circumstances because a waiver may not be available. We therefore believe it is appropriate to consider options that would allow States to adopt more stringent conventional gasoline benzene standards in areas with higher than average benzene levels. EPA seeks comment on two alternatives.

One alternative would be to define the applicability of the rule such that the federal conventional gasoline benzene standards proposed today would not apply to gasoline intended for and used in States where the State adopts more stringent benzene controls under a benzene control program submitted to EPA for approval. Under this approach, State benzene controls that are more stringent than the federal standard would not be preempted by the benzene standard proposed today. This would facilitate the ability of States to adopt more stringent conventional gasoline benzene standards. It is important to note that this provision for more stringent State benzene controls would apply only to conventional gasoline areas. States in RFG areas would continue to be subject to the current federal benzene standard for RFG, which was issued under section 211(c)(1), as well as the benzene standard proposed today.

Under this approach, the regulations would establish a process analogous to the waiver process provided in section 211(c)(4)(C) of the Act and provide criteria that must be met before a State could adopt and enforce a more stringent standard. For example, the regulations could require the state to establish the following: that areas within the state are experiencing benzene air pollution problems and that there is a reasonable basis for the State's determination that there is a public health need for additional controls; how benzene levels in gasoline impact air quality; and that the standards and lead time provided in the state plan are reasonable and practicable considering factors such as cost and supply impacts. We request comment on all of these

[37] Section 211(c)(4)(A) provides: Except as otherwise provided in [211(c)(4)(B) or (C)], no state (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emissions control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine * * * if the Administrator has prescribed under [211(c)(1)] a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless the State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

criteria and invite suggestions for other criteria that we could use.

Under this approach, the State would also need to demonstrate that the State control is more stringent than the applicable federal requirement. We have considered several options for making this demonstration, and request suggestions for other means of comparison. One difficulty is that EPA's proposed program would control benzene at the refinery and importer level while any State standards would apply to a geographic area. In many cases, gasoline distributed in a given area may not have been produced by a refinery in the area; in fact, the refinery could be hundreds of miles from the area. One option we have considered for determining whether a State program is more stringent is to evaluate whether it would get more benzene control than today's proposed program. A State could determine the gasoline benzene levels in the area, and make predictions of any changes in those levels with the State program. This would require estimating the range of gasoline benzene levels in gasoline supplied to the area under the federal program, and any differences in the gasoline benzene levels that would result from a State program. Another option would require a State standard to be as low (in benzene) as the cleanest refinery baseline of the refineries most likely to supply the area.

EPA believes this first alternative would be a reasonable exercise of EPA's discretion under section 211(c)(1), because a federal backstop is not needed to avoid degradation in benzene levels in those areas where a State has adopted more stringent controls. Where a State adopts a more stringent benzene control for conventional gasoline sold in its area, it may request the EPA to remove the proposed federal benzene standard applicable to such gasoline. If EPA finds the State standard is in fact more stringent than the federal requirement otherwise applicable to gasoline intended for and used in that area and that the regulatory criteria are satisfied, the federal control would no longer be applicable to conventional gasoline used in that area. Because no federal benzene standard would apply to gasoline used in the area regulated by the State control, the State control would not be preempted by today's proposed federal benzene standard.[38]

EPA believes this approach is consistent with the authority provided in section 211(c)(1). Section 211(c)(1) authorizes EPA to determine both the level of control that is appropriate as well as the product to which the control should apply. EPA believes it is appropriate that this federal program, which is designed to avoid backsliding, should not interfere with State authority to adopt controls that are more stringent. This approach is similar to the scheme outlined in section 211(c)(4), which allows EPA to approve otherwise preempted State fuel controls into the State Implementation Plan (SIP) if the controls are needed to help achieve one or more of the NAAQS. This alternative provides a mechanism for waiving preemption of State benzene controls that is otherwise missing in section 211(c)(4).

A second alternative would be to avoid preempting State benzene controls in conventional gasoline areas in the first instance. This could be accomplished by establishing a control, on a refinery-by-refinery basis, based on the overall exhaust toxics performance rather than specifically on benzene levels. As with benzene, many refiners currently produce conventional gasoline that over-complies with the individual baselines for exhaust toxics performance assigned to each refinery. Much of this over-compliance, as explained earlier, is the result of lower benzene levels in gasoline. A more stringent exhaust toxics performance standard, like the proposed benzene standard, would ensure maintenance of this recent performance (in most cases over-compliance) but would not specify how that level of performance is to be achieved.[39] Like the refinery-by-refinery benzene standard being proposed today, a refinery-by-refinery exhaust toxics performance standard that reflects the recent level of performance achieved by that refinery would impose only negligible costs on refiners, if any. Moreover, because EPA would be regulating exhaust toxics performance and not benzene content, State benzene controls may not be preempted.[40]

EPA invites comments on the need to consider the above options for avoiding presumption of State controls, as well as the advantages and disadvantages of both of these approaches, including the potential preemptive effect of the approaches, and estimates of any costs associated with each of the approaches.

We would expect that refiners would likely segregate such State fuel in order to comply with the State control. We invite comment on whether EPA should require segregation to ensure that batches of gasoline that were not intended to be State batches would not be labeled as such simply to avoid including them in a refinery's compliance determination for today's proposed program. By ensuring that gasoline is correctly accounted for and ultimately correctly distributed, the environmental goals of the federal and State programs are met. We request comment on this issue of segregating State gasoline, including the feasibility and practicality of such an approach and the impacts of distribution of a separate State gasoline.

F. What Are the Expected Impacts of EPA's Proposed Program?

1. Expected Costs and Benefits

EPA believes that no refinery capital expenditures or operational changes would be needed to comply with the proposed anti-backsliding program since the proposal only requires that refineries continue doing what they did during 1998–1999 in terms of gasoline benzene content.

Refineries with low 1998–1999 benzene levels may believe that the proposed rule is penalizing them for being ''cleaner'' than required with respect to fuel benzene content. While EPA appreciates the fact that these refineries were indeed cleaner than necessary, EPA believes that refineries in 1998–1999 were likely to be operating in a manner that optimized their operations. Thus, the over-compliance during that time period must have been the most comfortable

[38] EPA believes that if a particular federal control does not apply to gasoline used in a given area, that federal control should have no preemptive effect in that area under section 211(c)(4)(A). Thus, to determine the scope of federal preemption in conventional gasoline areas, EPA would only consider the conventional gasoline controls. The current conventional gasoline exhaust toxics performance standards, described in more detail below, use benzene as one of the inputs in the model used to evaluate the performance of a particular gasoline formulation. The level of benzene is not itself limited by any federal regulation for conventional gasoline. EPA believes it is reasonable to conclude that section 211(c)(4)(A) does not prohibit States from controlling benzene in conventional gasoline based on either the current conventional gasoline (CG) standards, or under today's proposal, where EPA's benzene control does not apply to that gasoline.

[39] The conventional gasoline toxics performance standard requires that exhaust toxics performance of current fuels be no less than the individual baseline, which was based on the performance of the gasoline produced in 1990. The performance of gasoline is modeled using EPA's Complex Model. The inputs used by the Complex Model to evaluate exhaust toxics performance for conventional gasoline include the levels of benzene, MTBE, ETBE, ethanol, aromatics, olefins, sulfur, RVP, and oxygen, as well as distillation values (E200 and E300). By regulating performance rather than the individual parameters that affect performance, the regulations give refiners flexibility in determining their fuel formulations, and preserve overall performance even if specific fuel characteristics vary.

[40] A state control on benzene would not be a control ''respecting'' exhaust toxics, for purposes of section 211(c)(4)(A).

operating position for refiners. Individual refiners whose gasoline contained very low levels of benzene must have been maximizing profits in the same way as refiners whose gasoline contained higher levels of benzene. Thus, there is no clear unfairness to setting standards for all refiners according to this optimized level, which had little year-to-year variation even over the three year period beginning in 1997.

Discussion of Incremental Volume Impact

The Agency recognizes that the demand for RFG is projected to increase over time, approximately 2% per year based on VMT projections. This raises an issue whether additional or different costs may be associated with this additional production to meet an increase in demand. EPA invites comment on this issue. The proposed benzene standards apply only to the annual average volume of RFG produced in the baseline years. The Agency intends to regulate the additional incremental production of RFG, and discusses options below. However, at this time we are not proposing a specific course of action and will take all comments into consideration when determining the appropriate standard to apply to the incremental RFG production in the final rule.

Specifically, EPA invites comment addressing four separate scenarios of potential increases in production of RFG: The first scenario would arise through increased production by refiners who currently produce RFG. These refiners may have current excess capacity and would expand their RFG production to meet rising demand. These refineries have established operations. They would have a baseline for their current production. The second scenario is refiners who might start producing RFG in the future. Some refiners who currently are only producing CG may decide to convert some of their production to RFG. They would not have an established baseline for the RFG production. The third scenario is importers, who are somewhat different since they often have no access to refining capacity themselves. Established importers would have a baseline. Therefore, to increase volume over the baseline volumes importers may have to find additional sources of RFG. That may cause them to seek additional volume from a new refining entity with benzene levels different from the established baseline. The last scenario consists of new refineries and importers who would not have established baselines. For each of these situations, EPA invites comment on costs associated with this increased production compared to costs with current production levels, information of the relative impacts on supply if any, and the predicted benzene levels of this increased production.

EPA seeks comment on two basic options for establishing a benzene standard for this increased production and requests ideas on other options that may be appropriate. Information received in the above request for comments will be useful to EPA in deciding the appropriate approach to take in setting a standard for this increase in production volume. EPA also invites comment on the relative merits of both approaches as applied to the different situations described above.

The first option would apply the same benzene content standard to all production. In other words, existing RFG refiners and importers that choose to expand production/importation would include all RFG produced in determining compliance with their 1998–1999 baseline benzene average. New RFG producers would need to meet the average benzene content currently found in the national RFG pool (*i.e.*, 0.66 vol%). This first option would ensure that the average benzene content of RFG would not degrade in the future.

The second option would set a separate standard that would apply only to the additional volume of RFG produced by a refinery or importer.[41] For these new barrels of RFG, EPA could require that the gasoline meet a less stringent standard, but no less stringent than the current RFG benzene standard of 0.95 vol% on average. This approach would preserve the benzene reductions that have been achieved to date for the existing inventory of RFG, while potentially allowing some limited increase above this level for the small amount of increased production. EPA requests comment on how benzene levels under this option are likely to compare to those that would be achieved under the first option.

Potential Interaction With Tier 2/Sulfur Gasoline Program and Possible MTBE Action

EPA is also seeking comment on the potential interaction, if any, of today's proposal with the promulgated Tier 2/sulfur reduction program and possible MTBE gasoline control programs. Regarding Tier 2 interaction with this proposal EPA, seeks comment on whether the implementation of Tier 2/sulfur there may lead to future compliance costs associated with this proposal. In addition to comments regarding potential costs differences, EPA requests comment on alternative benzene content standards that commenters believe would be appropriate under these circumstances and other alternative scenarios identified by commenters. EPA also seeks comment as to what extent, if any, the proposed benzene controls would affect the costs associated with future controls of MTBE content of gasoline. This information will be used to inform the Agency in its ongoing deliberations on the MTBE issue.

With regard to benefits, our proposed anti-backsliding program is not expected to reduce toxics emissions beyond what is currently being achieved. Instead, we would expect it to hold the average content of benzene in gasoline to 1998–1999 levels (gasoline in 2002, for example, would have the same benzene content, on average, as gasoline in 1998–1999). Because compliance with the proposed requirements would be determined at the refinery, and because fuel from a given refinery tends, on average, to be sold in a few specific areas (excluding fungible pipeline shipments), areas with relatively high gasoline benzene levels would be likely to continue to have relatively high gasoline benzene levels, unless a refiner voluntarily reduced its gasoline benzene content below its baseline levels. Fleet turnover to vehicles with lower standards (in other words, LEVs and Tier 2 vehicles) is expected to lower emissions of toxic compounds even as VMT increases, so benzene emissions will in fact continue to decrease, independent of our proposed anti-backsliding program.

2. Applicability of the Anti-Dumping Program

National Petrochemical & Refiners Association (NPRA) recently wrote to us requesting that we consider repealing the gasoline anti-dumping program which was established as part of the 1990 Clean Air Act Amendments.[42] A copy of this letter is included in the docket for this rule. The anti-dumping regulations require that each refiner's conventional gasoline, starting in 1995, produce no more emissions of NO_X and exhaust toxics emissions than were produced by that refiner's 1990

[41] Under this option we would need to establish not only a refinery-by-refinery baseline benzene content standard but also a refinery-by-refinery baseline on the volume of gasoline produced. Presumably these baselines would be based on the same time period.

[42] See EPA Air Docket A–2000–12, document number II–D–02.

gasoline. The primary purpose of the program was to prevent increased emissions from consumption of conventional gasoline due to the production of cleaner-burning reformulated gasoline.

NPRA believes that the combination of the Tier 2 sulfur controls, which begin phasing in by 2004, and the benzene standard being proposed today would on their own ensure compliance with the anti-dumping standards for NO_X and exhaust toxics emissions. In other words, with sulfur levels controlled to 30 ppm on average and benzene levels capped at current levels (which on average are less than those existing in 1990), refiners could not modify other gasoline parameters in order to violate their 1990 baseline standards for these two pollutants.

We request comment on the appropriateness of revising the anti-dumping program after full implementation of the Tier 2 sulfur controls and the benzene standards being proposed today. We also request comment on retaining the anti-dumping program, but waiving the testing and reporting requirements for all refiners and importers after implementation of the sulfur and benzene programs. Finally, we also request comment on the need to require further reductions in fuel benzene levels beyond those being proposed today before waiving the testing and reporting requirements associated with the anti-dumping program, to ensure that the waiver does not relax the current anti-dumping requirement for toxics.

G. Determination of the Need for Future Controls Deferred to Technical Analysis Plan and Future Rulemaking

In today's action we are not proposing to reduce the benzene content of gasoline below 1998–1999 levels. Although EPA has started to evaluate the emission benefits, costs, and technical issues associated with reducing fuel benzene levels below 1998–1999 average levels, a more precise evaluation of these issues cannot be made without much of the information that would be developed in the proposed Technical Analysis Plan. We are deferring a determination of the need for and appropriateness of additional controls related to benzene or other toxics until such time as more information is available.

Since reductions in fuel benzene content can produce substantial reductions in benzene emissions, fuel benzene control is a good approach to fuels-based toxics control. There are many ways of reducing gasoline benzene content. In fact, through our discussions with refineries and licensors of benzene reduction technology, we have identified four basic strategies that refineries could use to reduce benzene levels in their gasoline. The first strategy routes the precursor compounds (*i.e.,* those compounds that tend to form benzene in the reformer [43]) around the reformer. The second strategy separates a benzene-rich stream from reformate, the reformer product, and saturates [44] the benzene. In the third strategy benzene is separated from the reformate for sale to the petrochemical market. The fourth strategy involves separating either the benzene precursors or the benzene-rich product and other light compounds from the reformate, and saturating the benzene in an isomerate unit. While the first three strategies result in a net octane loss in the gasoline pool, the last strategy recovers that octane loss and can even increase the gasoline pool octane level. These and other potential benzene reduction strategies would be investigated in our Technical Analysis Plan.

In evaluating further mobile source air toxics, we will consider the appropriateness of both potential new controls and existing controls, considering costs and other relevant factors. Benzene reduction technologies (and in general, toxics reduction technologies and strategies), and how to best estimate the inventory benefits of additional control measures, are two areas for which we believe additional information is needed. Therefore, as mentioned above, we are deferring any further regulatory decisions until we can conduct our Technical Analysis Plan.

It should be noted that there are clear advantages in deferring a decision regarding the need for and appropriateness of further mobile source air toxics controls. As the gasoline and proposed diesel sulfur control programs are phased-in over the next few years, we can consider the effects of those programs, for example, the refinery impacts, as we estimate the costs and benefits of further controls. Also, currently there are significant data gaps in our nonroad emissions estimates and uncertainty in our estimated toxics inventories. We will be in a better position to address these limitations over the next few years. Furthermore, the nationwide benzene inventory will continue to decrease over time due to other programs, ensuring that adverse health effects associated with exposure to benzene will continue to decline. In the meantime, our proposed anti-backsliding provisions would prevent increases in the benzene content of gasoline. We also believe that within the next few years, additional data on ambient toxics levels will provide us with important information in evaluating further mobile source air toxics policy decisions.

[43] A reformer is a refinery operating unit which produces a gasoline blending stream known as reformate. Reformate is very high in aromatics, such as benzene, and reformate is the main source of benzene and aromatics in finished gasoline.

[44] When benzene is saturated, hydrogen is added to the molecule to transform it from an aromatic compound to cyclohexane.

H. What Are the Details of Today's Proposed Program?

This section explains the proposed benzene requirements, who must comply with the proposed standards, what gasoline is subject to the requirements, a possible credit banking and trading program, and compliance provisions.

1. Standards and Dates

We are proposing that each refinery and importer be assigned an individual baseline benzene value, separately for their reformulated and conventional gasolines, based on the quality of the gasoline produced or imported during the two-year period from 1998 through 1999. We are proposing that, beginning January 1, 2002, during each annual averaging period, the average benzene content for each type of gasoline listed above may not exceed the baseline benzene content for that type of gasoline for that refinery.

We are proposing a one-year deficit carryover which would permit refiners some flexibility in meeting their 1998–1999 baseline benzene levels. Under this flexibility, a refinery or importer would be allowed to be out of compliance with its benzene baseline for one year, but would have to make up the deficit and be in compliance the next year. EPA requests comments on this proposal and on a two-year averaging option wherein a refinery or importer's compliance would be determined every two years. EPA specifically requests comments on the potential environmental harms and costs or cost savings under such an option.

We request comment on whether the proposed 1998–1999 baseline is an appropriate baseline time period, and whether there would be any difference in requiring 1997–1998 to be the baseline period, or perhaps even a three-year baseline time period, 1997–1999, or some other time period. We specifically request comment on the year-to-year variability in a refinery's gasoline benzene levels. We also request

comment on the option of allowing a refinery to petition for a different baseline time period, if, during a portion of the baseline time period, refinery operations were significantly different from average operations, barring normal maintenance and turnarounds.

We also request comment on whether the proposed start of the program (January 1, 2002) allows sufficient time for refiners to prepare to meet the proposed requirements. We believe the proposed start date is appropriate since the requirements aim to capture recent performance as opposed to forcing further reductions. Because the proposed standards are average standards, which inherently allow batch-to-batch variability, we are not including compliance cushions in the setting of the gasoline benzene standard from each refinery's RFG and CG standard. There were no compliance cushions used in either the anti-dumping program or the RFG annual average benzene standard.

2. Entities Subject to the Proposed Regulation

The proposed benzene control program would apply to anyone who produces or imports gasoline for sale in the U.S., primarily petroleum refiners and importers. This includes anyone meeting our definition of a refiner (including blenders, in most instances) or an importer. Foreign refiners would in some cases be treated as a refiner.

3. California Gasoline

We are proposing that the requirements of the proposed benzene control program not apply to California gasoline. This is because California currently has a gasoline benzene standard that is more stringent than that required by the federal RFG program. Under California's program, a California refinery's annual average gasoline benzene content cannot exceed 0.8 vol%. This standard is more stringent than the federal RFG standards, which require that a refiner's RFG benzene not exceed 0.95 vol%, on average. California maximum benzene levels (on any batch subject to the averaging standard) are also more stringent than the federal RFG requirements. The current California maximum is 1.2 vol%, which will decrease to 1.1 vol% in 2003. The federal RFG maximum benzene level is 1.3 vol%. In 1998, California gasoline averaged less than 0.6 vol%. This average is below the current 0.65 vol% annual average for non-California, federal RFG. Additionally, beginning in 2003, California gasoline will become subject to a more stringent (refinery-based) benzene requirement of 0.7 vol% annual average. Given this upcoming reduction in the California averaging standard to a 0.7 vol% annual average, we do not expect average California gasoline benzene levels to increase.

While it is possible that California gasoline benzene levels could backslide compared to the levels in the baseline period, such a backslide is highly unlikely, or would be extremely minimal, given current California benzene levels and the upcoming more stringent standards. The goal of today's proposed program is to ensure that gasoline benzene levels around the country do not increase compared to the gasoline benzene levels during the baseline time period. We do not believe that excluding California from today's proposed program conflicts with this goal, and we do not expect any environmental detriment in California or the other 49 states as a result of excluding California gasoline from the proposed requirements.

This exclusion for California gasoline is consistent with other EPA fuel controls. California gasoline is currently excluded from some or all of the requirements of the RFG, anti-dumping, and gasoline sulfur programs. In the final RFG and anti-dumping rule (59 FR 7716, February 16, 1994), EPA exempted California refineries from most of the enforcement mechanisms, including reporting, associated with those programs because (1) California gasoline exceeded the federal performance standards for RFG; (2) the federal RFG areas in California were assured of meeting the federal RFG performance and content (benzene and oxygen) standards; and (3) the compliance and enforcement program was sufficiently rigorous. This exemption was extended for federal RFG Phase II (64 FR 49992, September 15, 1999). EPA has also exempted California gasoline from the recently promulgated gasoline sulfur requirements associated with the Tier 2 emission standards (65 FR 6698, February 10, 2000) because the current California gasoline sulfur requirement is at least as stringent as the new federal sulfur requirement.

Because it would not be included in the proposed program, we are proposing that California gasoline be segregated for the proposed benzene program as well as the other federal fuel programs. Though most California gasoline is produced and used in California, some is imported to or exported from California, and under the RFG and anti-dumping rules, such gasoline must be segregated and separately accounted. Segregation will ensure that low-benzene California gasoline is not part of a non-California refiner's benzene compliance determination, which would otherwise allow the refiner to use the low-benzene California gasoline to offset higher benzene gasoline destined for areas other than California.

We request comment on whether California should be excluded from the requirements of this proposed rule. If California gasoline were subject to today's proposed rule, it would be considered a separate type of gasoline for baseline and compliance determinations, just as we have proposed separate determinations for RFG and conventional gasoline.

4. Proposed Baseline Development and Submittal Requirements

a. *General requirements.* The purpose of establishing a benzene baseline for each refinery or importer is to determine the standards for that refinery under today's proposed rule. Each refinery or importer will have a reformulated gasoline benzene baseline value and a conventional gasoline benzene baseline value to the extent they produced or imported these fuels in the 1998–1999 baseline time period. We propose that refiners and importers would have to establish these benzene baselines for each individual refinery by submitting to us data establishing their annual average gasoline benzene levels based on the average of their 1998 and 1999 operations. No additional sampling or testing is required to establish a benzene baseline since this information is already required for both the reformulated gasoline and anti-dumping programs. We would review the data, and barring any discrepancies, approve benzene baselines for each refinery or importer.

We believe the process we have defined would minimize the burden to the industry and the time it will take for us to review and approve the benzene baselines. Specifically, refiners and importers must submit to us information which establishes (separately for RFG and CG) the batch report numbers, benzene levels and volumes of each batch, or composite, as applicable, of gasoline produced or imported in 1998 and 1999, as well as the annual average benzene levels calculated from this data. Within 120 days, we will review the application and notify the refiner of approval or of any discrepancies we find in the data submitted.

We are proposing that benzene baselines be submitted no later than June 30, 2001. EPA believes this would provide the industry with sufficient preparation time, and the Agency adequate review and approval time. EPA requests comment on whether this

deadline for benzene baseline submittals is appropriate.

b. *Proposed requirements for foreign refiners.* We are proposing that foreign refiners may follow the general requirements of our protocol for establishing individual refinery baselines (see 40 CFR 80.91–94 and also 40 CFR 80.410) by providing sufficient data to establish the volume of gasoline imported to the U.S. in 1998–1999 and the annual average benzene level of that gasoline. If the test method used to identify the benzene levels differs from the one specified in today's proposed action, the refiner would have to provide sufficient information about the test method to allow us to evaluate the appropriateness of the alternative. Because this information will be new to us, we may require more time to review and approve their 1998–1999 benzene baseline. But, consistent with our previous handling of foreign refiner submissions, once we have determined that the submission is complete, and the protocol has been followed, the foreign refiner may use the baseline while awaiting our formal approval. However, the refiner would be held to the baseline that is ultimately approved.

c. *Proposed requirements for importers and blenders.* To establish an individual benzene baseline, importers and blenders must have information on every batch of gasoline for at least twelve consecutive months within the two baseline years. Absent this data, we propose that they be assigned the industry average gasoline benzene baseline for that pool of gasoline.

d. *Proposed requirements for those with incomplete 1998–1999 benzene data.* Certain regulated parties did not produce or import gasoline into the U.S. during some or all of 1998–1999. EPA is proposing the following methodologies of determining the benzene baselines for these parties for the purposes of the proposed benzene control program:

(1) *Produced or imported for 12 consecutive months or more during the time period 1998–1999.* EPA is proposing to accept, at a minimum, 12 consecutive months' worth of data (which must include every batch produced or imported during that time period); any additional data (of acceptable quality) for the remainder of the baseline period must also be included in the determination.

(2) *Produced or imported for less than 12 consecutive months during 1998–1999.* EPA is proposing that refineries and importers in this situation use the 1998–1999 industry averages (separately for RFG and CG) as their 1998–1999 benzene baseline. We have estimated these values to be 0.66 vol% for RFG and 1.11 vol% for CG.

e. *Aggregation of refinery benzene baselines.* Consistent with the anti-dumping program, and with our position to maintain current performance with today's proposed action, we are proposing that multi-refinery refiners and importers be required to comply with the requirements of this proposal for their conventional gasoline on the same aggregate basis as their anti-dumping compliance is determined. Thus, each aggregate of a refiner would have a baseline conventional gasoline benzene level, computed after determining the baseline conventional gasoline benzene level of each refinery in the aggregate.

5. Flexibility Provisions

a. *Credit program.* This proposed anti-backsliding program does not include a credit trading program. However, EPA is seeking comment on the need for and viability of a credit trading program such as outlined below. While the agency believes it has provided sufficient flexibility with the proposed deficit carryover program, we are seeking comment on this credit trading approach as an alternative, or additional, means of providing compliance flexibility.

The current Reformulated Gasoline Rules provide a credit program that allows the transfer of benzene credits by refiners, importers, and blenders (see 40 CFR 80.67). In this program, benzene credits can be generated from a baseline average of 0.95 vol% benzene. This program will remain in place. Refiners that currently rely on this program, if any, will continue to be able to use it in meeting the basic RFG requirements in 40 CFR part 80, subpart D.

This credit generation and transfer approach could also be incorporated in the proposed anti-backsliding benzene standard. Refiners could generate credits by reducing the average benzene in their product below the anti-backsliding baseline. Under such a trading program, compliance could be achieved through a transfer of benzene credits provided that (1) the credits are generated in the same averaging period as they are used; (2) the credit transfer takes place not later than 15 working days following the end of the averaging period in which the benzene credits were generated; (3) the credits were properly created; and (4) the credits are transferred directly from the refiner, importer, or blender that created the credits to the refiner, importer, blender that used the credits to achieve compliance (*i.e.,* no brokering of credits).

Based on the fact that RFG and CG would have separate baselines, EPA believes it would be inappropriate to allow credit trading between the RFG and conventional gasoline pools. We request comment on the need for and appropriateness of adopting this type of credit program in the proposed anti-backsliding standard for both the reformulated and conventional gasoline pools. We are also seeking comment on whether any additional constraints might be included to limit credit transactions to ensure that the average benzene levels supplied to a given area do not degrade.

b. *Hardship provisions.* EPA is proposing to allow a refinery to temporarily produce and distribute gasoline which will cause it to exceed its baseline benzene level at the end of the averaging period based on the refiner's inability to produce complying gasoline because of extreme and unusual circumstances outside of the refiner's control that could not have been avoided through the exercise of due diligence. EPA is proposing to follow the ''extraordinary circumstances'' provisions as presented in 40 CFR 80.73 of the reformulated gasoline rule. EPA does not believe that the proposed benzene control program presents significant compliance challenges or compliance costs to the refiners. Thus, we are not proposing to include hardship provisions such as those included in the gasoline sulfur program for extreme economic hardship.

6. Downstream standards

Compliance with today's proposal occurs at the refinery or importer level, since each refinery, aggregate of refineries, or importer must comply with its average 1998-1999 baseline. As a result, there are no downstream standards associated with today's proposed rule.

7. Sampling and Testing

Overall we believe that our proposed anti-backsliding program will require refiners and importers to do little or no more than they are currently doing under the existing RFG and anti-dumping programs in terms of sampling and testing. The specific requirements are discussed below.

a. *Test method for benzene in gasoline.* We are proposing that ASTM standard method D3606–99 Standard Test Method for ''Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography'' be used for the measurement of benzene in gasoline.

This is the most recent update of this methodology.

b. *Requirement to test every batch of gasoline produced or imported.* We propose that the applicable per-batch or composite sampling and testing, as applicable for RFG and conventional gasoline, be continued under our proposed benzene control program. Since this program is only concerned with the annual average benzene level, there is no need for more batch testing than is already required.

c. *Sampling methods.* Sampling methods apply to all parties who conduct sampling and testing under the rule. We propose to require the use of sampling methods that were proposed in the July 11, 1997 **Federal Register** document for the RFG/CG rule (62 FR 37338, at 37341–37342, 37375–37376). These sampling methods include ASTM D 4057–95 (manual sampling), ASTM D 4177–95 (automatic sampling from pipelines/in-line blending), and ASTM D 5842 (this sampling method is primarily concerned with sampling where gasoline volatility is going to be tested, but it would also be an appropriate sampling method to use when testing for benzene).

d. *Gasoline sample retention requirements.* EPA is proposing to retain current gasoline sample retention requirements.

8. Recordkeeping and Reporting Requirements

Under today's proposal, refiners and importers would be required to keep, and make available to EPA, certain records that demonstrate compliance with their benzene baseline standard. The RFG/CG regulations currently require refiners and importers to retain records that include much of the information required in this proposed rule. Where this is the case, there would be no requirement for duplication of records or information.

Since there are no downstream standards under the proposed benzene regulations, only refiners and importers would be required to retain Product Transfer Documents (PTDs) and records of quality assurance programs (including, where applicable, benzene test results). Parties would be required to keep records for a period of five years.[45]

Refiners and importers would be required to submit an annual report that demonstrates compliance with the applicable benzene standards and data on individual batches of gasoline, including batch volume and benzene content. Based on our experience with other programs, we believe that requiring an annual benzene report and batch information will provide an appropriate and effective means of monitoring compliance with the average standards under the benzene program. Annual reports, on forms provided by the Agency, would be required to be received by EPA by the last day of February of the next calendar year.

EPA is proposing that parties that only blend oxygenates or butane into gasoline not be considered refiners under the proposed rule, and, as a result, would not be subject to the proposed reporting requirements.

We are also proposing that refiners and importers be required to arrange for a certified public accountant or certified internal auditor to conduct an annual review of the company's records that form the basis of the annual benzene compliance report (called an ''attest engagement''). The purpose of the attest engagement is to determine whether representations by the company are supported by the company's internal records. Attest engagements are already required under the RFG/CG regulations. The refiner's attest engagement under the RFG/CG rule partially encompasses benzene rule compliance since the attest auditors are already required to verify benzene results for both CG and RFG. Consistent with the RFG regulations, the attest reports for benzene would be included in the presently required attest engagement submitted by May 31 of each year.

9. Exemptions for Research, Development, and Testing

We are proposing to provide an exemption from the proposed benzene requirements for gasoline used for research, development and testing purposes. We recognize that there may be legitimate research programs that require the use of gasoline with sufficiently high benzene levels such that extra effort would be required of the refiner to offset the benzene contribution of the research gasoline. As a result, we are proposing provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling or dispensing gasoline that would cause an exceedance of the refiner's annual average benzene standard, or cause the refiner to produce gasoline with sufficiently lower benzene to offset the benzene content of such gasoline if it were included, where such gasoline is necessary to conduct a research, development or testing program. Parties would be required to submit to EPA an application for exemption that describes the purpose and scope of the program and the reasons why use of the higher benzene gasoline is necessary. In approving any application, EPA may impose reasonable conditions such as recordkeeping, reporting, and volume limitations.

10. Liability and Penalty Provisions for Noncompliance

The liability and penalty provisions under the proposed rule are similar to the liability and penalty provisions of the RFG and other fuels regulations.[46] Regulated parties would be liable for committing certain prohibited acts, or causing others to commit prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements, such as the recordkeeping or PTD requirements, or causing others to fail to meet such requirements.

The provisions of section 211(d)(1) of the Clean Air Act (the Act) for the collection of penalties would apply for noncompliance with the proposed rule. The penalty provisions would subject any person who violates any requirement or prohibition of the rule to a civil penalty of up to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of the applicable average benzene standard would constitute a separate day of violation for each day in the averaging period. The penalty provisions are similar to the penalty provisions for violations of the RFG regulations.

I. Toxics Performance Standard

EPA requests comments on an alternative approach that would be based on a toxics performance standard instead of a gasoline benzene content standard. This alternative program would be very similar to the gasoline benzene program described above, but would require that the average toxics performance for gasoline produced at each refinery not increase over the toxics performance of gasoline produced by that refinery during the baseline period, 1998–1999. Annual toxics performance would be determined using the Complex Model in the same way it is determined for our RFG and anti-dumping programs. Like our proposal for the gasoline benzene standard, toxics performance would be determined separately for RFG and CG. Also, like

[45] Five years is the applicable statute of limitations for the RFG and other fuels programs. See 28 U.S.C. 2462.

[46] See 40 CFR § 80.5 (penalties for fuels violations); § 80.23 (liability for lead violations); § 80.28 (liability for volatility violations); § 80.30 (liability for diesel violations); § 80.79 (liability for violation of RFG prohibited acts); § 80.80 (penalties for RFG/CG violations).

our existing toxics performance requirements described above, the RFG standard would apply to total toxics emissions while the conventional gasoline standard would apply only to exhaust toxics performance. Other components of the program would work in the same way as for the gasoline benzene content standard, described in section H.

We believe that both of these approaches, the benzene content standard and the toxics performance standard, are consistent with the toxics requirements of the reformulated gasoline and anti-dumping programs, and either one could be used as the basis of a program that seeks to maintain current levels of fuel-based toxics control. However, a toxics performance standard (TPS) approach has some benefits compared to the gasoline benzene content approach. For example, a TPS may provide a toxics control program which offers more flexibility for refiners than the proposed benzene content program. This is because the TPS approach gives refiners more than one fuel parameter to adjust to achieve compliance with the requirements. At the same time, this flexibility varies by refiner, and may not be a benefit to many refiners given that benzene emissions, which are heavily influenced by gasoline benzene content, are the majority of toxics emissions. In addition, a TPS program may be preferable because it would limit emissions of several toxics, as a group, not just benzene.

These benefits, however, must be weighed against some issues that would be raised by adoption of a TPS. First, while a TPS gives refiners more flexibility, it is also the case that refiners may gain a large degree of toxics benefits, as measured by the Complex Model, simply through the gasoline sulfur reduction already required by 2004 instead of through toxics control. In other words, refiners may be able to maintain their current levels of toxics performance by reducing sulfur; this may even allow them to reduce the performance of their fuels with respect to emissions of other toxics as long as the overall toxics performance remains constant. EPA is concerned that codification of the current level of TPS over-compliance would effectively amount to a loss of the toxics benefits of the Tier 2 rule. A second issue associated with the TPS option is that it may not yield the same degree of benzene control as a gasoline benzene content standard, since refiners can opt to adjust aromatics or other fuel parameters instead of holding their benzene levels at or near their 1998–1999 average. EPA requests comment on the importance of each of these issues as well as on ways they can be alleviated if a toxics performance standard is finalized. EPA also seeks comment on whether a TPS approach will offer the same degree of benzene control as a gasoline benzene content standard.

A third alternative, which may alleviate some of the issues associated with a TPS, is to set a benzene emissions performance standard. Under this approach, annual average benzene emissions would be subject to comparison to baseline benzene emissions for 1998–1999, as measured by the Complex Model. Benzene emissions could be measured as they are in the existing fuel control programs, total for RFG, exhaust-only for CG, or we could measure total benzene emissions for both RFG and CG. EPA seeks comment on both alternatives. This approach is somewhat more stringent than the benzene fuel content standard in that it measures benzene emissions associated with a particular fuel formulation and not just the benzene content of the fuel. It is also more stringent than a TPS because it targets benzene specifically. Refiners may favor a benzene emissions performance standard because benzene emissions are a function of several gasoline constituents, and refiners would have greater flexibility when setting their fuel formulations. This option also has the benefit of specifically addressing and maintaining benzene emissions, which are not directly addressed under either the benzene content or the toxics performance standard approaches.

At the same time, EPA is concerned that the same issues described above for the toxics performance standard may also apply to a benzene toxics performance standard. In this case, sulfur controls will allow catalysts to perform more efficiently, resulting in lower exhaust benzene. In addition, a specific benzene emissions performance standard would be more constraining for refiners, in that adjustments to aromatics would impact a refiner's ability to comply with the requirements. EPA seeks comments on whether a benzene emissions performance standard should be applied. EPA also seeks comment on the importance of the issues described above as well as on ways they can be alleviated if a benzene emissions performance standard is finalized.

VI. Nonroad Sources of MSAT Emissions

In this section, we will look at MSAT emissions from nonroad mobile sources.[47] First, we will briefly review the nonroad MSAT emission inventories that were presented in Section III. Next, we will discuss how the current nonroad emission control programs will reduce these nonroad inventories, as well as briefly touch upon the expected benefits from our new actions targeting the control of emissions from currently unregulated nonroad categories.

We are looking at nonroad MSAT emissions separately from motor vehicle MSAT emissions primarily because our understanding of nonroad MSAT emissions is much more limited. This section ends with a discussion of the current gaps in our data that we will need to fill before we can comprehensively assess the need for, and appropriateness of, programs intended to further reduce nonroad MSAT emissions.

A. Nonroad MSAT Baseline Inventories

We previously presented the 1996 baseline inventories for several key nonroad MSAT emissions in Table III–2. This nonroad MSAT data was taken from the 1996 National Toxics Inventory (NTI). In general, the data show that nonroad vehicles tend to be significant contributors of those same MSAT emissions for which motor vehicles are also significant contributors. For some MSAT emissions, the nonroad inventories are comparable to, or even higher than, those for on-highway vehicles. Nonroad vehicles contribute as much as 39 percent of the national inventory of some MSAT emissions, such as acetaldehyde and MTBE, and contribute significantly to the national inventories of several others, including 1,3-butadiene, acrolein, benzene, formaldehyde, lead compounds, n-hexane, toluene and xylene.

Table III–4 shows our estimates of on-highway vehicle VOC and diesel PM emissions. Comparing the 1996 values in this table to the nonroad VOC and diesel PM numbers presented later in this section we see that the nonroad VOC inventory in 1996 was almost 80 percent of the on-highway inventory, while the nonroad diesel PM inventory for the same year was roughly twice that for on-highway diesel PM.

[47] ''Nonroad'' is a term that covers a diverse collection of engines, vehicles and equipment, as described in detail later in this section. The terms ''off-road'' and ''off-highway'' are sometimes used interchangeably with nonroad.

B. Impacts of Current Nonroad Mobile Source Emission Control Strategies

1. Description of the Emission Control Programs

The Clean Air Act Amendments of 1990 directed us to study the contribution of nonroad engines to urban air pollution, and to regulate them if warranted. Due to the variety of nonroad engine and equipment types and sizes, combustion processes, uses, and potential for emissions reductions, we have placed nonroad engines into several categories. These categories include land-based diesel engines (e.g., farm and construction equipment), small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers), large land-based SI engines (e.g., forklifts, airport ground service equipment), marine engines (including diesel and SI, propulsion and auxiliary, commercial and recreational), locomotives, aircraft, and recreational vehicles (large land-based spark ignition engines used in off-road motorcycles, ''all terrain'' vehicles and snowmobiles). Brief summaries of our current and anticipated programs for these nonroad categories follow.

• *Land-based diesel engines.* Land-based nonroad diesel engines include engines used in agricultural and construction equipment, as well as many other applications (excluding locomotives, mining equipment, and marine engines). Under our Tier 1 standards phased in beginning in 1996, NO_X reductions of over 30 percent were required of new land-based nonroad diesel engines greater than 50 horsepower (hp).[48] Standards applicable to engines under 50 hp took effect for the first time in 1999. We have completed a second set of standards (Tier 2) which will be phased in from 2001 through 2006 and will require further NO_X reductions, as well as reductions in diesel PM emissions. Still more stringent NO_X standards for engines over 50 hp (Tier 3) have been adopted and will be phased in from 2006 through 2008. These Tier 2 and Tier 3 regulations will result in 50 percent reductions in VOC and 40 percent reductions in diesel PM beyond the Tier 1 regulations.[49] Finally, we are currently working on appropriate Tier 3 diesel PM standards for land-based nonroad diesel engines.

• *Small land-based SI engines.* Small land-based spark-ignition engines at or below 25 hp are used primarily in lawn and garden equipment such as lawn mowers, string trimmers, chain saws, lawn and garden tractors, and other similar equipment. Our Phase 1 emission controls for these engines took effect beginning in 1997 and will result in a roughly 32 percent reduction in VOC emissions.[50] We recently completed Phase 2 regulations for these engines which will result in additional reductions in combined HC and NO_X beyond the Phase 1 levels of 60 percent for nonhandheld engines and 70 percent for handheld engines.[51]

• *Large land-based SI engines.* We do not currently have emission standards in place for SI engines above 25 hp used in commercial applications. Such engines are used in a variety of industrial equipment such as forklifts, airport ground service equipment, generators and compressors. We are currently developing an emission control program for these engines.

• *Marine engines.* Due to the wide variety of marine engine types and applications we have broken them down into three general categories for regulatory purposes. The first category consists of gasoline outboard and personal watercraft engines. Our standards for these engines took effect in 1998 and become increasingly stringent over a nine year phase-in period, ultimately resulting in a 75 percent reduction in VOC.[52] The second category consists of commercial diesel marine engines. Our emission standards for these engines take effect in 2004 and are similar to our standards for land-based nonroad diesel engines.[53] These regulations will ultimately result in VOC reductions of 13 percent and diesel PM reductions of 26 percent for engines subject to the standards. The last category consists of both gasoline and diesel recreational sterndrive and inboard engines. We do not currently have emission regulations in place for this category of marine engine, but have begun developing them.

• *Locomotives.* Our regulations for locomotives and locomotive engines consist of three tiers, applicable depending on the date a locomotive is originally manufactured.[54] The first set of standards (Tier 0) applies to locomotives and locomotive engines originally manufactured from 1973 through 2001, any time they are manufactured or remanufactured. The second set of standards (Tier 1) applies to locomotives and locomotive engines manufactured from 2002 through 2004. The third set of standards (Tier 2) applies to locomotives manufactured in 2005 and later. While the Tier 0 and Tier 1 regulations are primarily intended to reduce NO_X emissions, the Tier 2 regulations will result in 50 percent reductions in VOC and diesel PM, as well as additional NO_X reductions beyond the Tier 0 and Tier 1 regulations.

• *Aircraft.* A variety of emission regulations have been applied to commercial gas turbine aircraft engines, beginning with limits on smoke and fuel venting in 1974. In 1984, limits were placed on the amount of unburned HC that gas turbine engines can emit per landing and takeoff cycle. Most recently (1997), we adopted the existing International Civil Aviation Organization (ICAO) NO_X and CO emission regulations for gas turbine engines. None of these actions has resulted in significant emissions reductions, but rather have largely served to prevent increases in aircraft emissions. We continue to explore ways to reduce emissions from aircraft throughout the nation.

• *Recreational Vehicles.* Large land-based spark ignition engines used in recreational vehicles include snowmobiles, off-road motorcycles and ''all terrain'' vehicles, and are presently unregulated. We are currently developing emission regulations for recreational vehicles.

In addition to the above engine-based emission control programs, fuel controls will also reduce emissions of air toxics from nonroad engines. For example, gasoline formulation (the removal of lead, limits on gasoline volatility and reformulated gasoline) will reduce nonroad MSAT emissions, because most gasoline-fueled nonroad vehicles are fueled with the same gasoline used in on-highway vehicles. An exception to this is lead in aviation gasoline. Aviation gasoline is a high octane fuel used in a relatively small number of aircraft (those with piston engines). Such aircraft are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

As just discussed, most of our fuel controls aimed at gasoline cover both on-highway and nonroad vehicle fuel. The same is not true for diesel fuel. We have regulations in place that have dramatically reduced the sulfur levels in on-highway diesel fuel, and we have proposed further reductions in on-highway diesel fuel sulfur levels. These controls, however, do not apply to nonroad diesel fuel. Prior to the sulfur controls for on-highway diesel fuel, there was no distinction between nonroad and on-highway diesel fuel. We

[48] 59 FR 31306, June 17, 1994.

[49] 63 FR 56968, October 23, 1998.

[50] 60 FR 34582, July 3, 1995.

[51] 64 FR 15208, March 30, 1999 and 65 FR 24267, April 25, 2000.

[52] 61 FR 52088, October 4, 1996.

[53] 64 FR 73300, December 29, 1999.

[54] 63 FR 18978, April 16, 1998.

are considering the control of sulfur in nonroad diesel fuel, which would allow more effective diesel PM control technologies such as catalysts to be applied to nonroad engines and vehicles.

2. Emission Reductions From Current Programs

The programs just summarized are expected to result in reductions of national inventories of the MSAT emissions. This section summarizes our estimates of nonroad MSAT inventories into the future, based on the nonroad emission control programs we currently have in place. Interested readers are encouraged to refer to our Technical Support Document for a more detailed discussion of these projections. The discussion in this section consists of three parts. First, we discuss the inventories of four gaseous MSAT emissions: benzene, formaldehyde, acetaldehyde and 1,3-butadiene. Second, we discuss nonroad VOC emissions inventories as a surrogate for the other nonroad gaseous MSAT emissions. Finally, we discuss the trend of nonroad diesel PM emissions.

We are not reporting inventory trends for the metals on our list of MSATs (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxin/furans. Metals in mobile source exhaust can come from fuel, fuel additives, engine oil, engine oil additives, or engine wear. Formation of dioxin and furans requires a source of chlorine. Thus, while metal emissions and dioxins/furans emissions are associated with particles, there are a number of other factors that contribute to emission levels. While it is possible that these compounds track PM emissions to some extent, we do not have good data on these relationships.

a. *MSAT emissions.* Table VI–1 shows our estimates of four nonroad MSAT emissions. These estimates were based on the 1996 inventories contained in the 1996 NTI study.[55] The 1990 estimates were derived by applying toxic fractions to the nationwide VOC totals from the draft NONROAD model to the 1996 NTI numbers.[56] Toxic fractions represent the fraction of total VOC that a given MSAT makes up. By knowing the total VOC inventory and the toxic fraction for a given MSAT, we can estimate the inventory of that specific MSAT indirectly. The 2007 and 2020 estimates were derived from the draft NONROAD model, with the toxic fractions applied to the nationwide NONROAD VOC results. Toxic fractions were applied separately to the various sources of nonroad emissions (*e.g.,* diesel, gasoline, two-stroke, four-stroke, exhaust, evaporative) in the NONROAD model. Because the toxic fractions for the four MSATs shown vary from one another among the different nonroad emission sources, the percentage reductions of the four MSATs shown differ from each other.

TABLE VI–1.—ANNUAL TOXICS EMISSIONS SUMMARY FOR SELECTED AIR POLLUTANTS FOR THE TOTAL U.S. NONROAD MOBILE SOURCES FROM 1990 TO 2020

[Thousand short tons per year]

Compound	1990 emissions	1996 emissions	2007 emissions	2020 emissions
Benzene	100.2	98.7	75.4	69
Acetaldehyde	37.7	40.8	26.3	20
Formaldehyde	79.2	86.4	53.8	40.7
1,3-Butadiene	9.4	9.9	8.8	7.8

Table VI–2 summarizes the percent reductions from 1990 and 1996 levels represented by the inventories in Table VI–1. This table shows that the reductions expected from our existing nonroad control programs are significant, although not as substantial as the reductions of these pollutants for on-highway vehicles presented in section III.

TABLE VI–2.—SUMMARY OF PERCENT EMISSION REDUCTIONS IN 2007 AND 2020 FOR SELECTED AIR POLLUTANTS FOR THE TOTAL U.S. FROM 1990 OR 1996 NONROAD MOBILE SOURCES

Compound	Reduction in 2007		Reduction in 2020	
	From 1990	From 1996	From 1990	From 1996
Benzene	25	24	31	30
Acetaldehyde	30	36	47	51
Formaldehyde	32	38	49	53
1,3-Butadiene	7	11	18	21

b. *VOCs.* With the exception of the four MSATs shown in Table VI–1, we do not have detailed emissions data from nonroad mobile sources for the other gaseous MSAT emissions. Therefore, to estimate projected inventory impacts from our current nonroad mobile source emission control programs, we use VOC inventories. We believe this is appropriate because the gaseous MSAT emissions are constituents of total VOC emissions. By using VOC emissions as a surrogate, we are assuming that MSAT emissions track VOC reductions. In reality, however, some gaseous MSAT emissions may not decrease at the same rate as VOCs overall. Without having more detailed emission data for each of the MSAT emissions, however, we are unable to offer any insights on how those rates may differ. We request comment on how to develop inventory projections for the other gaseous MSAT emissions.

Our VOC emission inventories were developed using the draft NONROAD

[55] It should be noted that these estimates do not include locomotives, aircraft or commercial marine diesel engines. Thus, the 1996 estimates shown here differ slightly from those shown in Table III–2.

[56] The draft NONROAD model is a model we are developing to project emissions inventories from nonroad mobile sources. Because this is a draft model and subject to future revisions, the inventories derived from the draft NONROAD model and presented here are subject to change. The version of the NONROAD model that was used in this analysis is the one we also used in support of our recently proposed 2007 heavy-duty engine rule (65 FR 35429, June 2, 2000).

model. Because the draft NONROAD model does not include locomotives, commercial marine diesel engines, or aircraft we supplemented the draft NONROAD model inventories with the locomotive and diesel marine inventories developed in support of our regulations for those categories, and with aircraft emission inventories from the National Air Pollutant Emissions Trends, 1900–1996 report. The results of this analysis, presented in Table VI–3, show that VOC inventories are projected to decrease approximately 44 percent between 1996 and 2020 due to existing nonroad mobile source emission control programs. Comparing the results of this analysis with Table III–4, we see that expected nonroad VOC reductions are not as dramatic as those projected for on-highway vehicles, with nonroad and on-highway VOC inventories expected to be very similar by 2020. This analysis shows that our existing nonroad emission control programs will also result in significant gaseous MSAT reductions (assuming, as previously discussed, that gaseous MSAT emissions track VOC reductions).

TABLE VI–3.—ANNUAL VOC EMISSIONS SUMMARY FOR THE TOTAL U.S. NONROAD MOBILE SOURCES

Year	1996	2007	2020
Million short tons per year	3.6	2.2	2.0
Cumulative Percent Reduction from 1996	.....	39	44

c. *Diesel PM.* We estimated the nonroad diesel PM inventories using the draft NONROAD model. As explained earlier, because the draft NONROAD model does not include locomotives, commercial marine diesel engines, or aircraft we supplemented the draft NONROAD model inventories using other sources of information to cover these emissions. Table VI–4 shows our estimates of nonroad diesel PM emissions inventories. As can be seen, we expect nonroad diesel PM emissions to begin to drop with the implementation of some of our nonroad regulations. However, in the absence of additional controls, we expect that nonroad diesel PM emission inventories will begin to increase due to expected growth in the populations of nonroad vehicles and equipment. Comparing Table VI–4 to Table III–4 we see that, while the nonroad diesel PM inventory is roughly twice that for on-highway vehicles in 1996, nonroad emissions of diesel PM are expected to be three to four times as great as on-highway diesel PM emissions by 2020.

As was previously mentioned, we are considering appropriate Tier 3 diesel PM standards for land-based nonroad diesel engines. We believe that any specific new requirements for nonroad diesel PM we might propose would need to be carefully considered in the context of a proposal for nonroad diesel fuel standards. This is because of the close interrelationship between fuels and engines—the best emission control solutions may not come through either fuel changes or engine improvements alone, but perhaps through an appropriate balance between the two. Thus, we are working to formulate thoughtful proposals covering both nonroad diesel fuel and engines.

TABLE VI–4.—ANNUAL DIESEL PM EMISSIONS SUMMARY FOR THE TOTAL U.S. NONROAD MOBILE SOURCES

Year	1996	2007	2020
Thousand short tons per year	345.8	282.8	310.8
Cumulative Percent Reduction from 1996	.....	18	10

C. Gaps in Nonroad Mobile Source Data

There are significant gaps in our data on MSAT emissions from nonroad engines. As a result of these data gaps our understanding of nonroad MSAT inventories is less developed than our understanding of on-highway vehicle MSAT emissions. The largest single data gap is in the area of emission factors. While we have basic emission factors for VOC and PM for most of the nonroad categories, we have very little VOC speciation data for the given categories which would allow us to use VOC as a surrogate to estimate emissions of specific MSAT emissions. Given the large variety of nonroad engine sizes, types and uses, as well as the likelihood that this variety will result in some differences in VOC composition, it is important that we obtain or develop speciated VOC data specific to each nonroad category in order to more accurately project nonroad MSAT inventories. These gaps, too, must be filled in order to accurately assess the need for, and the most appropriate direction of, any future MSAT control program targeted specifically at nonroad mobile sources.

D. Summary

In this section we presented our inventory projections of MSAT emissions from nonroad mobile sources. We also briefly discussed the data gaps that need to be filled in order to better understand nonroad MSAT emissions. Our analysis shows that, without further emission control programs, some nonroad gaseous MSAT emissions are expected to decline by almost 50 percent by 2020. However, our analysis also shows that, absent additional controls, nonroad diesel PM emissions are expected to increase in the future.

VII. Technical Analysis Plan To Address Data Gaps and Reopening of Rulemaking

A. Technical Analysis Plan To Address Data Gaps

Because of the continuing potential future health impacts of exposure to the public of air toxics from mobile sources, we propose to continue our toxics-related research activities. Therefore, in addition to proposing today's controls, we believe we must continue to evaluate and re-assess the need for, and level of, controls for both on-highway and nonroad sources of air toxics in the future. Among the 21 compounds that EPA is proposing for inclusion on the list of MSATs, we believe that the Agency should focus its research in the next two years on benzene, diesel exhaust, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein for on-highway and nonroad mobile sources.[57] Agency screening analysis and consultation with the States indicate that these chemicals are likely to present the greatest risks to public health and welfare. This MSATs research will be coordinated with and extend the work that now is underway in the National Air Toxics Assessment (NATA) program that is part of the Urban Air Toxics Strategy.[58]

[57] EPA may also focus on other MSATs in the next two years, if new information shows that is appropriate.

[58] EPA's Office of Transportation and Air Quality, which is responsible for the MSATs program, will be working in coordination with the Office of Air Quality Planning and Standards (OAPQS), which manages NATA, and the Office of Radiation and Indoor Air, which is examining issues related to a wide range of indoor air pollutants. OTAQ will also rely on the health effects information and exposure and risk assessment guidelines of EPA's Office of

Continued

In conducting future research, EPA plans to address four critical areas where there are data gaps, or the need for additional research and analysis on the exposure of the public to air toxics, and the fuel and vehicle pollution controls that are available to reduce air toxic emissions. They are:

- Developing better air toxics emission factors for nonroad sources;
- Improving estimation of air toxics exposures in microenvironments;
- Improving consideration of the range of total public exposures to air toxics; and
- Increasing understanding of the effectiveness and costs of vehicle, fuel, and nonroad controls for air toxics.

Developing emission factors for nonroad sources. EPA wants to analyze the emissions of several types of commonly used nonroad engines to increase the engine test data it has on the air toxics from nonroad mobile sources. The Agency will then pool the data on air toxics emissions to develop better air toxics emissions factors for these sources.

Improving estimation of exposures in microenvironments. In the past, the Agency has used carbon monoxide (CO) measurements outdoors and indoors as a surrogate for estimating air toxics levels in different microenvironments (*e.g.,* inside vehicles, homes, shopping malls, office buildings, etc.). This approach has limitations. EPA is currently using the Hazardous Air Pollutant Exposure Model—Version 4 (HAPEM4), for estimating microenvironmental exposures in the National Scaling Assessment of NATA. HAPEM4 uses recent, direct technical assessments of the microenvironmental factors for individual chemicals to model the exposures in microenvironments. These microenvironmental factors and the results of their application are currently being peer reviewed. After that review, EPA will incorporate applicable comments into HAPEM4 microenvironmental factors that are needed to provide improved exposure estimates. In the future, it may prove necessary to have new field research undertaken to fill gaps in current data sets such as microenvironmental settings (*e.g.,* ''houses with attached garages''). EPA will conduct field work in areas that the Agency judges are critical to provide reasonable exposure results for any major group of the U.S. population.

Another important aspect of considering microenvironmental exposures is the amount of time people spend in each microenvironment. HAPEM4 uses the recently developed Comprehensive Human Activity Database (CHAD) of information describing activities of various subgroups in the U.S. population in different microenvironmental settings. CHAD is a more expansive human activity diary data set than others EPA has used in exposure assessments to date, but the Agency recognizes that additional field research may be needed to expand human activity information for under-represented demographic groups, particularly in urban areas. EPA will update CHAD to take advantage of new data that becomes available through peer-reviewed studies. As CHAD is updated in the future, EPA will make necessary adjustments to ensure that HAPEM4 is providing the best reflection of each subgroup's activities and enable a reasonable subgroup analysis where EPA would be likely to gain additional insights about the health effects occurring for particular groups. In addition, the Agency will review the data to see where special analysis is warranted to isolate the subgroups facing greater risks.

Improving consideration of the range of public exposures. EPA's analysis to date has primarily examined average levels of exposure. However, as the Agency has stated in the Urban Air Toxics Strategy, EPA also wants to consider the disproportionate impacts of air toxics in ''hotspot'' areas. Hotspots are generally thought of as areas with elevated pollutant levels that could be associated with potentially serious health risks. The HAPEM3 modeling framework that EPA used for conducting the 1999 EPA Air Toxics Study described in Section I.E. above could not address this issue.[59] States and local air pollution control agencies have raised the hotspots issue as a major concern that needs to be addressed in a proper air toxics risk characterization.[60] Initially, EPA needs to develop and evaluate approaches that allow a reasonable examination of the concern over hotspots. Upon finding a reasonable way to address this issue, the Agency plans to assess the impacts of elevated air toxics in certain areas over the next two years. EPA will work with the State and local air pollution control agencies to ensure that the results of air toxics monitoring data analyses and urban monitoring pilot projects scheduled to be completed in the next year are considered in EPA's development of mobile source air toxics exposure and risk analyses.[61]

Additionally, EPA will evaluate the feasibility of improving the local-scale accuracy of the ASPEN model. More accurate and reliable local scale-modeling of ambient air toxics concentrations will better inform the Agency and the public about potential ''hot spots.'' This information will also improve HAPEM exposure estimates.

Increasing understanding of the effectiveness and costs of vehicle, fuel, and nonroad air toxics controls. The Agency intends to conduct additional analysis on the types of controls that it could have for vehicles, fuels, and nonroad engines to lower emissions cost-effectively in a reliable and predictable manner. For the seven air toxics mentioned above, the Agency will analyze a variety of control options, including a reevaluation of previously considered control options, for both on-highway and nonroad sources. Based on the results of this work, EPA plans a more detailed engineering feasibility, performance, and cost analysis for the most promising technical approaches and a re-assessment of the level of air toxics controls for these sources.

In all of these research areas, EPA wants to work collaboratively with industry representatives, manufacturers of emissions control technology, State and local agencies, environmental groups, and other stakeholders. In keeping with this approach, the Agency plans to hold at least three technical workshops with all interested stakeholders to consider:

- Improvements EPA should make to ASPEN and HAPEM4 to enable the Agency to better assess the risks from air toxics;
- Ways to address the significance of the hotspots issue;[62] and

Research and Development in conducting its program.

[59] Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999. EPA420–R–99–029/030. This report can be accessed at http://www.epa.gov/otaq/toxics.htm.

[60] STAPPA/ALAPCO and NESCAUM raised this concern at an conference on mobile source air toxics that the Health Effects Institute managed for EPA in February 2000.

[61] EPA will characterize the exposure risks of air toxics in future analysis in the manner prescribed in the Agency's Guidance for Risk Characterization, February 1995.

[62] This workshop would include ways to qualify and quantify the geographic and exposure/risk impacts of mobile source emissions, considering both the ubiquitous ambient impact as well as potential hotspots. It would further assess how to examine for hotspots the geographic and exposure variability that exists for air toxics. Geographic variability includes the observed elevated urban area ambient concentrations of mobile source air toxics, peak ambient concentrations adjacent to roadways in urban and rural areas, and the elevated, mobile source-dependent emissions impacts (for example, waste transfer station

• Available vehicle, fuel, and nonroad control technologies for reducing air toxics.

The results of this research will provide the basis for any future rulemaking, as discussed below.

EPA solicits comments on this plan to support the Agency's future decisions on MSAT controls. The Agency also solicits submission of any documents with relevant technical research of which commenters believe the EPA may be unaware, or descriptions of research activities commenters believe the Agency should pursue.

B. Commitment for Further Rulemaking

EPA is also proposing a regulatory provision providing for a future rulemaking that will determine, based on the information available at that time, what additional motor vehicle or fuel controls would be appropriate to control emissions of hazardous air pollutants from motor vehicles and their fuels. This rulemaking would reassess the appropriateness of the then current standards under the Clean Air Act including the need for and technical and economical feasibility of further controls. The standards that have been promulgated by EPA or that are promulgated pursuant to today's proposal would stay in effect unless revised by this subsequent rulemaking procedure. EPA commits to issue a proposed rule by the end of 2003, and to take final action by the end of December of 2004.

As part of this rulemaking, EPA will reexamine the controls available for reducing emissions of benzene as well as the other hazardous air pollutants emitted from on-highway and nonroad vehicles and equipment and their fuels. EPA will reassess the reductions in toxics emissions expected to be achieved by the current suite of motor vehicle and fuel controls that will be implemented over the next several years as well as the potential for innovative control technologies to provide further reductions. In 2004, EPA will also be able to better determine the appropriateness of additional fuel controls in light of potential developments being considered by Congress, EPA and States with respect to MTBE and the oxygen content of gasoline. Finally, the review will consider the contribution of nonroad engines to emissions of air toxics and whether controls that reduce these emissions along with motor vehicle emissions are appropriate under the Act.

operations and bus, marine, aircraft, and locomotive terminal operations). Exposure variability includes recognition of factors that lead to different levels of human exposure, such as commuting, or living in a residence with an attached garage.

VIII. Public Participation

A. Comments and the Public Docket

Publication of this document opens a public comment period on this proposal. You may submit comments during the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of the action. Throughout this proposal you will find requests for specific comment on various topics.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. We also encourage commenters who disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. You should send all comments, except those containing proprietary information, to the EPA's Air Docket (see **ADDRESSES**) before the date specified above for the end of the comment period.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments. Such submissions should be labeled as ''Confidential Business Information'' and be sent directly to the person listed (see **FOR FURTHER INFORMATION CONTACT**), not to the public docket. This will help ensure that proprietary information is not placed in the public docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a non-confidential version of the document that summarizes the key data or information must be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, we will make it available to the public without further notice to the commenter.

B. Public Hearings

We will hold a public hearing as noted under **DATES** above. If you would like to present testimony at the public hearing, we ask that you notify the contact person listed above two weeks before the date of the hearing. You should include in this notification an estimate of the time required for the presentation, and any need for audio/visual equipment. We also suggest that sufficient copies of the statement or material to be presented be made available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material before the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. Written transcripts of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing date to allow submittal of supplementary information.

IX. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

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

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

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

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

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

EPA has determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866 because it raises novel legal or policy issues and is therefore subject to OMB review. The Agency believes that this regulation would result in none of the economic effects set forth in Section 1 of the Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit

enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the standards as proposed seek to hold gasoline benzene fuel content to levels previously achieved by refiners in 1998 and 1999. The proposed standards would not require refiners to purchase equipment or to change their refining practices in new and unique ways. Today's proposed program also does not create requirements that would affect the ways in which fuels are transported or stored.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements (ICR) in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* We will announce in a separate **Federal Register** document that the ICR has been submitted to OMB.

The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request 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.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA believes this proposed rule contains no federal mandates for state, local, or tribal governments or for the private sector as defined by the provisions of Title II of the UMRA. Nothing in the proposed rule would significantly or uniquely affect small governments.

2. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule may have federalism implications, as specified in Executive Order 13132, by preempting state and fuel benzene controls. The proposed standards will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

EPA consulted with state and local officials in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13094 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

The proposed rule does not create any mandates or impose any obligations, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are

proposed in today's document. The standards referenced in today's proposed rule involve the measurement of gasoline fuel parameters. The measurement standards for gasoline fuel parameters referenced in today's proposal are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866.

X. Statutory Provisions and Legal Authority

The statutory authority for the fuels controls proposed in today's document can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Additional support for the procedural and enforcement-related aspects of the fuel controls in today's proposal, including the proposed recordkeeping requirements, come from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 14, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 80 and 86 of title 40, of the Code of Federal Regulations are amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

2. Section 80.2 is amended by revising paragraph (d) to read as follows:

§ 80.2 Definitions.

* * * * *

(d) *Previously certified gasoline*, or *PCG*, means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards in subparts D, E, H, and I of this part, as appropriate.

* * * * *

3. Section 80.46 is amended by revising paragraphs (e) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(e) *Benzene.* (1) Benzene content shall be determined using ASTM standard method D–3606–99, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography''; except that

(2) Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D–3606–99 when present.

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 2622–98, D 3246–96, D 3606–99, D 1319–93, D 4815–93, and D 86–90 with the exception of the degrees Fahrenheit figures in Table 9 of D 86–90, are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

4. Subpart I is added to read as follows:

Subpart I—Gasoline Benzene

General Information

Sec.

Gasoline Benzene Standards

Baseline Determination

Sampling, Testing and Retention Requirements for Refiners and Importers

Recordkeeping and Reporting Requirements

Exemptions

Subpart I—Gasoline Benzene

General Information

§§ 80.580–80.585 [Reserved]

§ 80.590 Who must register with EPA under the benzene program?

(a) Refiners and importers who are registered by EPA under § 80.76 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the standards in § 80.595 who are not registered by EPA under § 80.76 must provide to EPA the information required by § 80.76 by October 1, 2001, or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

Gasoline Benzene Standards

§ 80.595 What are the gasoline benzene standards for refiners and importers?

(a)(1) The refinery or importer annual average gasoline benzene standard is the baseline benzene level for that refinery or importer as determined at § 80.695.

(2) A refinery or importer has a separate annual average gasoline benzene standard for each of the following types of gasoline produced at that refinery or imported:

(i) Reformulated gasoline;

(ii) Conventional gasoline.

(b)(1) The annual average gasoline benzene standard is the maximum average benzene level allowed for gasoline produced at a refinery or imported by an importer during each calendar year starting January 1, 2002. Refiners who have chosen, under subpart E of this part, to comply with the requirements of subpart E of this part on an aggregate basis, must comply with the requirements of this subpart on the same aggregate basis.

(2) The benzene standard and all compliance calculations for benzene under this subpart are in percent by volume (vol%) and volumes are in gallons.

(3) The averaging period is January 1 through December 31 of each year.

(4) The standards under paragraph (a) of this section shall be met by the importer for all imported gasoline, except gasoline imported as Certified Benzene-FRGAS under § 80.810.

(5) The annual average benzene level is calculated in accordance with § 80.605.

§ 80.600 What gasoline is subject to the benzene standards and requirements?

For the purpose of this subpart, all reformulated gasoline, conventional gasoline and RBOB, collectively called ''gasoline'' unless otherwise specified, is subject to the standards and requirements under this subpart, as applicable, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) Gasoline that is exported for sale outside the U.S.

(c) Gasoline designated as California gasoline under § 80.625, and used in California.

(4) For RFG, the volume of RFG that exceeds the annual average volume of RFG produced during the 1998–1999 baseline years.

§ 80.605 How is the annual refinery or importer average benzene level determined?

(a) The annual refinery or importer average gasoline benzene level is calculated as follows:

$$B_a = \frac{\sum_{i=1}^{n} (V_i \times B_i)}{\sum_{i=1}^{n} V_i}$$

Where:

B_a = The refinery or importer annual average benzene value, as applicable.
V_i = The volume of applicable gasoline produced or imported in batch i.
B_i = The benzene content of batch i determined under § 80.730.
n = The number of batches of gasoline produced or imported during the averaging period.
i = Individual batch of gasoline produced or imported during the averaging period.

(b) The annual average calculation specified in paragraph (a) of this section shall be completed separately for each type of gasoline specified at § 80.595(a)(2).

(c) All annual refinery or importer average calculations shall be conducted to two decimal places.

(d) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the benzene content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(e) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Benzene-FRGAS under § 80.810;

(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.600.

(f) A refiner or importer may exceed its refinery or importer annual average benzene standard specified in § 80.595, separately for RFG and CG, for a given averaging period, creating a compliance

deficit, provided that in the calendar year following the year the standard is not met, the refinery or importer shall:

(1) Achieve compliance with the refinery or importer annual average benzene standard specified in § 80.595; and

(2) Use additional benzene credits sufficient to offset the compliance deficit of the previous year.

§ 80.610 What requirements apply to oxygenate blenders?

Oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.615 What requirements apply to butane blenders?

Butane blenders who blend butane into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.620 [Reserved]

§ 80.625 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart *California gasoline* means any gasoline designated by the refiner or importer as for use in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) *Requirements for California gasoline.* The requirements are as follows:

(1) Each batch of California gasoline must be designated as such by its refiner or importer;

(2) [Reserved]

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere;

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under § 80.81(g); and

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

(d) *Use of California test methods and off site sampling procedures.* In the case of any gasoline that is not California gasoline and that is either produced at a refinery located in the State of California or is imported from outside the United States into the State of California, the refiner or importer may, with regard to such gasoline:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations instead of the sampling and testing methods required under § 80.730; and

(2) Determine the benzene content of gasoline at off site tankage as permitted in § 80.81(h)(2).

§§ 80.635–80.685 [Reserved]

Baseline Determination

§ 80.690 How does a refiner or importer apply for a benzene baseline?

(a)(1) A refiner or importer must submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001.

(2) Any refinery which was not in operation during 2001, or any importer which was not in business during 2001, must submit an application to EPA which includes the applicable information required under paragraph (c) of this section no later than 6 months prior to the introduction of gasoline into commerce.

(b) The benzene baseline request must be sent to: U.S. EPA, Attn: Benzene Program (6406J), 401 M Street SW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Benzene Program, 501 3rd Street NW, Washington, DC 20001.

(c) The benzene baseline application must include the following information:

(1) A listing of the names and addresses of all refineries owned by the company for which the refiner is applying for a benzene baseline, or the name and address of the importer applying for a benzene baseline.

(2)(i) The annual average benzene level for each type of gasoline, per § 80.595(a)(2), produced in 1998–1999 for each refinery for which the refiner is applying for a benzene baseline, or the annual average gasoline benzene baseline for gasoline imported in 1998–1999.

(ii) Calculation of the average benzene levels under this paragraph shall be in accordance with § 80.695.

(iii) For those with insufficient data pursuant to § 80.705, a statement that the refinery's or importer's baseline will be the default baseline specified at § 80.705(b).

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the benzene baseline determination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a company contact person.

(5) The following information for each batch of gasoline produced or imported in 1998–1999, separated by type of gasoline as listed at § 80.585(a)(2):

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Benzene content.

(d) Foreign refiners must follow the procedures specified in § 80.810(b) to establish individual benzene baseline values for a foreign refinery.

(e) Within 120 days of receipt of an application under this section, EPA will notify the refiner of approval of the refinery's baseline or of any deficiencies in the application.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards are deemed to be those applicable under the corrected information.

§ 80.695 How is a benzene baseline determined?

(a) A refinery's or importer's benzene baseline is calculated using the following equation:

$$B_{Base} = \frac{\sum_{i=1}^{n} (V_i \times B_i)}{\sum_{i=1}^{n} V_i}$$

Where:

B_{Base} = Benzene baseline value.
V_i = Volume of gasoline batch i produced or imported.
B_i = Benzene content of gasoline batch i produced or imported.
n = Total number of batches of gasoline produced or imported during January 1, 1998 through December 31, 1999.
i = Individual batch of gasoline produced or imported during January 1, 1998 through December 31, 1999.

(b) The calculation at § 80.695(a) shall be made separately for each type of gasoline listed at § 80.595(a)(2).

(c) Any refinery for which oxygenate blended downstream was included in compliance calculations for 1998–1999, pursuant to § 80.65 or § 80.101(d)(4), must include this oxygenate in the baseline calculations for benzene content under paragraph (a) of this section.

§ 80.700 [Reserved]

§ 80.705 What is the benzene baseline for refineries or importers with incomplete 1998–1999 data?

(a)(1) A refinery or importer must use the methodology specified at § 80.695 for determining a benzene baseline if it has benzene measurements on every batch of gasoline produced or imported for 12 or more consecutive months during January 1, 1998 through December 31, 1999.

(2) The determination in paragraph (a)(1) of this section is made separately for each type of gasoline listed at § 80.595(a)(2) produced or imported during January 1, 1998 through December 31, 1999.

(3) All consecutive and non-consecutive batch benzene measurements during January 1, 1998 through December 31, 1999 are to be included in the baseline determination, unless the refinery or importer petitions EPA to exclude such data on the basis of data quality, per § 80.91(d)(6) and receives permission from EPA to exclude such data.

(b) A refinery or importer that has benzene measurements on every batch of gasoline produced or imported for less than 12 consecutive months during January 1, 1998 through December 31, 1999 shall have the following benzene values as its benzene baseline for the purposes of this subpart:

(1) [Reserved]

(2) For conventional gasoline, 1.11 vol% benzene.

§§ 80.710–80.725 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

§ 80.730 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Beginning January 1, 2002, refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its benzene content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) For purposes of meeting the sampling and testing requirements of this section for conventional gasoline, any refiner may, prior to analysis, combine samples of gasoline from more than one batch of gasoline or blendstock and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of § 80.101(i)(2).

(3) Any refiner who produces reformulated gasoline or conventional gasoline using computer-controlled in-line blending equipment may meet the testing requirement of paragraph (a)(1) of this section under the terms of an exemption granted under § 80.65(f)(4).

(b) *Sampling methods.* For purposes of paragraph (a) of this section, refiners and importers shall sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057–95, entitled ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products.''

(ii) Samples collected under the applicable procedures in ASTM method D 5842–95, entitled ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurement,'' may be used for measuring benzene content if there is no contamination present that could affect the benzene test result.

(2) Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.''

(c) *Test method for measuring the benzene content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method provided in § 80.46(e) to measure the benzene content of gasoline they produce or import.

(2) Except as provided in § 80.750 and in paragraph (c)(1) of this section, any ASTM benzene test method for liquefied fuels may be used for quality assurance testing under § 80.800, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(e).

(d) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95 and D 5842–95 are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

§ 80.735 What gasoline sample retention requirements apply to refiners and importers?

(a) *Sample retention requirements.* Beginning January 1, 2002, any refiner or importer shall:

(1) Collect a representative portion of each sample of a batch or composite batch analyzed under § 80.730(a), of at least 330 ml in volume;

(2) Retain sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater;

(3) Comply with the gasoline sample handling and storage procedures under § 80.730(b) for each sample portion retained; and

(4) Comply with any request by EPA to:

(i) Provide a retained sample portion to the Administrator's authorized representative; and

(ii) Ship a retained sample portion to EPA, within 2 working days of the date of the request, by an overnight shipping service or comparable means, to the address and following procedures specified by EPA, and accompanied with the benzene test result for the sample determined under § 80.730(a).

(b) *Sample retention requirement for samples subject to independent analysis requirements.* (1) Any refiner or importer who meets the independent analysis requirements under § 80.65(f) for any batch of reformulated gasoline or RBOB will have met the requirements of paragraph (a) of this section, provided the independent laboratory meets the requirements of paragraph (a) of this section for the gasoline batch.

(2) For samples retained by an independent laboratory under paragraph (b) of this section, the test results required to be submitted under paragraph (a) of this section shall be the test results determined under § 80.65(e).

(c) *Sampling compliance certification.* Any refiner or importer shall include with each annual report filed under § 80.770, the following statement, which must accurately reflect the facts and must be signed and dated by the same person who signs the annual report:

I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under 40 CFR 80.730.

§ 80.740 What requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirements of § 80.730 to sample and test every batch of gasoline as follows:

(1) Sample and test to determine the volume and benzene content of the PCG prior to blendstock blending.

(2) Sample and test to determine the volume and benzene content of the gasoline subsequent to blendstock blending.

(3) Calculate the volume and benzene content of the blendstock, by subtracting the volume and benzene content of the PCG from the volume and benzene content of the gasoline subsequent to blendstock blending. The blendstock is a batch for purposes of compliance calculations and reporting.

(b) In the alternative, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and benzene content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average benzene standard and for reporting.

§ 80.745 [Reserved]

§ 80.750 What alternative benzene requirements apply to importers who transport gasoline by truck?

Importers who import gasoline into the United States by truck may comply with the following requirements instead of the requirements to sample and test every batch of gasoline under § 80.730:

(a) *Standards.* The imported gasoline must comply with the applicable average standards under § 80.595(a).

(b) *Terminal testing.* The importer may use test results for benzene content testing conducted by the terminal operator, for gasoline contained in the storage tank from which trucks used to transport gasoline into the United States are loaded, for purposes of demonstrating compliance with the standards in paragraph (a) of this section, provided the following conditions are met:

(1) The sampling and testing shall be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing shall be performed using the methods specified in §§ 80.730(b) and 80.46(e), respectively.

(3) At the time of each transfer of gasoline to the importer's truck for import to the U.S., the importer must obtain a copy of the terminal test result that indicates the benzene content of the truck load.

(c) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in §§ 80.730(b) and 80.46(e), respectively.

(3)(i) The quality assurance test results for benzene must differ from the terminal test result by no more than the ASTM reproducibility of the terminal's test results, as determined by the following equation:

$R = 0.13 (B) + 0.05$, for $0.1 \leq B \leq 1.5$ vol%

$R = 0.28 (B)$, for $B > 1.5$ vol%

Where:

R = ASTM reproducibility.

B = Benzene content based on the terminal's test result.

(ii) For measured benzene levels less than 0.1 vol%, use 0.1 vol% in the equation in paragraph (c)(3)(i) of this section.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) *Party required to conduct quality assurance testing.* The quality assurance program under paragraph (c) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives, no later than 21 days after the sample was taken, copies of all results of tests conducted.

(e) *Assignment of batch numbers.* The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.765, and reporting under § 80.770.

(f) *EPA inspections of terminals.* EPA inspectors or auditors, and auditors conducting attest engagements under § 80.815, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) *Certified Benzene-FRGAS.* This section does not apply to Certified Benzene-FRGAS.

(h) *Effect of noncompliance.* If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline benzene average standards in § 80.595, as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation and, if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.730.

§§ 80.755–80.760 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.765 What records must be kept?

(a) *Records that must be kept.* Beginning January 1, 2002, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, shall keep records that contain the following information:

(1) The product transfer document information required under §§ 80.77 and 80.106;

(2) For any sampling and testing for benzene content required under this subpart:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the test;

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test; and

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(2)(iii) of this section.

(b) *Additional records that refiners and importers must keep.* Beginning January 1, 2002, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) For each batch of gasoline produced or imported:

(i) The batch volume;

(ii) The batch number assigned under § 80.65(d)(3) and the appropriate designation under paragraph (b)(1)(i) of

this section; except that if composite samples of conventional gasoline representing multiple batches are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(iii) The date of production or importation; and

(iv) If appropriate, the designation of the batch as California gasoline under § 80.625, exempt gasoline for research and development under § 80.780, or for export outside the United States.

(2) The calculations used to determine the applicable baseline under § 80.695.

(3) The calculations used to determine compliance with the applicable benzene average standards of § 80.595.

(4) A copy of all reports submitted to EPA under § 80.770.

(c) *Additional records importers must keep.* Any importer shall keep records that identify and verify the source of each batch of Certified Benzene-FRGAS and Non-Certified Benzene-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.810(o).

(d) *Length of time records must be kept.* The records required in this section shall be kept for five years from the date they were created.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or upon approval by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

§ 80.770 What are the benzene reporting requirements?

Beginning with the 2002 averaging period, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries and/or aggregate(s) of refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information for each type of gasoline specified at § 80.595(a)(2), as applicable:

(1) The EPA importer, or refiner and refinery facility registration numbers;

(2) The applicable standard under § 80.595;

(3) The total volume of gasoline produced or imported;

(4) The annual average benzene content of the gasoline produced or imported;

(5) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under § 80.65(d)(3) and the appropriate designation under § 80.75; except that if composite samples of conventional gasoline representing multiple batches produced are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The benzene content of the batch as determined under § 80.730; and

(6) When submitting reports under this paragraph (a) of this section, any importer shall exclude Certified Benzene-FRGAS under § 80.810.

(b) *Additional reporting requirements for importers.* Any importer shall report the following information for Benzene-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the Certified Benzene-FRGAS was produced; and

(2) The total gallons of Certified Benzene-FRGAS and Non-Certified Benzene-FRGAS imported from each foreign refiner and refinery.

(c) *Report submission.* Any annual report required under this section shall be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(d) *Attest reports.* Attest reports for refiner and importer attest engagements required under § 80.85 shall be submitted to the Administrator by May 31 of each year for the prior calendar year averaging period.

Exemptions

§ 80.775 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to distribute gasoline which does not meet the requirements of this subpart provided the refiner or importer meets all the criteria, requirements and conditions contained in § 80.73 (a) through (e).

§ 80.780 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing (''R&D'') purposes by submitting to EPA an application that includes all the information listed in paragraph (b) of this section.

(a) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(b) *Information required to be submitted.* To demonstrate each of the four elements in paragraphs (a)(1) through (4) of this section, the application required under this section must include the following information:

(1) A statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.785.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's beginning and ending dates;

(ii) An estimate of the maximum number of vehicles and engines involved in the program, and the number of miles and engine hours that will be accumulated on each;

(iii) The benzene content of the gasoline expected to be used in the program; and

(iv) The quantity of gasoline that exceeds the applicable benzene standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

(i) A description of the technical and operational aspects of the program;

(ii) The site(s) of the program (including street address, city, county, state, and zip code);

(iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to EPA;

(iv) The manner in which results of the program will be recorded and made available to EPA;

(v) The manner in which information on the gasoline used in the program (including quantity, benzene content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to EPA;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline where appropriate;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(c) *Additional requirements.* (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be designated by the refiner or importer as exempt R&D gasoline.

(3) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in the distribution system of the gasoline.

(4) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(d) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of motor vehicle emissions control systems. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void ab initio.

(e) *Effects of exemption.* Gasoline that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the gasoline is used in a manner that complies with the memorandum of exemption granted under paragraph (d) of this section.

Violation Provisions

§ 80.785 What acts are prohibited under the gasoline benzene program?

No person shall:

(a) *Averaging violation.* Produce or import gasoline that does not comply with the applicable benzene average standard under § 80.595.

(b) *Causing an averaging use violation.* Cause another person to commit an act in violation of paragraph (a) of this section.

§ 80.790 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the benzene standards of this subpart shall be determined based on the benzene level of the gasoline, measured using the methodologies specified in §§ 80.730(b) and 80.46(e). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the benzene level of gasoline if the evidence or information is relevant to whether the benzene level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46(e) and 80.730(b), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the benzene standards, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.795 Who is liable for violations under the gasoline benzene program?

(a) *Persons liable for violations of prohibited acts.*—(1) *Averaging violation.* Any refiner or importer who violates § 80.785(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner or importer who causes another party to violate § 80.785(a), is liable for a violation of § 80.785(b).

(3) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(4) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner or importer who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner or importer who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

§ 80.800 [Reserved]

§ 80.805 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.795 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.795(a)(1) or (2) for a violation of the applicable benzene averaging standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period.

(c) Any person liable under § 80.795(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

Provisions for Foreign Refiners With Individual Benzene Baselines

§ 80.810 What are the additional requirements for gasoline produced at foreign refineries having individual refiner benzene baselines?

(a) *Definitions.* (1) A *foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana

Islands (collectively referred to in this section as ''the United States'').

(2) A *foreign refiner* is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Benzene-FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery benzene baseline under § 80.695 and that is imported into the U.S.

(4) *Non-Benzene-FRGAS* means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery benzene baseline, gasoline produced at a foreign refinery with an individual refinery benzene baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual benzene baseline during a year when the foreign refiner has opted to not participate in the Benzene-FRGAS program under paragraph (c)(3) of this section.

(5) *Certified Benzene-FRGAS* means Benzene-FRGAS the foreign refiner intends to include in the foreign refinery's benzene compliance calculations under § 80.605, and does include in these compliance calculations when reported to EPA.

(6) *Non-Certified Benzene-FRGAS* means Benzene-FRGAS that is not Certified Benzene-FRGAS.

(b) *Baseline establishment.* Any foreign refiner may submit a petition to the Administrator for an individual refinery benzene baseline pursuant to § 80.695.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish the volume and benzene content of gasoline that was produced at the foreign refinery and imported into the United States during 1998 and 1999 for purposes of establishing a benzene baseline under § 80.695.

(2) In making determinations for foreign refinery baselines, EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery benzene baseline.

(c) *General requirements for foreign refiners with individual refinery benzene baselines.* A foreign refiner of a refinery that has been assigned an individual benzene baseline according to § 80.695 must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Benzene-FRGAS, the foreign refiner must meet all provisions that apply to refiners under this subpart.

(2) In the case of Non-Certified Benzene-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall substitute the name Non-Certified Benzene-FRGAS for the names ''reformulated gasoline'' or ''RBOB'' wherever they appear in the following provisions:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements under § 80.765.

(iii) The reporting requirements in § 80.770 and this section.

(iv) The product transfer document requirements in this section.

(vi) The prohibitions in this section and § 80.785.

(vii) The independent audit requirements under § 80.815, paragraph (h) of this section, §§ 80.125 through 80.127, 80.128(a), (b), (c), (g) through (i), and 80.130.

(3)(i) Any foreign refiner that has been assigned an individual benzene baseline for a foreign refinery under § 80.695 may elect to classify no gasoline imported into the United States as Benzene-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual benzene baseline must designate each batch of Benzene-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Benzene-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Benzene-FRGAS prior to its being imported into the United States, it must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Benzene-FRGAS was produced.

(3) On each occasion when Benzene-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Benzene-FRGAS that meets the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Benzene-FRGAS;

(B) The identification of the gasoline as Certified Benzene-FRGAS or Non-Certified Benzene-FRGAS;

(C) The volume of Benzene-FRGAS being transported, in gallons;

(D) In the case of Certified Benzene-FRGAS:

(*1*) The benzene content as determined under paragraph (f) of this section; and

(*2*) A declaration that the Benzene-FRGAS is being included in the compliance calculations under § 80.605 for the refinery that produced the Benzene-FRGAS.

(ii) The certification shall be made part of the product transfer documents for the Benzene-FRGAS.

(e) *Transfers of Benzene-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Benzene-FRGAS is imported into the United States. A foreign refiner may remove the Benzene-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance calculations under § 80.605; and

(B) In the case of Certified Benzene-FRGAS, the volume and benzene content of the gasoline from the compliance calculations under § 80.605.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the benzene content and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Benzene-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Benzene-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for benzene using the methodology specified in § 80.730 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample; and

(iii) Review original documents that reflect movement and storage of the Certified Benzene-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Benzene-FRGAS was produced; and

(B) That the Benzene-FRGAS remained segregated from:

(*1*) Non-Benzene-FRGAS and Non-Certified Benzene-FRGAS; and

(*2*) Other Certified Benzene-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Benzene-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the benzene value.

(ii) Where a vessel transporting Certified Benzene-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The benzene value determined at the port of entry is higher than the benzene value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Benzene-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline benzene compliance calculations under § 80.605.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of Benzene-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.815:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Benzene-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Benzene-FRGAS, and of Non-Certified Benzene-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Benzene-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Benzene-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Benzene-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Benzene-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Benzene-FRGAS was produced at the refinery that is the subject of the

attest engagement, and whether the Certified Benzene-FRGAS was mixed with any Non-Certified Benzene-FRGAS, Non-Benzene-FRGAS, or any Certified Benzene-FRGAS produced at a different refinery.

(5)(i) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified and Non-Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(ii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel. Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Benzene-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130, § 80.815 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery benzene baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Benzene-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and benzene content, and transfers of title or custody, of any gasoline or blendstocks, whether Benzene-FRGAS or Non-benzene-FRGAS, produced at the foreign refinery during the period January 1, 1998 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and benzene content of Benzene-FRGAS;

(C) The proper classification of gasoline as being Benzene-FRGAS or as not being Benzene-FRGAS, or as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS;

(D) Transfers of title or custody to Benzene-FRGAS;

(E) Sampling and testing of Benzene-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.815 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery benzene baseline, producing and exporting gasoline under an individual refinery benzene baseline, and all other actions to comply with the requirements of this subpart relating to the establishment and use of an individual refinery benzene baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates Title 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Benzene-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Benzene-FRGAS to the

United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery benzene baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates Title 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery benzene baseline.

(1) The foreign refiner shall annually post a bond of the amount calculated using the following equation:

Bond = G x $ 0.01

Where:

Bond = Amount of the bond in U.S. dollars.

G = The largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates Title 18 U.S.C. 1001 and Clean Air Act section 113(c)(2);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds'' (Available from the Government Printing Office or the Internet at http://www.fms.treas.gov/c570/index.html); and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this subpart.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by a foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Benzene-FRGAS with any Non-Certified Benzene-FRGAS or Non-Benzene-FRGAS, and no person may combine Certified Benzene-FRGAS with any Certified Benzene-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Benzene-FRGAS or as Non-Benzene-FRGAS, and each batch classified as Benzene-FRGAS shall be further classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS.

(2) Gasoline shall be classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Benzene-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Benzene-FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Benzene-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Benzene-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Benzene-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Benzene-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the benzene value using the methodologies specified in § 80.730, by:

(*1*) The third party analyzing the sample; or

(*2*) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Benzene-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer shall meet the requirements specified in § 80.595 for any imported gasoline that is not classified as Certified Benzene-FRGAS under paragraph (o)(2) of this section.

(p) *Truck imports of Certified Benzene-FRGAS produced at a refinery.* (1) Any refiner whose Certified

Benzene-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures must ensure Certified Benzene-FRGAS remains segregated from Non-Certified Benzene-FRGAS and from Non-Benzene-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Benzene-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Benzene-FRGAS, that prohibit the commingling of Certified Benzene-FRGAS with any of the following:

(A) Other Certified Benzene-FRGAS from other refineries.

(B) All Non-Certified Benzene-FRGAS.

(C) All Non-Benzene-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Benzene-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States;

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Benzene-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery benzene baseline and standards under § 80.240 and this section.

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, ab initio, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the gasoline benzene requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.695, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart I, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR part 80, subpart I, including 40 CFR 80.810 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.815 What are the attest engagement requirements for gasoline benzene compliance applicable to refiners and importers?

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.810, the attest engagements for refiners and importers must include the following procedures and requirements each year.

(a) *Baseline.* (1) Obtain the EPA benzene baseline approval letter for the refinery to determine the refinery's applicable benzene baseline and baseline volume under § 80.695.

(2) Obtain a written representation from the company representative stating the benzene value that the company used as its baseline and agree that number to paragraph (a)(1) of this section and to the reports to EPA.

(b) *EPA reports.*(1) Obtain and read a copy of the refinery's or importer's annual benzene reports filed with EPA for the year.

(2) Agree the yearly volume of gasoline reported to EPA in the benzene reports with the inventory reconciliation analysis under § 80.128.

(3) Calculate the annual average benzene level for all gasoline and agree that value with the value reported to EPA.

§ 80.820 [Reserved]

Additional Rulemaking

§ 80.825 What additional rulemaking will EPA conduct?

No later than December 31, 2003, the Administrator shall propose any requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that the Administrator determines are

appropriate pursuant to section 202(l)(2) of the Act. The Administrator shall take final action on the proposal no later than December 30, 2004.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7521(l) and 7521(m)–7671q.

[FR Doc. 00–18640 Filed 8–3–00; 8:45 am]

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Federal Register

Friday,
August 4, 2000

Part III

Department of Justice

Environmental Protection Agency

40 CFR Chapter IV

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information; Final Rule

DEPARTMENT OF JUSTICE

40 CFR Chapter IV

[AG Order No. 2318–2000]

RIN 1105–AA70

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter IV

RIN 2050–AE80

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information

AGENCIES: Department of Justice and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) and the Department of Justice (DOJ) are promulgating a rule that provides for access to information concerning the potential off-site consequences of hypothetical accidental chemical releases from industrial facilities. Under section 112(r) of the Clean Air Act (CAA), facilities handling large quantities of extremely hazardous chemicals are required to include that information in a risk management plan (RMP) submitted to EPA. As required by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), this rule provides members of the public and government officials with access to that information in ways designed to minimize the likelihood of accidental releases, the risk to national security associated with posting the information on the Internet, and the likelihood of harm to public health and welfare.

DATES: This rule is effective on August 4, 2000.

ADDRESSES: Supporting information used to develop the proposed rule and the final rule is contained in Docket No. A–2000–20. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (except government holidays), at Waterside Mall, Room M1500, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying. The assessments upon which this rule is based are also available on the Internet at http://www.usdoj.gov and http://www.epa.gov/ceppo.

FOR FURTHER INFORMATION CONTACT: Brenda Sue Thornton, Trial Attorney, Criminal Division, Terrorism and Violent Crime Section, Department of Justice, 601 D Street, N.W., Room 6500, Washington, DC 20530, (202) 616–5210; John Ferris, Chemical Engineer, (202) 260–4043, or Vanessa Rodriguez, Chemical Engineer, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; or the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 (in the Washington, DC, metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at http://www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION: This rule was published in the **Federal Register** as a proposed rule on April 27, 2000 (65 FR 24834). This **Federal Register** action announces EPA and DOJ's final decisions on the rule.

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I. Introduction

A. Statutory Authority and Background

As more fully described in the notice of proposed rulemaking (NPRM) (65 FR 24853 (April 27, 2000)), the federal government's efforts to prevent and mitigate chemical accidents are reflected in several pieces of legislation, including section 112(r) of the CAA, 42 U.S.C. 7412(r). In that section, Congress imposed a general duty on industrial facilities handling any extremely hazardous chemicals to do so safely (CAA section 112(r)(1)), and required EPA to establish a regulatory program for facilities that pose the greatest risk (CAA section 112(r)(7)). Congress directed that the regulatory program require covered facilities to develop and implement a risk management program for preventing accidental chemical releases and minimizing the consequences of releases that do occur. Congress further mandated that facilities perform an off-site consequences analysis (OCA) for one or more hypothetical accidental worst case and/or alternative release scenarios and report the results of the analysis in a risk management plan (RMP) to be submitted to federal, state, and local government agencies and made available to the public.

EPA issued the rules establishing the regulatory program required by CAA section 112(r) on January 31, 1994 (59 FR 4478) and June 20, 1996 (61 FR 31668, the ''RMP rule''). In those rules, EPA continued the philosophy that EPA embraced in implementing the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Specifically, EPA recognized that regulatory requirements by themselves will not guarantee safety, and that providing the public with information about hazards in a community can and should lead government officials and the public to work with industry to prevent accidents. EPA thus relied on the public availability of RMPs to stimulate further chemical risk reductions efforts, which occur primarily at the local level where the risk is found.

Over 15,000 facilities are subject to the RMP rule. In an effort to reduce the burden of collecting and disseminating RMPs, EPA designed an electronic RMP

form that could be placed on the Internet for purposes of public access. However, the Federal Bureau of Investigation and other representatives of the law enforcement and intelligence communities raised concerns that releasing the OCA portions of RMPs via the Internet would enable individuals anywhere in the world anonymously to search electronically for industrial facilities in the U.S. to target for purposes of causing an intentional industrial chemical release. In response to those concerns, EPA posted RMPs on the Internet (*www.epa.gov/ceppo/*) without the sections of the RMP that contain OCA results (sections 2 through 5). However, those OCA sections, and any EPA electronic database created from those sections, were still subject to public release in electronic format pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552. On August 5, 1999, CSISSFRRA was enacted (Pub. L. No. 106–40) to provide at least a one-year exemption from FOIA for ''OCA information,'' including the OCA portions of RMPs and any EPA database created from those portions. CSISSFRRA amended section 112(r)(7) of the CAA by adding a new subparagraph (h).

CSISSFRRA requires the President, by the end of the one-year period of the FOIA exemption, to decide how to disseminate OCA information. Specifically, CSISSFRRA requires the President to assess ''the increased risk of terrorist and other criminal activity associated with the posting of [OCA] information on the Internet'' and ''the incentives created by public disclosure of [OCA] information for reduction in the risk of accidental releases'' (CAA section 112(r)(7)(H)(ii)(I)). Based on those assessments, the President is required by August 5, 2000, to promulgate a regulation governing access to OCA information in a manner that minimizes the likelihood of chemical releases, however caused. Until that time, CSISSFRRA limits public access to OCA information but provides government officials access for purposes of preventing, planning for, or responding to chemical releases. The President delegated to the Attorney General and the Administrator of EPA the authority to conduct the required assessments and rulemaking (see the delegation memorandum at 65 FR 8631 (February 22, 2000)). The proposed and final rules are subject to approval by the Director of the Office of Management and Budget (OMB).

The risk and benefits assessments were completed and used as the basis for the proposed rule. The conclusions of those assessments are fully described in the NPRM. Briefly, the risk assessment found that an increased risk of terrorist or other criminal activity would accompany the release of certain items of OCA information via the Internet. That information could be used by terrorists or other criminals for purposes of targeting or maximizing the results of industrial chemical releases. The benefits assessment concluded that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. It also found that ease of public access to information is important to the public's use of that information. The risk and benefits assessments are available in the docket for this rulemaking and on the EPA and DOJ websites (*www.epa.gov/ceppo/* and *www.usdoj.gov*).

B. The Proposed Rule

Based on the risk and benefits assessments, EPA and DOJ proposed providing the public with several means of obtaining access to OCA information and information about the risk expressed by OCA information. The complete proposal is contained in the NPRM. A brief summary follows.

In order to minimize the risk of Internet dissemination of OCA information while still providing public access to that information, we proposed to provide the public with access to paper copies of OCA information for covered facilities at 50 or more federal reading rooms geographically distributed across the United States. At the reading rooms, members of the public would have access to OCA information for a limited number of facilities, located anywhere in the country, and would be able to read the information and take notes from it, but not remove or mechanically reproduce it. Reading rooms would be authorized to provide any member of the public with access to OCA information for up to 10 stationary sources per calendar month. Based upon an analysis of the geographic distribution of RMP-covered facilities, we concluded that the 10 per individual per calendar month limit would still permit most members of the public to have access to OCA information for facilities in whose ''vulnerable zone'' they live or work, as well as to OCA information for a few other facilities located elsewhere.

In addition, we proposed making the less sensitive items of OCA information available to the public on the Internet by posting them on EPA's website. Those items of OCA information included information about passive and active safety systems used by facilities; we explained that that information would facilitate risk reduction dialogues among members of the public, state and local officials, and facilities. Only the items of OCA information for which the risk assessment found there was a significant risk of use for terrorist or other criminal purposes would be excluded from Internet posting.

We also proposed creating a ''risk indicator'' system as a tool for providing the public with a means of understanding, via Internet inquiry, some aspects of the risk expressed by OCA information. Members of the public would be able to enter a specific address (such as that of a home, school, or place of employment) into the risk indicator system and learn if that address might be within the ''vulnerable zone'' of at least one facility that submitted an RMP to EPA. Members of the public who do not have access to the Internet would be able to obtain the same information by calling the EPA hotline or by mailing a request to the Administrator of EPA. The risk indicator system also would inform individuals of several means by which they could obtain the names of the facilities and additional information.

Further, we proposed authorizing and encouraging members of local emergency planning committees (LEPCs), state emergency response committees (SERCs), or local fire departments to allow members of the public to read, but not remove or mechanically copy, paper copies of OCA information for all of the covered facilities in the LEPC's jurisdiction and for any facilities whose vulnerable zone extended into the LEPC's jurisdiction. To further supplement public access, under the proposed rule, EPA would make available to the public additional information on chemical accident risk through an Internet website. The proposal also addressed how EPA would provide access to OCA information to federal, state, and local government officials for their ''official use'' by codifying the provisions of CSISSFRRA that appear in CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee). Finally, the proposal called for establishing further provisions as needed to implement CSISSFRRA, such as prohibiting the unauthorized release of OCA information and authorizing the Administrator to provide OCA information to qualified researchers under CAA section 112(r)(7)(H)(vii).

II. Discussion of Comments on the Proposed Rule

The proposed rule was published for comment in the **Federal Register** on April 27, 2000. The comment period ended on June 8, with 68 comments

submitted. Commentors represented industry, trade associations, public interest groups, journalists, environmental groups, law enforcement, emergency response groups, state/local entities, and the general public. In addition, on May 9, 2000, EPA and DOJ held a public hearing on the proposed rule at which nine presenters representing public interest groups, environmental research groups, state and local emergency planning groups, and the general public provided comments about the proposed regulation. We are responding to most comments on the proposed rule in this preamble. We respond to additional comments in a supplemental document included in the public docket for this rulemaking.

A. Risk and Benefits Assessments

As noted above, the assessments were available on the EPA and DOJ websites. We received comments on both the benefits assessment and the risk assessment expressing a wide range of opinion. We note at the outset that CSISSFRRA did not call for the assessments to be developed through a public rulemaking process (see CAA section 112(r)(7)(H)(ii)). Instead, CSISSFRRA required the President to conduct the assessments and then, ''based on the assessments,'' to promulgate regulations governing the distribution of OCA information. In requiring regulations, CSISSFRRA ensured the public an opportunity to participate in the government's consideration of the extent to which and the manner in which OCA information should be made available based on the assessments. Preparation of the risk assessment, however, necessarily called for the exercise of expert judgment in sensitive areas of law enforcement and national security, areas in which the President is typically accorded broad discretion. We thus believe that Congress did not intend the assessments to be subject to public evaluation except to the extent they do, or do not, adequately support the rule being promulgated. We nonetheless appreciate the careful consideration that the assessments received from the public and respond below to the significant concerns that were raised.

In regard to the approach taken by both assessments, several commentors asserted that the assessments were fundamentally flawed because they failed to quantify the risk and benefit of disseminating OCA information. EPA and DOJ disagree with that comment. Given the short time frame the agencies had to develop the assessments and lack of a clear basis for estimating the probability of a chemical accident or criminal incident involving an industrial facility, it would have been difficult, if not impossible, to obtain or develop sufficient data to support such an analysis. To begin with, since OCA information is not yet publicly available, its effect on the risk and benefits to be assessed cannot be measured directly. In addition, because the RMP program took effect only last year and trends in terrorism are changing, there is little other data regarding the precise issues that the assessments were required to address.

Furthermore, EPA and DOJ believe that statistical evaluation of the benefits and costs relating to the release of OCA information on the Internet was not necessary to determine how OCA information should be disseminated, which is the purpose of this rulemaking exercise. In the benefits assessment, an analysis of the effect of public release of Toxic Release Inventory (TRI) data indicated that information dissemination leads to further risk reduction efforts. In the risk assessment, an analysis was conducted of trends related to weapons of mass destruction and recent terrorist events. Each assessment used those analyses as the basis for assessing the benefits and risks related to dissemination of OCA information. The findings that resulted from those analyses informed the rule. We believe that that methodology was appropriate for purposes of determining how best to disseminate OCA information.

1. Benefits Assessment

As noted above, the reaction to the benefits assessment was mixed. Many commentors agreed with the conclusions regarding the benefits of public disclosure of OCA information. Other commentors took issue with some of the assessment's findings.

Several commentors contended that there was no basis for drawing an analogy between the TRI program experience and what might be expected for OCA information because TRI data records are based on anticipated lawful releases, derived from estimates or actual measurements, while OCA information is based on hypothetical, unanticipated releases. We disagree that an analogy between TRI data and OCA information is inappropriate. As noted in the benefits assessment, although TRI data represent actual releases while OCA information represents hypothetical releases, our reason for examining the TRI program experience was the fact that TRI data are made publicly available in an easily used and understood format. The assessment noted a correlation between the ready accessibility of TRI data and the extensive use made of it by community and environmental groups, the news media, state and local governments, and industry, and concluded that a similar correlation might reasonably be expected from the dissemination of OCA information.

Some commentors disagreed with the benefits assessment's contentions that the publication of TRI data contributed to reductions in TRI emissions. They attributed TRI emissions reductions mainly to economic incentives, technical considerations, and CAA regulatory programs. The commentors were also critical of the methodology and the conceptual and statistical support for the assessment's analysis of the effect of negative media attention on TRI emissions reductions. They criticized, for example, the assessment's focus on the ''worst polluting'' facilities selected by EPA. They took issue with comparisons between large facilities with correspondingly large releases to small facilities with small releases, and comparisons between supposedly similar facilities that may have differed in terms of process or industry classification. They questioned, moreover, whether the analysis captured the full range of TRI data available beginning in 1987. Based on those criticisms, the commentors viewed the TRI analogy as an invalid basis for the benefits assessment's conclusion that wide public access to OCA information would help reduce the risk of chemical accidents.

As the assessment noted several times, a number of different factors contributed to TRI emissions reductions. Nonetheless, according to the literature reviewed for the assessment, the interest in TRI data—either in the form of published reports, negative press accounts, or the publication of TRI data by a company—was one of the factors affecting TRI emissions reductions. As explained in Appendix D of the assessment, the media relied on total emissions data to label certain facilities as the ''worst polluters.'' EPA compared the total TRI emissions reduction rates of those ''worst polluting'' facilities with the overall TRI emissions reduction rates for all other facilities (both large and small) since TRI data were first published in 1989 (which includes data collected in 1987 and 1988). The ''worst polluting'' facilities featured in news accounts appeared to have reduced their emissions significantly more than did the other facilities. EPA also compared ''worst polluting'' facilities to others listed under the same TRI industry

classification because facilities in the same industry classification were likely to have similar processes. EPA recognizes that within a single industry classification there could be differences in chemical processes that might account for some of the differences in TRI emissions. Those variations, however, would not affect the results of the assessment's comparative analysis of TRI emissions reduction rates for facilities that were subject to significant negative publicity and those that were not. As indicated in Appendix D, moreover, even the reduction rates of facilities with relatively low levels of emissions that were the subject of negative press accounts were significantly greater than those of other facilities not subject to negative publicity. In light of that evidence, we continue to believe that if OCA information, like TRI data, were made publicly available in an easily understood format, there would be increased public understanding and dialogue about accidental release risk and risk reduction. We further believe that the resulting public pressure could lead to the adoption of additional risk reduction measures.

Other commentors contended that the benefits assessment should not use the term ''risk reduction'' when referring to the TRI program since TRI data does not communicate ''risk,'' which is often understood to be the consequence of an event multiplied by the probability that the event will occur. They also questioned whether the OCA information has value for risk reduction. As the benefits assessment explained in detail in Chapter 6, however, OCA information by itself does not communicate risk; rather, OCA information in context and in comparison with other information can provide insights about risk. As stated in Chapter 6, ''[F]rom this comparison and understanding of potential risk, unacceptable risks can be reduced. * * *''

Several commentors also claimed that the assessment's figures for the costs of chemical accidents were outdated and likely overstated because they did not take into account the significant risk reduction benefits of the RMP rule. They suggested, for example, that many companies reduced their inventories of hazardous chemicals in order to avoid being subject to the RMP rule. We believe that the costs of chemical accidents reported in the benefits assessment are based on the most current accurate data available. Some of the data come from the RMP five-year accident histories—data provided by the RMP facilities themselves.

We recognize that before RMPs were required, many responsible chemical facility owners and operators were aware of the need for chemical accident prevention as the result of efforts by a variety of organizations, including the Center for Chemical Process Safety, the American Chemistry Council (formerly the Chemical Manufacturers Association) via the Responsible Care™ program, the Occupational Safety and Health Administration, and others. The objective of the benefits assessment was not to quantify the cumulative impact of voluntary process safety initiatives or of the 1996 RMP rule. Instead, as required by CSISSFRRA, the focus of the assessment was to evaluate the nature and extent of risk reduction benefits that would likely occur if OCA information were widely available and easily accessible to the public. We remain convinced that the assessment correctly concluded that readily available, easily accessible and interpreted OCA information, in combination with RMP information, would stimulate public dialogue about chemical risks and would result in at least some of the 15,000 covered facilities implementing additional risk reduction measures.

Lastly, several commentors asserted that the benefits assessment overstated the importance of OCA information and underestimated the value of the data already released in executive summaries or available through local sources of risk information. The benefits assessment acknowledged that many facilities have provided OCA data in their executive summaries, and that individuals with sufficient effort and know-how could generate their own offsite consequence data from publicly available information. In fact, some organizations have already published their own databases of ''worst-case'' scenarios based upon data less accurate than OCA information. However, the assessment also noted that the amount of OCA data included in executive summaries varies widely, and that OCA data in executive summaries cannot be easily sorted or compared. In addition, OCA results prepared by those outside the company are often erroneous because they are based on incomplete or inaccurate information. The OCA information in an RMP is generated by the company submitting it, and takes into account site-specific information; consequently, the OCA information portions of RMPs contain the most reliable data for comparison purposes and for understanding risks. The assessment made clear, however, that OCA information for a single facility is of limited value, and is far more useful when evaluated in the context of the facility's entire RMP, and compared to OCA information reported by similar facilities or by facilities handling similar chemicals.

2. Risk Assessment

Like the benefits assessment, the risk assessment prompted a range of comments. Some commentors generally agreed with its conclusions. Others, citing DOJ's expertise, deferred to the assessment's findings, but urged DOJ to consider additional risks. In contrast, some commentors claimed that the assessment's conclusions were overstated in light of the availability of data comparable to OCA information or that it failed to consider factors that would reduce the risk assessed.

Some commentors expressed concern that the risk assessment understated the security concerns posed by the dissemination of OCA information. Some of those commentors asserted that the assessment should have considered the potential danger that OCA information could be disseminated by persons taking handwritten notes that could be posted on the Internet. In fact, the risk assessment addressed that potential risk. While the assessment recognized that dissemination of handwritten notes was cause for concern, it concluded that the risk posed by that was less than that posed by release of government documents containing OCA information. Handwritten notes would not carry the same presumption of accuracy and reliability generally associated with government documents. Handwritten notes also would require significant time and effort to transcribe, making them less likely to be used for purposes of creating a large electronic OCA database that could be posted on the Internet.

Other commentors stated that the risk assessment did not discuss other potential risks associated with the release of OCA information, such as exploitation of the data for purposes of conducting industrial espionage or locating precursor chemicals for purposes of creating illicit drugs. We note, however, that CSISSFRRA requires the risk assessment to weigh whether posting OCA information on the Internet would increase the risk of criminally-caused chemical releases. While the release of OCA information may pose other risks as well, we did not, and, given time constraints, could not, assess those risks.

By contrast, a number of commentors asserted that the assessment overstated or mischaracterized the risk posed by the dissemination of OCA information.

Those commentors made several points. First, one stated that the assessment did not discuss the ''increased risk'' posed by dissemination of OCA information on the Internet (quoting CAA section 112(r)(7)(H)(ii)(I)(aa)). Rather, the commentor offered, it merely concluded that OCA information would be helpful to a terrorist or criminal. In fact, however, the risk assessment did address the issue of ''increased risk,'' as required by CSISSFRRA. It concluded that OCA information would provide someone seeking to target or maximize an industrial chemical release with helpful information that is not currently available, and, therefore, that posting OCA information on the Internet would increase the risk of a terrorist using the information for that purpose.

Other commentors argued that information identical or similar to OCA information is already publicly available, and, therefore, the risk assessment overstated the risk posed by posting OCA information on the Internet. The risk assessment acknowledged that some items of OCA information and information comparable to OCA information are currently available to the public. However, the risk assessment also found that the items of OCA information most likely to be used by a terrorist to plan or execute an attack (*e.g.,* the distance to endpoint, the population within the distance to endpoint, and public and environmental receptors affected) have not been assembled into a publicly available resource that would be as comprehensive and accessible as OCA information would be if posted on the Internet, particularly in its database form. While several commentors noted that RMP executive summaries are currently available on the Internet, both the risk and benefits assessments found that the quantity and quality of OCA data contained in the posted executive summaries vary considerably. Some executive summaries include all of the OCA data elements while others include little or none. Consequently, OCA data that have been released through the executive summaries do not constitute a comprehensive collection of OCA information. Moreover, OCA data included in the executive summaries cannot be electronically searched in a manner that would allow the sort of comparisons among RMP facilities that would facilitate targeting. The risk assessment thus reasonably concluded that full publication of OCA information on the Internet would pose a significantly greater risk than that currently posed by the public availability of executive summaries and other information, even though executive summaries have been posted on the Internet.

Similarly, some commentors questioned the risk posed by OCA information, since data similar to OCA information could be calculated using publicly available sources of information. The risk assessment found that calculating information like OCA information using available sources of data would be possible but would require significant effort and know-how. To date, no comprehensive collection of data on the off-site consequences of chemical releases is available on the Internet. To the extent that EPCRA information is available on the Internet, the risk assessment found that such information does not pose the same degree of risk as would OCA information because EPCRA information does not furnish the type of targeting data (such as the distance a chemical release would travel and the population that lives within that area) that could be used to plan terrorist events. Furthermore, the assessment found that some publicly available information similar to the key items of OCA information is only available through SERCs and LEPCs, and is not Internet-accessible. The risk assessment found that the ability to access information anonymously posed significant security concerns and that, for information attainable only through personal contact, for example, by contacting a SERC or LEPC, there is less of a risk that the information would be misused by criminals, who typically avoid such contact in executing their plans. Thus, to the extent that information similar to OCA information is currently available, it can be obtained only through means that do not pose a risk comparable to that which would be created by Internet access to OCA information.

Another commentor maintained that OCA information has already entered the public domain because every covered facility in its state had held the public meeting required by CSISSFRRA section 4. That section specifies that every covered facility must provide the public with a summary of the OCA portions of its RMPs at a meeting or in a public notice no later than February 1, 2000. We do not believe, however, that those meetings (and notices) provided OCA information in a way that presents a significant risk. Facilities were required to share only a summary of their OCA information, and facilities were free to do so in various ways, making it unlikely that the information they shared with the public was sufficiently detailed or uniform to make it easy to assemble and distribute over the Internet. Also, the meetings were a one-time requirement and thus are not an ongoing source of OCA information.

Several commentors questioned the risk assessment's conclusions regarding the helpfulness of OCA information to terrorists and criminals; they asserted that it does not provide a ''roadmap'' for terrorists and that it fails to provide all of the information that a terrorist would need to conduct an attack. The risk assessment, however, did not claim that OCA information provides a comprehensive ''how-to'' manual for attacks on chemical facilities. Nor did it claim that OCA information provides all of the information that would be sought by someone seeking to cause an intentional chemical release. Rather, the risk assessment found that OCA information supplies some pieces of information that would be useful to someone seeking to target or maximize an industrial chemical release. The risk assessment noted that information such as the population that could be affected, the distance that a plume of chemical could radiate, and the types of buildings and landmarks in the local area are precisely the type of information that would be of interest to a terrorist seeking to maximize the effect of an industrial chemical attack. Thus, even if OCA information does not provide a ''roadmap'' for terrorists or all of the necessary information for an attack, it still provides crucial pieces of information that would increase the risk of terrorist or other criminal activity.

A few commentors argued that several of the examples cited in the risk assessment were irrelevant to whether terrorists or criminals in the United States might seek to cause an industrial chemical release. In particular, those commentors considered irrelevant the examples of chemical releases that occurred in Bosnia and the incidents involving criminals in the United States who had personal knowledge of the industrial facilities they targeted. We disagree. Those incidents were included in the risk assessment because they establish specific, important points relevant to the risk assessment. The examples in Bosnia demonstrate that it is in fact possible to cause large-scale chemical releases using explosives or other means; and the two criminal incidents that occurred in the United States demonstrate that criminals in this country have indeed considered using—although they have not successfully caused—chemical releases to inflict mass casualties.

Lastly, two commentors asserted that the risk assessment should have taken into account the risk reduction that would be achieved by informing the

community of OCA information. We agree that the dissemination of OCA information can assist the community in preventing, preparing for, and responding to chemical releases, regardless of how they are caused, and thereby may mitigate the damage that such releases could cause. However, that point does not contradict the risk assessment's finding that the release of OCA information on the Internet would increase the risk of an intentional chemical release or other related criminal conduct. Moreover, while the benefits assessment concluded that public release of OCA information would likely result in a significant reduction in chemical risk, it did not find that the reduction in risk would offset the increase in risk that would accompany Internet dissemination of OCA information. As explained above, we do not have sufficient data to estimate the number of lives that could be lost or saved by various approaches to the dissemination of OCA information. But we are concerned that terrorists or criminals would use anonymous Internet access to OCA information to maximize the effects of a release, and that those effects are likely to be large compared to the effects of unintentional releases. Moreover, it will take time for the public release of OCA information to create the incentives that will in turn lead to risk reduction. The increased risk created by Internet dissemination of OCA information, by contrast, would be immediate. For those reasons, we do not believe that unfettered release of OCA information would achieve the statutory objective of minimizing the risks of chemical releases, however caused.

3. The Assessments and the Proposed Rule

We received a number of comments related to the assessments and their role in informing the proposed rule. Some commentors believed that the proposed rule appropriately balanced the findings of the assessments. Those commentors noted the tension between the concerns raised in the assessments, but offered that the proposed rule represented a reasonable accommodation of those concerns. Others asserted that the conclusions of the risk assessment were given too much weight in view of the evidence presented, or that the conclusions of the benefits assessment were given too little weight.

One commentor noted that while the benefits assessment chronicled actual, significant damages from accidental releases in terms of casualties, evacuations, and property damage, the risk assessment did not cite a successful terrorist attack on an industrial facility in the United States. The commentor was thus concerned that the proposed rule ignored the ''very real risks'' of chemical accidents in favor of what the commentor characterized as ''greatly exaggerated fears of the unknown.''

While there have thankfully been no successful terrorist or criminal chemical releases in the United States (although there have been several abroad), the risk assessment discussed two recent plots to cause chemical releases that were thwarted by law enforcement. As the risk assessment also pointed out, it is important to recognize that the consequences of an intentional release could be devastating. A chemical release intended and designed to cause maximum damage to property and life—as terrorist events increasingly are—would have dire consequences. The fact that an intentional release has not yet occurred in the United States does not mean that the risk of such an incident should be discounted or ignored. Nor does it mean that steps to prevent such an incident should not be taken. As the risk assessment concluded, trends suggest that the odds of such an event are increasing. The rule recognizes that fact and balances that concern with the benefits to be gained from providing the public with access to OCA information.

Similarly, one commentor asserted that the proposed rule sought to eliminate the risk associated with posting OCA information on the Internet rather than balancing that risk with the incentives for risk reduction that would be created by making the information available to the public. We disagree. CSISSFRRA requires the government to promulgate a regulation that ''minimizes'' the likelihood of accidental and intentional releases based upon the findings of the risk and benefits assessments. The proposed rule was designed to do so. It would not have eliminated all the risks cited by the risk assessment. To further reduce the risk, the proposal could have called for any member of the public to have access to OCA information for no more than one facility per month or even per year, or could have made reading rooms less numerous. Instead, the proposal called for any member of the public to obtain OCA information for up to 10 facilities per month at the 50 or more reading rooms across the country. It also called for an Internet-based risk indicator system to stimulate the public's interest in OCA information and the potential for risk reduction. The proposed rule thus was an attempt to minimize the risk of chemical releases, however caused, by providing the public with access to OCA information while establishing safeguards intended to discourage criminal use of the information.

Several commentors asserted that the proposed rule was ''arbitrary and capricious'' because it failed to make a rational connection between the facts found in the benefits assessment and the decisions made in regard to the rule. In particular, the commentors pointed to the benefits assessment's findings that the public will use information to reduce risks to the extent the information is easy to access, understandable, and in a format that facilitates comparison and analysis. They claimed that the proposed rule would make OCA information difficult to obtain. They argued that the proposed restrictions would thus undermine the potential benefits of releasing OCA information, and that EPA and DOJ essentially disregarded the benefits assessment's findings.

We agree that there must be a rational connection between the regulatory limitations established in this rulemaking and the findings in the benefits and risk assessments. However, the final rule should not, and cannot, respond to each of the assessments' findings standing alone. CSISSFRRA requires the final regulations to govern the distribution of OCA information in a manner that ''minimizes the likelihood of accidental releases and the [increased risk of terrorist and other criminal activity associated with the posting of OCA information on the Internet] and the likelihood of harm to public health and welfare,'' in light of the assessments. To meet that requirement, the findings of both assessments must be considered to determine how best to distribute OCA information in a way that reduces the risk to public health and welfare of chemical releases, however caused. We believe the final rule is informed by the findings of both the benefits and the risk assessments.

Another commentor asserted that EPA and DOJ's justification for withholding OCA information from the Internet is ''unique and arbitrary.'' The commentor argued that, if posting OCA information on the Internet is unacceptably dangerous due to the assistance it could give a terrorist in identifying a potential target and planning an attack, then many other types of information on the Internet could be seen as equally dangerous, such as baseball schedules and stadium seating capacities. The commentor explained that a terrorist could use that information to determine potential casualty figures for a planned attack during a game.

This criticism misinterprets the basis of our concern about OCA information. The risk assessment found evidence that terrorists are increasingly interested in using weapons of mass destruction (WMD) and that chemical releases can be triggered from an industrial facility, thereby converting that facility into a WMD. Based in part on that evidence, the assessment concluded that posting OCA information on the Internet would increase the risk of terrorists or criminals targeting chemical facilities for attack. OCA information provides data that is qualitatively superior to the sort of information cited by the commentor. In particular, OCA information includes the number of people, the size of the area, and the types of buildings and landmarks that could be affected by a chemical release. As the assessment emphasizes, that is *precisely* the type of information that terrorists seek for purposes of planning an attack. Stadium seating capacities and schedules, by contrast, provide information only about the number of people that could be affected. For those reasons, EPA and DOJ conclude that the release of some items of OCA information presents a terrorism risk that warrants their exclusion from the Internet. Moreover, the fact that chemical facilities, as opposed to baseball stadiums and many other places where the public congregates, are themselves potential WMD, makes clear that there is heightened risk in making OCA information easily available to terrorists or other criminals.

We also received a comment that the proposed rule makes OCA information more difficult to access than information currently reported under EPCRA section 312, even though the benefits assessment found that EPCRA section 312 information was not widely used because it was difficult to obtain. However, the commentor did not correctly characterize the benefits assessment's findings. The benefits assessment found that several reasons account for the infrequent use of EPCRA section 312 information. First, the public is not aware of the availability of the EPCRA information because limited resources have allowed only about half of the SERCs and LEPCs to publicize its availability. Second, the effort required by members of the public to locate their SERC or LEPC and request that information has been a disincentive. Lastly, EPCRA data is not in a format that is easily understood by the public.

As will be described in more detail later, under the final rule, the public will more likely be aware of OCA information and have the means to access and understand it. First, the EPA's website on the Internet—a widely accessible medium—will inform the public of the existence and availability of OCA information. Second, the website will provide contact information and instructions for obtaining access to OCA information, so members of the public will not have to locate that information for themselves. Third, OCA information will be accessible from more sources than is EPCRA section 312 information; while EPCRA section 312 information is available only through SERCs and LEPCs, OCA information will be available through federal reading rooms, as well as through SERCs, LEPCs, and other related state and local agencies that opt to provide access to local OCA information, as described in more detail later. Fourth, some OCA information will be readily accessible on the Internet. Finally, the public is more apt to use OCA information because it is easier to comprehend than is the EPCRA section 312 data. OCA information does not require calculations or analysis to determine the potential consequences of potential releases; it communicates that information directly and is designed to allow easy comparisons among RMP facilities.

B. General Comments on the Rule

We received comments raising a variety of general or overarching concerns with the proposed rule. One commentor asserted that the proposed rule does not further right-to-know efforts. Other commentors argued that terrorists will be able to get OCA information while the proposed rule's restrictions on OCA information will only harm the public. As stated above, DOJ and EPA agree that the public's right-to-know is an important element in the reduction of accidental releases and that risk reduction benefits will flow from the public's access to OCA information. Accordingly, the proposed rule provided the public with multiple avenues for obtaining access to OCA information, including federal reading rooms, LEPCs, SERCs, and fire departments that opt to provide read-only access. It also provided the public with hazard information through a risk indicator system and clarified that state and local government officials, as well as federal officials, can communicate the substance of OCA information to the public as long as they do not release the restricted forms of that information. While the proposed rule would not have permitted unfettered release of OCA information, it would have provided for dissemination of OCA information in ways that are consistent with right-to-know efforts and would have allowed the public and industry to better prevent and prepare for chemical releases, whether or not intentionally caused. As explained further in this preamble, the final rule adopts and improves on those public access provisions.

One commentor argued that the proposed system for providing the public with access to OCA information would undermine the utility of the CAA's citizen suit enforcement provision by denying members of the public the information they need to prosecute such suits. But as noted above, the system would not deny public access to OCA information, only control it. Federal, state, and local reading rooms, and the Internet would all be potential outlets for the information. As described later, we have also sought to improve the proposed system's ability to assure reasonable access to OCA information by all members of the public.

One commentor expressed concern that the proposed regulation would ''disenfranchise'' U.S. citizens located outside the country by withholding access to OCA information from them. The basis for that concern was our proposal to define ''member of the public or person'' as an individual located in the United States. We did not intend to withhold access to OCA information from any U.S. citizen. Rather, we intended only to limit our reading room obligation to establishing rooms in the United States, where the vast majority of persons affected by RMP facilities are located. Given the resource implications of establishing federal reading rooms, we considered it appropriate to commit to locating at least 50 rooms in the United States and retain discretion to locate more elsewhere. We continue to believe that that is the appropriate course to take.

As described later, we are developing an approach to operating reading rooms that will give us flexibility in where we locate them; to the extent we learn that there is demand for reading room access by U.S. citizens abroad, we will consider providing reading room access in appropriate locations. Nonetheless, we realize that the definition of ''member of the public or person'' need not be limited in the way proposed to accomplish our objective. The reading room provision of the rule itself specifies that the required reading rooms be located across the United States. Moreover, we realize that the proposed definition would have been problematic for some other rule provisions that used the terms ''public'' or ''person.'' We have thus deleted the phrase ''located in the United States'' from the definition. At the same time,

we have revised the rule provision calling for a system that indicates whether an address is within a facility's vulnerable zone so that our obligation extends only to persons located within any state (defined to include the 50 states, the District of Columbia, and U.S. territories). The vast majority of persons affected by vulnerable zones are within a state, and we consider it reasonable and prudent to limit our obligation in order to limit the potential impact of that obligation on our resources. We expect, however, to answer inquiries from persons located outside the U.S. unless those inquiries become voluminous.

Several commentors voiced concern that, without ready access to OCA information, the public would be unable to hold EPA accountable for the effectiveness of the RMP program. We disagree. We do not believe that changes over time in any single set of data (*e.g.,* distance to endpoint) are sufficient to measure the effects of the RMP program on a facility's practices. Differences in OCA data may reflect differences in assumptions and models used in conducting the analysis. Other RMP information, including accident histories and information about prevention and response programs, offers a more comprehensive basis for measuring a facility's progress or comparing facilities' safety practices. Moreover, RMP information except for OCA information is already available on the Internet. Consequently, there is already a wealth of information that an individual can use to determine the compliance status of an individual facility, even without the additional OCA information offered by the proposed rule. We thus believe that the ready access to that information sufficiently enables interested individuals to evaluate the effectiveness of the RMP program.

One commentor claimed that the proposed rule distorted the notion of a ''public record'' because the proposed rule would not allow publicly released OCA information to be copied or carried away from reading rooms. The commentor noted that the proposal treated OCA information as ''public'' in the setting of the reading rooms but prohibited it from release to the public in the context of the Internet. We find that the proposal's treatment of OCA information is consistent with CSISSFRRA's statutory framework. Congress anticipated that OCA information in different forms could be disseminated differently; under CSISSFRRA the government is required to provide the public with access to paper copies of OCA information in limited quantities, and in addition the government is required to assess whether and how to provide OCA information on the Internet (CAA section 112(r)(7)(H)(ii)(II)). Thus, the proposed rule's approach to dissemination of OCA information was well within the scheme contemplated by the CSISSFRRA.

We received a comment that the proposed rule is illogical because it tracks members of the public who review OCA information at federal reading rooms but allows companies to release OCA information to the public without restriction. Both of those aspects of the proposed rule, however, flow from the statute itself. First, CAA section 112(r)(7)(H)(ii)(II)(aa) specifies that the final rule must provide access to paper copies of OCA information for a ''limited number'' of facilities. The only way the government can implement the ''limited number'' provision is to limit the number of facilities for which an individual can receive access to OCA information. Second, CAA section 112(r)(7)(H)(v)(III) contemplates that facilities will release their OCA information to the public if they so choose. It provides that the statute's restrictions on dissemination of OCA information do not apply to information released without restriction by facilities, and it requires facilities that provide OCA information to the public under those terms to notify the Administrator, who is directed to maintain a public list of such facilities. Congress thus clearly intended to allow facilities to release their OCA information as they consider appropriate. Congress' approach to facilities' release of their own information does not conflict with the concern expressed in the risk assessment that large quantities of OCA information would be disseminated in a searchable format on the Internet. Individual facilities separately releasing their OCA information does not significantly raise that concern.

Relatedly, one commentor asserted that the federal government should provide access to OCA information that facilities release without restriction. As noted above, CSISSFRRA requires EPA to make publicly available a list of the facilities that have notified EPA that they have released their OCA information without restriction. Approximately 1,000 facilities have notified EPA, and EPA has made a list of those facilities available on its website. That list will enable members of the public to obtain OCA information from those facilities. At the same time, CSISSFRRA does not require that EPA and DOJ make publicly available the OCA information released by listed facilities. Neither EPA nor DOJ will provide the OCA information merely because it has been released by the listed facilities, for the security reasons cited above.

Several commentors asserted that even greater restrictions should have been proposed because the rule would not stop OCA information from being hand-copied and posted on the Internet. We do not believe Congress intended for us to prevent members of the public from hand-copying the OCA data that they view. CAA section 112(r)(7)(H)(ii)(II)(aa) guarantees the public ''access'' to paper copies of OCA information for at least a limited number of facilities, and the utility of ''access'' would be greatly diminished if the public had to rely on memory alone to recall that information. Also, CAA section 112(r)(7)(H)(viii) expressly precludes mechanical and electronic copying of the electronic OCA information made available under that provision. It is silent with regard to copying by hand. The fact that Congress expressly precluded mechanical and electronic copies suggests that it was aware of the problem of copying and made an affirmative decision to prohibit only certain forms of copying. We thus believe that Congress' silence with regard to copying by hand is properly interpreted to mean that hand copies are to be permissible.

Another commentor claimed that the best manner of determining whether the proposed rule provided adequate public access to OCA information compared to other alternatives was to give the full RMP database to qualified researchers so that they could use it to conduct a peer review analysis of the proposal. CSISSFRRA mandates that the means of disseminating paper copies of OCA information be based upon assessments conducted by the government; it does not appear to contemplate the sort of peer review process that the commentor proposed. Further, it is unlikely that the short time frame provided by the statute would have allowed for such a process. Moreover, we do not believe that the commentor's method of assessing the various alternatives for providing the public with access to OCA information would be preferable to the method of analysis that we conducted through our assessments. We agree, however, that there are public benefits to providing qualified researchers with access to OCA information. CSISSFRRA does not require that this rulemaking establish a means of doing so, but we are working on devising and implementing a system for giving qualified researchers access to

OCA information, as required by CAA section 112(r)(7)(H)(vii).

One commentor asserted that it was unnecessary for the public to receive information about facilities outside their communities, and that a facility's OCA information should only be available to members of the community in which it is located. Such an approach, however, would be inconsistent with CSISSFRRA and the findings of the benefits assessment. CAA section 112(r)(7)(H)(ii)(II)(aa) expressly guarantees access to paper copies of OCA information for a limited number of facilities ''located anywhere in the United States, without any geographical restriction.'' The benefits assessment also notes that a person interested in assessing a local facility's safety practices may find it useful to compare that facility's OCA information with that of similar facilities located elsewhere.

Some commentors suggested that the creation of 50 federal reading rooms, or approximately one per state, has environmental justice implications. The Environmental Justice Executive Order (Exec. Order No. 12898, 59 FR 7629 (1994)) requires that each federal agency conduct all activities affecting the environment or human health in a manner that does not discriminate by race, color, or national origin, and address, as appropriate, any disproportionately high and adverse human health or environmental effects on minority and low-income populations. Executive Order 12898 also encourages agencies to work to ensure that public documents relating to human health and the environment are readily accessible to the public. We believe that our approach, including various means of access in addition to federal reading rooms, will not have a disparate impact upon minority groups or low-income groups. As discussed below, we are committed to providing reasonable access to everyone seeking to view OCA information and have made changes to the rule reflecting that intention. We expect that the vast majority of federal reading rooms will be placed in urban areas with relatively large minority and low-income communities. Those locations will provide practical access to OCA information for those communities, some of which have historically suffered from a disproportionate environmental hazard burden. The rule provides for additional access to OCA information by allowing state and local government agencies to provide access under the ''enhanced local access'' section of the rule. Also, the vulnerability zone indicator system, which is accessible via email, telephone, and U.S. mail, will provide an individual with additional data on some aspects of the risk expressed by OCA information.

Some commentors also expressed concern that little had been done to involve minority and poor communities in the development or public review of the proposed rule, contrary to the Environmental Justice Executive Order. EPA and DOJ disagree. Especially in light of the relatively short period of time we had to conduct the risk and benefits assessments, as well as to propose and finalize this rule, we believe that we provided a reasonable opportunity for review of the proposed rule by minority and poor communities in compliance with that Executive Order. The proposed rule outlining the federal government's policy was published in the **Federal Register** and available on the EPA website. In addition, we provided additional notice of the proposal by holding a public hearing and providing individual notification to thousands of individuals across the country, including state and local government agencies.

Another commentor faulted the proposed rule for not acknowledging Indian country, tribal governments, or tribal equivalents of SERCs and LEPCs. CSISSFRRA itself does not address Indian country or tribes. It amends the CAA, which defines ''state'' in a way that does not include Indian country. However, CAA section 301(d) authorizes EPA to promulgate regulations specifying those CAA provisions for which it is appropriate to treat Indian tribes as states. EPA has promulgated that regulation (63 FR 7271 (Feb. 12, 1998)), which provides that tribes can take delegation of programs under CAA section 112, including the RMP program, if EPA finds they meet specified criteria. Thus, a tribe found to meet those criteria may be treated as a state and receive and disseminate OCA information to the same extent and in the same manner as any state under the rule being promulgated.

C. Rule's Impact on Risk Reduction

A number of commentors agreed that the proposed rule generally provided for public access to OCA information in a way that would minimize the likelihood and consequences of chemical releases, however caused. Some of those commentors noted that other information available in RMPs, under EPCRA or other programs, would, on their own or in tandem with OCA information, allow the public to learn about and understand the hazards and risks posed by chemical plants in their communities. In contrast, some commentors expressed concern that the proposed rule would not minimize overall risk, and even more significantly, might increase overall risk by making it too difficult for the public to access OCA information that could be used to reduce the likelihood of accidents.

Some commentors argued that the proposed rule would take away a risk reduction tool without decreasing existing dangers. We disagree with that statement. The agencies did not propose to ''take away a risk reduction tool,'' since there still would be public access to OCA information. In order to reduce the risk associated with Internet posting of OCA information, the proposed rule delineated procedures for obtaining access to the information and limitations on the amount of information that could be obtained by any member of the public. It provided for access to up to 10 facilities' OCA information per individual per month, access that would allow members of the public in the vast majority of counties to obtain information for local facilities and a few additional facilities for a basis for comparison. In addition, the proposal in no way attempted to restrict the use of that risk reduction tool once obtained.

A few commentors argued that the proposed rule encouraged secrecy, which would breed incompetence and complacency. While we agree that secrecy can have such an effect, in this case the public will have access to OCA information, so facilities' information will be far from secret. In addition, other RMP information currently available on the Internet, including information concerning facilities' accident prevention programs, provide important information for assessing and comparing facilities' practices. Likewise, other publicly available environmental reports—such as those concerning accidents reported under EPCRA and the Comprehensive Environmental Response, Compensation, and Liability Act—are useful in evaluating a facility's safety practices. OCA information provides a particularly simple way of roughly assessing and comparing the hazards facilities pose, but it is not the only information capable of communicating such hazards, as a number of commentors pointed out.

Several commentors argued that, by making OCA information difficult to access, the proposed rule would force the public to rely on government officials for risk information without being able to check the accuracy of that information. Other commentors claimed that the public might resort to other forms of less reliable, more exaggerated information that would make local risk

reduction efforts more difficult. Relatedly, another commentor argued that, to the extent other, more exaggerated information is generated as a substitute for OCA information, terrorists and other criminals may be led to believe that consequences of a release would be greater, thereby increasing the risk of a release. The fundamental premise of those comments is that the rule would render OCA information inaccessible. We disagree. As mentioned above, we are committed to making OCA information reasonably available to the public and have made changes in the final rule to ensure such access. Consequently, local and state governments need not ask the public to trust their representations but may provide access to OCA information and other information that the public may use to verify government assertions about the risk of chemical releases.

Several commentors asserted that the proposed rule, in validating the idea that public dissemination of OCA information poses a risk, would have a ''chilling effect'' on local officials' communication of OCA data, thus curtailing accident prevention efforts that result from public awareness and pressure. We did not intend to create such a chilling effect. Indeed, we believe dialogue among government, the public, and industry is essential to further risk reduction efforts. As we explained in the proposal, we have attempted to address the concern about CSISSFRRA's perceived chilling effect by explaining in the rule the ways in which state and local government agencies may legitimately disseminate OCA information, or descriptions thereof, to the public. In fact, the rule encourages appropriate local and state agencies to provide public access to such information, which should counter any inference to the contrary. Further, it is worth reiterating that government officials may be held criminally liable only for ''willful'' violations of the restrictions on OCA information dissemination. In other words, the government would be required to demonstrate that the official knew his or her actions to be unlawful. EPA and DOJ moreover, will continue to provide guidance to state and local covered persons to explain the extent to which they may lawfully disseminate OCA information, or communicate the substance of that information, under the final rule.

Similarly, one commentor expressed concern that the proposed rule might discourage members of industry from participating in SERCs and public meetings at which OCA information is discussed. In particular, the commentor asserted that proposed section 1400.6(b) could be interpreted to render it unlawful for industry members serving on SERCs to provide OCA information for their facilities to the public, if those facilities have not formally decided to release that information. In many instances, whether CSISSFRRA is applicable will depend upon the context in which OCA information is being disseminated. For example, in the instance cited by the commentor, 1400.6(b)'s restrictions on dissemination apply only if the member of industry is distributing OCA information to the public in his or her capacity as a representative of the SERC. In addition, CSISSFRRA does not restrict his or her ability to participate in public discussions about OCA information; in fact, CSISSFRRA section 4 anticipates that members of industry will engage in such discussions with the public.

Several commentors argued that, if the rule makes public access to OCA information difficult, it should compensate for any resulting decrease in risk reduction incentives by requiring facilities to secure their sites and/or take prescribed risk reduction steps, such as reducing their inventory of dangerous chemicals or substituting safer chemicals to the extent feasible. Other commentors disagreed, asserting that requiring facilities to make themselves secure from terrorist attacks or to take other risk reduction measures would be an inappropriate remedy for the risk posed by broad release of OCA information. To begin with, we note that CSISSFRRA requires the final rule to ''govern[] the distribution of [OCA] information.'' It does not call on the government to decide whether to impose further substantive requirements on facilities to reduce the risk of chemical releases, however caused. In the short time available to conduct the assessments and rulemaking on the distribution of OCA information, it was not possible for us to address the broader policy, programmatic, and legal issues posed by the commentors' suggestion for additional regulatory requirements. CSISSFRRA does, however, include a requirement that DOJ, in consultation with relevant federal, state, and local agencies, as well as members of industry and the public, conduct studies to examine the issue of site security at RMP facilities and the extent to which the RMP rule effectively addresses that issue. DOJ is working to comply with that requirement. In the meantime, EPA has issued a site security alert informing industry of various risks posed by criminal activity related to chemical facilities.

D. Reading Rooms

1. General Comments on Reading Rooms

As indicated above, the proposed rule called for providing the public with access to paper copies of OCA information through the creation of at least 50 federal reading rooms geographically distributed across the United States. Several commentors expressed concern that the costs of creating federal reading rooms could outweigh the benefits. Further, several other commentors suggested that it would be more appropriate for LEPCs, SERCs and/or other local groups to be the principal providers of OCA information; some commentors also urged EPA to help fund such efforts. Some commentors recommended that the reading room approach be abandoned or scaled down out of concern that reading rooms would not adequately safeguard the OCA information and could result in the widespread dissemination of OCA material. Other commentors questioned whether federal reading rooms would provide reasonable access, particularly for people who live some distance from reading rooms. Finally, other commentors supported the federal reading room approach but made suggestions about how to make reading rooms more effective and secure.

For the reasons discussed below, we continue to believe that providing the public with access to paper copies of OCA information is best done through reading rooms. We are developing an implementation approach for federal reading rooms that will allow read-only access to OCA information in a reasonably secure manner that is convenient for the public and efficient for the government. We do not believe that existing federal statutes authorize us to rely solely on LEPCs, SERCs, or other state or local entities to provide reading room access; requiring such agencies to do so, moreover, might raise constitutional concerns regarding the appropriate relationship of federal and state power. CSISSFRRA makes the federal government responsible for distributing OCA information. Nevertheless, LEPCs, SERCs, and other emergency prevention, planning, and response agencies can play an important part in facilitating public access to OCA information, and the final rule being promulgated encourages them to do so. We also intend to provide assistance to interested state and local agencies.

As for whether reading rooms can provide reasonable access, we are committed to establishing a network of federal reading rooms and other potential state and local outlets (further

described below) that would ensure that every member of the public has a reasonable opportunity to obtain access to OCA information. We believe that federal reading rooms can and will be an appropriate and cost-effective mechanism for providing the required public access to OCA information.

2. The Number of Paper Copies

We received a comment interpreting the limit on the number of RMP facilities for which an individual may view paper copies of OCA information as 10 per person per visit. Today's notice clarifies that the limit is 10 per person per month, regardless of the number of reading room visits a person makes. Any person may visit a reading room multiple times during a single calendar month to view the OCA information for the same 10 facilities. A person may not visit multiple reading rooms to view OCA information for more than 10 different facilities in a single month. We have changed the text of the regulation to clarify that point.

We received many comments on what the appropriate ''limited number'' should be. Some commentors expressed concern that the proposed limit of 10 per month was too generous considering the potential criminal use of that information and suggested a lower number, such as 10 per year. Several commentors indicated that the proposed limit of 10 was arbitrary, unreasonable, and/or would hamper the goal of providing the public with access to paper copies of OCA information because the proposed limit of 10 per month would be insufficient for citizens living or working in areas with high concentrations of RMP reporting facilities, or would hinder individuals wishing to conduct nationwide comparative research. Finally, some commentors stated that the limit of 10 per month was appropriate.

Several commentors also raised issues concerning the application of the 10 per month limit. One commentor suggested that the limit apply not to individuals but to organizations, so that an organization could not use its employees or members to compile collectively OCA information for more than the prescribed ''limited number'' of facilities. Another commentor argued that members of the public have a legitimate interest only in OCA information for facilities in their community, and that the limited number should thus be applied in a way that provides access to information only for such facilities. Two other commentors recommended that OCA information be provided only to state and local officials with emergency planning, prevention, or response responsibilities.

We note at the outset that CSISSFRRA requires that these regulations provide access for ''any member of the public'' to paper copies of OCA information for a limited number of facilities ''located anywhere in the United States, without any geographical restriction'' (CAA section 112(r)(r)(H)(ii)(II)(aa)). We thus do not have the discretion to deny the public access to paper copies of OCA information, to establish a limit that applies to organizations instead of individuals, or to restrict the geographical scope of the facilities for which a member of the public may request OCA information. The benefits assessment also makes clear that public access to OCA information would stimulate further risk reduction and that the public's ability to compare the hazards and safety practices of similar facilities located in different places is important to stimulating that risk reduction.

With respect to the appropriate numbers limit, we explained in the proposal that we chose a limit of 10 facilities per individual per month based on consideration of many of the issues expressed in the comments received. As required by the law, we weighed the risks that would result from unlimited reading room access to paper copies against the benefits that would accrue from public awareness of potential release hazards, as communicated through OCA information. A limit was proposed that would hinder the ability of an individual or group to gather large quantities of OCA information to post on the Internet, while allowing individuals in most parts of the country or in most counties to gain access to OCA data for all the facilities in their community and a few more for purposes of comparison.

In determining that limit, we conducted an analysis of the geographic distribution of RMP facilities across the nation. The analysis showed that 82% of all counties that have RMP facilities have no more than 10 such facilities. Because residents of most counties would be able to review OCA information for all the facilities in their county in a single visit to a federal reading room, EPA and DOJ believed that a limit of 10 per month would provide reasonable access for persons living or working in areas with RMP facilities. Moreover, under the 10 per month limit, in the great majority of those counties, residents would also be able to review OCA data for RMP facilities located outside their county.

At the same time, we recognized that the proposed limit of 10 per individual per month would not permit all members of the public to obtain OCA information for every facility in their own communities. The proposed rule, therefore, included provisions to authorize and encourage LEPCs, SERCs, and fire departments to supplement the access provided by federal reading rooms by providing read-only access to OCA information for facilities located in the LEPC's jurisdiction and facilities with vulnerable zones that extend into that jurisdiction. However, as discussed more fully below, we received comments that many LEPCs and SERCs would be unwilling and/or unable to provide such access.

In passing CSISSFRRA, Congress emphasized that members of the public should have access to OCA information, particularly for facilities in their local communities (see 145 Cong. Rec. S7545, daily ed. June 23, 1999 (statement of Sen. Chafee)). We agree that every member of the public should be able to access OCA information for facilities in the communities where he or she lives or works without making multiple trips to a federal reading room. We have thus decided to require federal reading rooms to provide any person with access to OCA information that the LEPC in whose jurisdiction the person lives or works is authorized to provide (*i.e.,* access to OCA information for facilities located in the jurisdiction of the LEPC and facilities with a vulnerable zone that extends into that jurisdiction). That access will be in addition to access to OCA information for up to 10 facilities located anywhere in the country, without geographical restriction. With reading room access to OCA information for local facilities assured, access to OCA information for 10 facilities located anywhere will allow members of the public to compare facilities in their community with similar facilities located elsewhere and to learn about facilities in communities where they might move or where relatives or friends live or work.

In providing federal reading room access to OCA information for a person's local facilities, we do not want to discourage LEPCs, SERCs, and others from providing local access to the same. Obviously, it will be more convenient for a member of the public to access information locally than at a federal reading room that may be located many miles away. Also, we want to encourage dialogue between members of the public and their local officials responsible for chemical emergency planning and response. By making local OCA information available locally, LEPCs,

SERCs, and other state and local agencies can encourage the public to become involved in chemical risk reduction efforts. As more fully discussed in the next section of this notice, we are committed to helping LEPCs, SERCs, and others provide that local access.

3. Operation of Reading Rooms

Some commentors suggested that federal reading rooms be open at nights and on weekends. We understand that some members of the public may find it difficult to reach reading rooms during the normal work week. However, due to cost, personnel, and security concerns, reading rooms will be located in federal buildings, which are typically open only during normal business hours. We will explore the extent to which reading rooms can also be open at other hours to accommodate members of the public.

As urged by several commentors, we have endeavored to develop a cost-effective and secure means of operating federal reading rooms. At some reading rooms, access will be available on a walk-in basis because the OCA data will be maintained at the reading room. At other reading rooms, however, the OCA data will not be maintained on-site, and therefore a person wishing to view OCA data at those reading rooms will need to contact a central office at a toll-free number at least three days prior to the date on which the person would like to view the OCA information at the reading room. During the toll-free call, the requestor will be asked to provide his or her name, telephone number, and the names of the facilities for which he or she is requesting OCA information. That information will enable the central office to schedule an appointment for the requestor at a reading room, relay the requested copies of OCA information to that reading room, and, if necessary, contact the requestor. That information will not be retained beyond the requestor's appointment date.

As discussed below, at the reading room, the requestor will need to display photo identification issued by a federal, state, or local government agency, sign a sign-in sheet, and certify that the requestor has not received access to OCA information for more than 10 facilities during that calendar month. The requestor will then receive access to the requested OCA information. Requestors will be limited to access to paper copies of OCA information for a total of 10 facilities during a calendar month, regardless of how many reading rooms they visit during a single month.

As discussed above, any person will also receive access at a federal reading room to OCA information that the LEPC in whose jurisdiction the person lives or works is authorized to provide (*i.e.,* access to OCA information for facilities located in the jurisdiction of the LEPC and facilities with a vulnerable zone that extends into that jurisdiction). Persons seeking such access will also be asked to sign in and to provide proof demonstrating that he or she lives or works in the LEPC jurisdiction for which the OCA information has been requested. They will not, however, be required to sign a certification.

4. The Number of Reading Rooms

We received a range of comments on the appropriate number of reading rooms. Several commentors suggested that fewer reading rooms would be adequate and appropriate while many commentors expressed concern that 50 reading rooms would not provide reasonable public access due to issues such as time and travel costs, especially in large states and for low income groups.

We are committed to providing reasonable access to OCA information. We intend to establish reading rooms in virtually every state, the District of Columbia, and outlying territories having RMP facilities. In addition, we will work to set up additional reading rooms in states that have a significant number of RMP facilities, such as California and Texas. While we anticipate establishing more than 50 reading rooms, we have not increased the number of rooms required by the rule because the need for additional rooms may be affected by the extent to which state or local government agencies provide access under the enhanced access provisions of the rule. Moreover, as we implement the reading room provision and learn more about the demand for reading rooms in different parts of the country, it may become appropriate to relocate reading rooms.

5. The Location of Reading Rooms

As for the specific locations of the federal reading rooms, a number of commentors suggested a number of factors to consider in determining locations. We agree with those suggestions and have decided to use the following criteria in making our decisions: equitable distribution across the United States and its territories; the density of the population surrounding the location; the availability of public transportation to the location; the ability to provide security at the location; and the availability of federal offices that could readily implement the reading room requirement at reasonable cost. Federal offices, it should also be noted, are handicapped accessible. The location of federal reading rooms will be posted on EPA's and DOJ's websites when they are determined.

6. Security Measures at Reading Rooms

We proposed that a reading room representative be required to view a government document identifying that individual before granting that individual access to OCA information. Some commentors stated that that requirement would have a chilling effect on the public's use of reading rooms because some people may be reluctant to show identification to the government. Other commentors urged that we require photo identification to ensure that the person presenting the identification is in fact the person to whom the identification was issued.

We recognize that some individuals may be reluctant to show identification to a government official. However, the personal identification requirement is a reasonable means of accomplishing the statutory requirement that individuals have access to ''a limited number'' of paper copies of OCA information. Further, as noted in the risk assessment, EPA and DOJ believe that the identification requirement will also decrease the likelihood that OCA information would be obtained by individuals seeking it for criminal purposes because such individuals prefer to conceal their activities. With respect to the type of identification, EPA and DOJ agree that photo identification issued by a local, state, or federal government agency (*e.g.*, a driver's license or passport) should be required. That requirement will significantly reduce the risk that someone will attempt to use identification not his or her own.

One commentor suggested that there should be some type of identification validation system to ensure the accuracy of an individual's identification document. EPA and DOJ have concluded that it would be too costly to create an independent identification validation mechanism. The responsibility for checking individuals' identification documents will be left to those operating the federal reading rooms. EPA and DOJ do not consider that to be a significant problem, since the majority of locations at which the reading rooms will be located are federal agencies that have security staff that already visually check the identification of all persons seeking entry to the federal facility or other areas of limited access. Individuals using the federal reading rooms will have their identification checked in the same manner as would any member of

the public seeking entry into federal buildings.

As discussed above, the final rule will require federal reading rooms to provide any member of the public with access to the OCA information that the LEPC where the person lives or works would be able to provide to them. To implement that provision, it will be necessary for reading rooms to check identification and documentation to ensure that a requestor receives access only to the local OCA information to which he or she is entitled (i.e., OCA information for stationary sources located within the jurisdiction of the LEPC in which the individual lives or works and for any other stationary sources that have a vulnerable zone that extends into that LEPC's jurisdiction). We will create guidelines for federal reading room personnel regarding such procedures.

In the NPRM we described procedures by which reading rooms would determine whether a requestor had exceeded the 10 per month allotment. We anticipated that reading rooms would keep daily sign-in sheets to record the name of any person who received access to OCA information and the name and number of facilities to which that person had received access. Whenever someone requested access to OCA information, reading room personnel would review the sign-in sheets for that day and the previous days during the month to determine how many, if any, facilities' OCA information that person had already received that month. We noted that sign-in sheets would be protected under the Privacy Act (5 U.S.C. 552a) and would be retained for three years.

We received several comments on the record keeping aspect of the proposed rule. Several commentors expressed concern that the use of sign-in sheets would raise privacy concerns, and one commentor expressed a related concern that the proposed rule was silent as to how the federal government would use the information. Other commentors agreed with the identification requirement and the concept of keeping some type of record, but recommended that the final rule require record keeping and a corresponding check on people using a reading room in order to ensure that they have not had access to OCA information for more than 10 facilities per month. Two commentors suggested that EPA and DOJ establish a national database as a means of enforcing the 10 paper copy per month limit.

We recognize that privacy concerns are raised whenever the government collects information about individuals. We also are mindful of the need, identified by the risk assessment and required by CSISSFRRA, to limit the number of facilities for which individuals can access OCA information in paper form. We thus have endeavored to design a system that will effectively implement the limitation but minimize the need for keeping records on individuals' access to OCA information.

Specifically, we will use the sign-in sheet system discussed in the NPRM (65 FR 24853 (April 27, 2000)), and keep the sign-in sheets in a manner that will minimize privacy concerns and that will not entail the creation of a system of records under the Privacy Act. The Privacy Act applies to records retrieved by name within systems of records. Federal reading rooms will not create an elaborate tracking system; they will not index or otherwise manipulate the sign-in sheets according to individuals' names. Instead, a reading room representative will visually inspect the sign-in sheet(s), which will be organized chronologically, for the month in which an individual seeks access to paper copies to see if that individual's name appears on the sign-in sheet(s) for dates earlier in the month and, if so, if that individual has already received OCA information for the allotted 10 facilities without geographical restriction.

We believe that the sign-in system will help deter individuals from seeking improperly to obtain OCA information exceeding the 10 facilities per month national limit. To further deter individuals from attempting to exceed their allotment by visiting more than one federal reading room in a month, reading room personnel will be instructed to provide access to OCA information only to individuals who have signed a certification that they have not exceeded their allotment. The certification will inform members of the public that they may be subject to criminal penalties under federal law for falsely certifying that they have not received OCA information for more than 10 facilities that month.

It should also be noted that the information recorded on sign-in sheets may be used by law enforcement in the event of a duly authorized investigation of a violation of civil or criminal law. For that reason, the reading rooms will retain the sign-in sheets for three years. In the event that the sign-in sheets are compiled into a system retrieved by name for purposes of such an investigation, they will be subject to the Privacy Act and will be handled accordingly. Federal law enforcement agencies have already established Privacy Act systems applicable to their indexed investigative records, and if the information from sign-in sheets were so compiled, it would receive those protections.

The reading room records will not be used beyond the purposes outlined above (*i.e.*, to ensure compliance with the 10 facility per month limit and to carry out authorized law enforcement investigations).

In deciding to adopt the sign-in certification approach, EPA and DOJ have decided not to institute a national database for enforcing the 10 facility per month limit, as some commentors recommended. We anticipate sign-in sheets with certifications should provide adequate assurance that the monthly limit on OCA information is not exceeded. However, after gaining experience with the federal reading rooms, we will evaluate whether the sign-in sheet system is in fact effective. For that purpose, we will review a sample of sign-in sheets for several reading rooms to determine if the existing system is adequately enforcing the limit. Based on that review, DOJ, EPA, and OMB will consider whether a national database or other tracking system should be instituted to enforce the limit.

One commentor asserted that the establishment of such records would violate the Paperwork Reduction Act of 1995 because it would not provide the government with information that has practical utility. That assertion is not correct. As discussed above, the information collected would have practical utility, namely to ensure that the statutory and regulatory limit on access to OCA information in paper form is properly applied.

7. Alternatives to Reading Rooms

We expressly asked for comments on whether, as an alternative to reading room access to information, paper copies should be released to the public upon request. Some commentors stated that there should be an alternative system of direct delivery of OCA paper copies to interested parties. They asserted that the proposed federal reading room system would be insufficient to provide OCA paper copy access to all interested citizens. In addition, they indicated that, because only a limited number of federal reading rooms would be established, some citizens would find it inconvenient to travel the distances necessary to access the information.

Other commentors opposed off-site distribution of paper copies or allowing individuals to take away paper copies from reading rooms. Some noted that such a system would pose a significant security risk because it would increase the risk of OCA information being

disseminated widely, thus violating the intent of CSISSFRRA. Some emphasized that paper copies, once outside the control of the government, could easily be scanned into an Internet database and that such a system would provide potential terrorists with the type of Internet access to OCA information that the proposed rule was designed to prevent. Further, in noting that potential terrorists may forgo attempts to gain access to OCA information if they must do so in person and submit to an identification check, some commentors stated that the mail delivery alternative would lessen the deterrence benefit of on-site access.

We have considered the alternatives of mail delivery of OCA information to interested citizens and the distribution of take-away copies, and have determined that both would present an unacceptable security risk. With respect to mail delivery upon request, any safeguards, such as a requirement of proof of residence at the delivery location, could easily be circumvented by an individual or group establishing a ''phantom residence.'' We also agree with the commentors who noted that requiring persons to go to a federal reading room and provide identification would provide some deterrence to those potential terrorists who might wish to keep their interest in the information hidden. We further agree that, once paper copies have left the federal reading rooms, they can easily be scanned onto the Internet where they could be viewed anonymously by those with criminal intent. Anonymous access to significant amounts of OCA information is precisely what this rule is designed to prevent. As a result, the final rule will use reading rooms to provide access to paper copies because reading rooms allow for that access to occur within a controlled setting.

E. Enhanced Local Access to OCA Information

Commentors generally supported the proposed rule's provisions for enhanced local access as a promising means of facilitating the public's access to OCA information and public-private dialogue about chemical safety in their communities. Many of those commentors, however, also pointed out a number of obstacles to making enhanced local access a reality and suggested ways of overcoming those obstacles.

A key element of the proposal for enhanced local access was clarification that state and local government officials (as well as federal officials) may communicate to the public the substance of OCA information (*i.e.*, the OCA data elements reported in RMPs), even though they may not disseminate the official forms in which the data is reported and compiled (*i.e.*, the OCA portions of RMPs and EPA's OCA database). While developing the proposed rule, we learned that many state and local officials were concerned that CSISSFRRA may preclude them from communicating OCA data in any form. As we explained in the proposal, the ''scope'' section of ''CSISSFRRA'' (CAA section 112(r)(7)(H)(xii)(II)) expressly provides that the statute ''does not restrict the dissemination of [OCA] information by any covered person [defined by CSISSFRRA as government officials and qualified researchers] in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from [OCA] information.'' In other words, while covered persons may not disseminate the OCA portions of RMPs or any EPA database created from those portions, they may discuss or otherwise communicate the data reported in those portions. We thus proposed capturing that important point in the proposed regulations.

We received comments supporting and questioning the proposed clarification. Several commentors from LEPCs and SERCs indicated the clarification was helpful but sought further guidance on how OCA data could be lawfully disseminated. Other commentors were concerned that the clarification was not consistent with the law, and that communication of OCA data was risky because it is dissemination of the information's content, not its format, that they believed poses the risk. Another commentor expressed concern that the clarification could be interpreted to allow dissemination of the restricted portions of RMPs with only minor changes in format, which would undermine the protections of CSISSFRRA.

After revisiting CSISSFRRA and its legislative history, we have concluded that the proposed rule's clarification not only is consistent with the law but virtually mirrors it. As noted above, CSISSFRRA itself provides that it does not restrict the dissemination of OCA information in any manner or form except in two specified forms—the OCA portions of an RMP and any EPA database created from those portions. RMPs, including the sections containing OCA data, are designed to make information contained therein easy to compile into an electronic database, which would be capable of Internet posting. The legislative history confirms that Congress intended to make clear that government officials could communicate the substance of OCA information if not the restricted forms of that information—in order to allow the type of public dialogue that is important to chemical emergency prevention, planning, and response. As one House member explained, CSISSFRRA was passed to address the risk posed by Internet posting of a large OCA database, not to prevent public officials from sharing OCA data for individual plants with their communities. (See 145 Cong. Rec. H6083, daily ed. July 21, 1999 (statement of Rep. Dingell)).

We share the concern voiced by one commentor that the protections provided by CSISSFRRA would be undone if minor changes in the format of OCA information were sufficient to allow a government official to disseminate lawfully the OCA portions of RMPs or EPA's OCA database. We believe CSISSFRRA's scope provision must be interpreted in a common sense manner that achieves Congress' intent both to protect OCA information from Internet dissemination and to allow government officials to discuss risk. As noted above, Congress' concern with the OCA portions of RMPs arose from the fact that they are easy to compile into an electronic database. Minor changes in format most likely would not change that problematic characteristic. We have thus removed the word ''replicate'' from the relevant provision of the final rule in order to avoid the implication that minor changes in the format of OCA information would be sufficient to permit their release. That change is consistent with the point made by the House member cited above who stated that OCA information may be used ''in any other format that avoids compilation of a national database.'' Under that view, for example, discussion of OCA data at a public meeting would be appropriate because it would not be a form of communication amenable to the creation of such a database.

Several LEPCs asked us to further clarify how they may communicate the substance of OCA information (referred to as ''OCA data elements'' in the rule). We appreciate their concerns and plan to provide additional guidance in the future. Because it is impossible to foresee all the ways in which government officials may wish to communicate OCA data elements, we believe it would be most efficient and productive to work with representatives of LEPCs, SERCs, and other relevant government agencies in reviewing possible means of communication and responding to inquiries about the same.

Many commentors expressed doubt that the enhanced local access provisions would work as proposed. They noted that, because many LEPCs are inactive or have limited funding, few LEPCs would be willing or able to afford to provide secure OCA read-only access. Relatedly, a national organization of fire department officials expressed strong opposition to the proposed specification of fire departments as institutions that could volunteer to provide the public with local OCA information. One commentor suggested we authorize not only LEPCs and fire departments but also other local government agencies involved in chemical emergency planning, prevention, or response, such as police and planning departments. Local governments would then have several options for providing the public with read-only access.

We recognize that a large number of LEPCs are currently inactive, but EPCRA survey data indicate that most heavily populated industrial areas have active LEPCs. Those LEPCs are providing EPCRA information (chemical inventory data and contingency plans, some of which include possible consequences of hypothetical accidents) to the public. Although the final rule does not require LEPCs to disseminate OCA information, we expect that those with active EPCRA public information programs could easily provide enhanced local access to OCA information.

Since some areas of the country do not have active LEPCs, we have decided to expand the types of entities that are authorized to provide read-only access, as suggested by a commentor. The final rule provides that LEPCs and any other ''related local government agency'' may provide the public with read-only access to OCA information for facilities in the LEPC's jurisdiction and any other facilities with a vulnerable zone that extends into that LEPC's jurisdiction. Related local government agencies include fire, police, and planning departments and any other local government agency involved in chemical emergency planning, prevention, or response.

One commentor asked whether state agencies that take delegation of the CAA 112(r) program would be authorized to provide read-only access. The final rule expands the types of state entities that may provide read-only access to OCA information. Along with SERCs, any ''related state government agency'' (*e.g.,* emergency management, environmental protection, and natural resources departments involved in chemical emergency planning, prevention, or response) would be authorized to provide a person with access to OCA information that the LEPC in whose jurisdiction that person lives or works could provide. Thus, a state agency that takes responsibility for implementing the RMP program under CAA section 112(r) may provide that access. It is also worth noting that the final rule does not prescribe the locations where read-only access to OCA information may be provided by LEPCs, SERCs, and state and local government agencies. They may provide access at any facility they choose, including municipal buildings and courthouses.

As described earlier, to further address concerns that enhanced local access may not become a reality in every part of the country, we have also decided to require federal reading rooms to provide any member of the public with access to OCA information that the LEPC in whose jurisdiction the person lives or work would be authorized to provide. By expanding the number of state and local entities that may provide enhanced access and the scope of access to OCA information that federal reading rooms are required to provide, we believe the final rule will provide reasonable access to OCA information for all members of the public.

Several commentors recommended that the federal government provide LEPCs and SERCs with the resources necessary to provide local access, including a binder containing all of the OCA information that a particular LEPC would be authorized to show the public. A commentor also requested model procedures for operating a local OCA reading room. Further, a few commentors suggested that, in those communities with RMP reporting facilities that do not have LEPCs, EPA work with the local governments to establish them. We agree that federal assistance and guidance are warranted. As explained below, we intend to supply the binders suggested by one of the commentors to LEPCs, SERCs, and related local and state agencies that decide to provide enhanced local access. Providing that and other support to local access efforts will become an important component of the EPA's chemical accident prevention program.

Additional commentors stated that most LEPCs and SERCs would be unable to determine whether a facility outside their jurisdiction has a vulnerable zone that would affect their area. One commentor suggested that the final rule should simply authorize LEPCs to distribute the OCA for any facility within 25 miles of their local boundaries. We are not changing our approach in today's final rule. As noted above, we intend to provide any LEPC or related local agency willing to provide local access with a binder that contains the OCA information it is authorized to show the public. We will also work with SERCs and related state agencies to provide them with a similar resource (depending on the number of facilities in a state, binders may be too cumbersome, so there may be a need to explore other means of providing the information). Moreover, contiguous LEPCs can, and often do, work together to determine which RMP facilities have vulnerable zones that affect their areas. LEPCs, SERCs and other emergency planning organizations have historically engaged in joint planning activities to better prepare for emergencies. We are thus confident that the rule's provision allowing local or state agencies to share OCA information with adjoining jurisdictions can be implemented in a manner that would assist LEPCs and SERCs to determine which facilities outside their jurisdictions have vulnerable zones that extend into their jurisdiction.

Two SERCs and one LEPC commented that the proposal to authorize SERCs to provide individuals with OCA information on the basis of that individual's residence or workplace was too burdensome. They questioned whether SERCs would be able to verify the requestor's place of residence or workplace. We understand that SERCs and related state agencies will have to request and review proof of residence and/or workplace. Federal reading rooms will have to do the same for any person requesting OCA information on those bases. We believe that that requirement is necessary, however. SERCs have much broader jurisdictions than do the vast majority of LEPCs. Thus, the number of facilities within their jurisdictions is typically much greater. If SERCs were allowed to share OCA information for all the facilities in their jurisdictions with any member of the public, the risk of persons using SERCs to amass OCA information would be significant. To avoid that risk, we must limit the amount of OCA information a SERC or related state agency can share. We appreciate the extra work that that may involve, but believe it would be manageable. A driver's license or other identification can establish someone's home address while a pay stub can establish a work address. As we address the same issue in federal reading rooms, we will share our ideas and experiences with the states.

One commentor also questioned our authority to limit the release of OCA information to individuals on the basis of their residence or workplace. The

commentor claimed that there is no statutory authority for such a limitation. In fact, the local enhanced access provision is being implemented under CAA section 112(r)(7)(H)(ii)(II)(bb), which authorizes the regulation to allow public access to OCA information ''as appropriate.'' In light of the previously discussed concerns that would arise were SERCs allowed to provide OCA information for the entire state, we believe that it is appropriate to adopt the residence and workplace limitation for local agency dissemination of OCA information.

Several commentors from LEPCs and SERCs expressed great reservation about the potential criminal liability associated with the improper disclosure of OCA information. Some stated that, because of those concerns, they have not requested the OCA information that they are entitled to obtain and are authorized to show the public. The final rule is intended to address those concerns. It makes clear that state and local (as well as federal) officials may communicate OCA data elements to the public in a form other than the OCA sections of RMPs and EPA's OCA database. It also authorizes LEPCs, SERCs, and related local and state agencies to show the OCA sections of RMPs to members of the public in accordance with specified geographical limitations. In a subsequent section of this preamble, we discuss what OCA information state and local officials may share with one another. Moreover, as we noted earlier, government officials may be held criminally liable for unlawfully disseminating OCA information only if they ''willfully'' violate CSISSFRRA (*i.e.,* by distributing OCA information with the knowledge that they are doing so unlawfully).

One commentor asserted that only local persons who live or work within the vulnerable zone of a facility should have access to local reading rooms. Several commentors also recommended that local reading room staff be required to implement the same security procedures that federal reading rooms will follow—asking users for photo identification and recording information about their access to OCA information. That, the commentors argued, would close a loophole in the proposal that would allow persons to obtain OCA information without being tracked. We understand that asking local providers of OCA information to follow security procedures would further reduce the risks identified by the risk assessment. However, we did not propose those security procedures at the local level because of the burden that that would create and the effect that that burden might have on the ability and willingness of local entities to provide OCA information access. We also took into account the fact that the vast majority of LEPCs have a relatively small number of RMP facilities located in, or affecting, their jurisdiction. We thus concluded that any risk posed by local read-only access without additional security procedures was small. The comments we received from LEPCs, SERCs, and others confirm our concerns about requiring local agencies to follow the type of security procedures that federal reading rooms will follow. Indeed, the comments indicate that local agencies will find it a challenge to provide local access, even with the help we intend to provide. We have thus decided not to impose any further requirements on local agencies willing to provide read-only access to local OCA information.

We also do not agree that local access should be restricted to local residents. First, implementing such a restriction would require local agencies to institute much, if not all, of the security procedures that we have decided would be too burdensome. Second, members of the public who do not live or work in a community may nevertheless have a legitimate interest in obtaining OCA information for that community. For example, a requestor may have relatives who live in the community, or may be considering purchasing a home or working in the area.

Lastly, several commentors recommended that LEPCs be authorized to provide take-away paper copies of local OCA information. Several others recommended against permitting LEPCs to do so. We have concluded that if users were permitted to obtain paper copies of OCA information LEPC-by-LEPC, it would not be long before a large collection would be accumulated and possibly posted on the Internet. For that reason, the final rule retains the proposed prohibition on LEPC and SERC dissemination of take-away paper copies of local OCA information.

F. Risk Indicator System (Vulnerable Zone Indicator System)

Many of the comments on the proposed risk indicator system were positive, stating that the system would provide useful information that would encourage the general public to become more active in addressing chemical safety concerns in their communities. At the same time, those and other commentors raised various concerns with the system and made suggestions for improving it. A few commentors considered the system so troublesome that they urged us to abandon it altogether.

Several commentors thought the proposed indicator system might frighten recipients of the information and had the potential for depressing property values. They noted that the system would communicate information based on worst-case release scenarios that are highly unlikely and that the information provided would necessarily be imprecise given the nature of RMP data. Based on those concerns, some commentors urged us not to implement the system, or to convert the system so that it would identify the RMP facilities near a particular address, but would not indicate whether facilities' vulnerable zones extend to that address. Other commentors recommended that we avoid potential misunderstandings by including in the system caveats explaining the nature and limitations of the vulnerable zone derivations.

We continue to believe that an indicator system can help spark the public's awareness of chemical risks in its community and interest in working with government and industry to reduce them. Members of the public can already use RMP*Info to locate nearby facilities by asking the system to search for facilities by zip code or county. We proposed an indicator system to allow members of the public to determine if their homes, schools, or other places of interest might be affected by a worst-case or alternative scenario release from a facility. The benefits assessment found that the public is more apt to use such interpreted data, and we thus developed the indicator system as a way of providing the public with information that communicates risk without disseminating OCA information itself. At the same time, we agree that it is important that users of the indicator system understand the nature and limitations of the information thereby provided. We will therefore design the system to include sufficient explanatory information so that users will not become unduly alarmed if the system reports that their address might be in a vulnerable zone. The system will display a notice explaining that it is designed to perform the limited function of helping users quickly determine whether the off-site consequences of any facility's worst-case or alternative release scenarios might affect a particular address. It will also explain the limitations of the data used to calculate the vulnerable zones.

Relatedly, several commentors thought the proposed name, ''Risk Indicator System,'' was inaccurate because it would not provide an indication of ''risk,'' understood to be

the probability of an event multiplied by the consequences of that event. Those commentors suggested changing the name of the indicator system to ''Hazard Indicator System'' or ''Vulnerable Zone Indicator.'' We agree with those comments, and have decided in the final rule to change the name of the system to ''Vulnerable Zone Indicator System'' (VZIS). That name more accurately reflects the limited purpose and capabilities of the system.

Several commentors expressed concern that the proposed indicator system could be used to determine distance to endpoints and thus would provide useful targeting information. We do not agree. The indicator system will consist of very limited query and response software located in RMP*Info. The information provided by the system will be whether an address might be within a vulnerable zone. There will be no indication whether the address is at or near the outer boundary of a vulnerable zone. Nor will the system provide the name or location of the facility that is the origin of the vulnerable zone. Thus, no one would be able to determine from the indicator system the distance to endpoints reported as part of OCA information.

A number of commentors asserted that the proposed indicator system should be deployed only if it identifies the facility that is the origin of the vulnerable zone and/or the chemical involved in the hypothetical release defining the zone. They were concerned that, without that information, the system would alarm users without providing them with the information necessary to address their concerns. A number of other commentors recommended strongly against identifying facilities, arguing that to do so would compromise the security achieved by the rule's restrictions on access to OCA information. Some commentors suggested that the indicator system instruct users on how to obtain facility identities; one recommended including instructions on how to contact the facility or facilities directly.

We recognize that system users who learn that their address might be within a vulnerable zone would likely want to learn more about the hazards they may face. Indeed, we hope that that would be their reaction. However, we remain concerned that the indicator system would pose security concerns if the public could immediately obtain, on an anonymous basis, the name of the facility and chemical involved. Instead, we intend that the system furnish instructions on how to obtain the names of facilities in whose vulnerable zones they live or work.

Several commentors stated that the indicator system should not direct recipients of the indicator system data to LEPCs or SERCs for further information unless those agencies have agreed to provide access to such information. We agree in part with those commentors. We believe that chemical safety is most effectively addressed at the local level. SERCs, LEPCs, and other state and local entities are generally in closer contact than is EPA with local facilities and communities that would be affected by releases. For more than a decade, EPA has endeavored to work cooperatively with local agencies so that they can realize their potential to help prevent and respond to accidental releases. We therefore believe that SERCs, LEPCs, and other local entities can and should be encouraged to assume an important role in communicating OCA information to members of the public. While we do not intend for the indicator system to direct users specifically to SERCs and LEPCs, the indicator system will inform users of the several ways, including through their SERCs and LEPCs, through which they can obtain additional information about the facilities whose vulnerable zones might affect an address of interest. We have thus revised the last sentence in proposed § 1400.4(a) accordingly.

While we cannot at this time name all potential sources of information, at least facility names, locations, and vulnerable zones will be available at all federal reading rooms and all SERCs, LEPCs, or other state and local agencies that opt to provide local access to OCA information. The indicator system will note specifically state and local entities that do not seek and/or provide that information. The system will also advise users that, once they know the name of a facility, they can turn to RMP*Info to learn more about the facility's chemical accident history and the steps the facility is taking to prevent such accidents. Individuals may also contact a facility directly to request access to OCA information. The system will also inform users that they can obtain not only OCA information but further information on risk through contacting a SERC, LEPC, or other state or local ''covered person.'' Federal, state, and local government officials are authorized and encouraged in the proposed rule to provide reading-room access to OCA information, and are permitted to convey and discuss the substance of OCA information, as long as they do so in a manner that does not disseminate the OCA sections of the RMPs or EPA's OCA database.

Several commentors also expressed concern about whether the indicator system would be easy for local covered persons to operate. EPA intends to provide an enhanced version of the RMP*Review software to those federal, state, and local covered persons providing local access so that they can easily identify the facilities whose vulnerable zones extend to a particular address, and provide that facility identification information to individuals who request it.

Some commentors worried that the indicator system would ''rate'' facilities for potential risk. Nothing in the proposed rule required the indicator system to include rating information, and no such requirement has been added to the final rule. The risk a facility poses is a function of many factors, at least some of which are site-specific. No computer system could adequately account for all relevant factors. As discussed below, we intend to maintain a website of chemical safety-related information that will assist the public in assessing hazards posed by facilities and measures that can reduce those hazards. In addition, RMP*Info already allows the public to learn about facilities' prevention and response programs.

G. Internet-Accessible OCA Information

As explained in detail in the NPRM, the risk assessment segregated the OCA information that would be helpful to terrorists or other criminals into three categories. The first category of OCA information provided a general account of the consequences of a chemical release in terms of the damage that might be inflicted on the community. It was composed of the distance to endpoint, the residential population within the distance to endpoint, the public receptors, the environmental receptors, and the map or graphic of the worst-case or alternative release scenario. The second category of information consisted of OCA information that provided a rough sketch of what is involved in triggering a release from an RMP facility. Included in this category were the name of the chemical involved in the worst-case or alternative release scenario; the projected quantity of chemical released; the release rate; the duration of the release; and the scenario that results in the release. The third category of information consisted of OCA information on passive and active mitigation measures.

The risk assessment concluded that Internet access to categories one and two of OCA information posed the greatest risk of being used in relation to an attempted industrial chemical release. However, there were certain

items of OCA information within category two that posed less risk because they were fixed values that were widely known. Thus, the proposed rule would have posted on the Internet the OCA information in category three and parts of the information in category two, but withheld the remaining information in category two and all of category one.

We solicited public comment on whether any additional items of OCA information should be placed on the Internet or whether any items of OCA information that we have proposed posting should not be. The comments we received were divided. Some commentors asserted that the risk assessment's findings in regard to the dangers of posting category 2 information should be heeded and that no category 2 information should be placed on the Internet. Others argued that category 3 information should not be posted because the risk assessment found that it would be helpful to terrorists (although the assessment found that it would be much less so than would category 1 or 2 information). Still others argued that no OCA information, especially the passive and active mitigation system information in category 3, should be placed on the Internet.

Other commentors maintained that the OCA information that we proposed posting would be meaningless unless viewed in the context of the rest of the OCA information. Several commentors similarly argued that all OCA information should be placed on the Internet without restriction. Still another commentor believed that at least the chemical name should be included in the information posted.

We have considered those comments and still believe that the public will benefit from posting the items of OCA information that we proposed. Such information can be used for purposes of comparing various risk reduction characteristics of RMP facilities. Further, posting it would not create an unacceptable security risk. While some commentors have expressed concern about the release of information about active and passive mitigation measures, similar RMP information has already been released on the Internet and the release of that information was found by the risk assessment to pose the least degree of risk. Furthermore, such information is precisely the type of information that could be used by the public to further its dialogue with industry.

In regard to the comments that all OCA information be placed on the Internet, the risk assessment found that wholesale release of OCA information in that manner would unacceptably heighten the risk of intentional releases. Similarly, we disagree with the comment concerning the names of chemicals. While we recognize that there would be public benefit resulting from the posting of that information, we find that the risk that it could be used in concert with other OCA information for illicit purposes is too great to permit it to be posted. As one commentor noted, while an individual item of OCA information may not appear to pose a significant risk standing alone, its release could raise ''mosaic'' concerns: some items of OCA information may not raise significant security concerns considered individually but pose greater concerns when assembled with other items of OCA information. For example, some items of OCA information in category 2 can be used to calculate items of information that are in category 1. We believe that while the items of OCA information that we proposed posting will not pose mosaic problems, others would. Thus, only the items of OCA information that were proposed to be posted will be placed on the Internet.

H. Access to OCA Information by Government Officials

The proposed rule called for codifying CSISSFRRA's provisions regarding access to OCA information by state and local governmental officials for ''official use.'' We received comments raising questions and concerns about various aspects of the proposed codification.

One commentor criticized the proposed definition of ''official use,'' claiming that it would exclude the use of OCA information for purposes of enforcing the RMP rule or other legal requirements. We disagree. The proposed definition of ''official use'' is substantively identical to the statutory definition of that term. Consequently, to the extent that definition limits the use of OCA information, we have no discretion to change that result. However, we believe that the statutory and regulatory definition of ''official use'' does permit the use of OCA information in enforcement actions against facilities. ''Official use'' is defined as ''an action of a federal, state, or local government agency or an entity [such as LEPC, SERC or volunteer fire or police department] intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.'' (Final rule, § 1400.2(h)). Determining compliance with, and enforcing the terms of, the RMP rule is surely carrying out a function relevant to preventing, planning for, or responding to accidental releases. The same can be said about determining compliance with, and enforcing, EPCRA and other legal requirements related to chemical accident prevention, planning, and response.

Several commentors raised concerns about the proposed restrictions on state and local officials' dissemination of OCA information to their counterparts in other states. One commentor considered the restrictions arbitrary and claimed they would interfere with useful communications among states. Another commentor urged us to avoid hindering OCA information sharing between fire and emergency service personnel from jurisdictions involved in joint planning. By contrast, another commentor recommended that the rule not allow a state or local official access to OCA information for facilities not located in the official's state.

Based on our review of the statute and its legislative history, we believe that the proposed provisions for state and local official access are legally required. CSISSFRRA itself expressly provides that the final rule must allow for state and local officials to gain access to OCA information for facilities not only in their own state but in other states as well. EPA will provide state or local government officials with OCA information for their state upon request. In addition, to avoid unnecessarily broad dissemination of OCA information to state and local officials, CSISSFRRA requires that those officials specifically request information for facilities in other states, rather than provide that the federal government unilaterally distribute it to them. CSISSFRRA leaves no doubt, however, that the final rule must allow a state or local official, upon request, to access OCA information for official use for his or her state or any other states. Morever, as the benefits assessment points out, persons interested in evaluating the safety practices of local facilities may find it helpful to compare OCA information for those facilities with that of similar facilities located elsewhere. This statement is as true for government officials as it is for members of the general public.

Similarly, CSISSFRRA itself limits the extent to which a state or local official can share OCA information with officials of other states or of localities in other states. It specifies that the regulations allow such officials to share OCA information for their states with officials of contiguous states. We do not anticipate that this limitation will hinder useful communication among officials of different states and localities. Since under CSISSFRRA and the final

rule any state or local official may request OCA information for facilities in any state, it will not be necessary for state and local officials to disseminate their own information. A state or local official interested in obtaining information for a noncontiguous state may simply request it from EPA, and an official interested in sharing that information with another state's officials may suggest to those officials that they request it themselves.

The commentors' general point that the rule not hinder communications among government officials nevertheless is well taken. We have reviewed the relevant regulatory provisions and made several changes to improve their clarity and practicality. While the proposed rule authorized EPA to provide a state or local official with OCA information for ''his or her'' official use, the final rule deletes the quoted language so that every official in a state or locality with an official use for the information need not request it separately. Relatedly, we have revised the regulatory language to make clear that officials within a state or locality may share OCA information with one another for official purposes. Consequently, an official from a county planning department, for example, may request OCA information for official use and distribute it to his or her colleagues who also need to review the information ''to carry out a function relevant to preventing, planning for, or responding to accidental releases.''

As indicated above, CSISSFRRA provides government officials with access to OCA information for ''official use.'' One commentor suggested that EPA ensure that the government official requesting OCA information has an ''official 'need to know.' '' We believe that approach is unnecessary and impracticable. CSISSFRRA contains a definition of ''official use'' that describes the purposes for which such officials may lawfully use OCA information. The final rule adopts the statutory definition verbatim. Before providing OCA information to a government official as required under CAA section 112(r)(7)(H)(iv) (regarding availability of OCA information during the first year following enactment of CSISSFRRA), we ask the official to state in writing that access is for ''official use'' as defined by the statute. If the official uses OCA information for other than official purposes, he or she might be exposed to administrative, and possibly criminal, sanctions. As an added precaution, and as required by CSISSFRRA, we will continue to provide officials receiving OCA information with a security notice that includes examples of what constitutes ''official use.''

Finally, several states and LEPCs commented on the logistics of obtaining and safeguarding OCA information. One commentor urged us not to charge local officials for paper copies of OCA information, particularly in light of the proposal that LEPCs and other state and local entities be allowed to make paper copies of OCA information available to the public in read-only form. Another commentor urged us to provide OCA information in an ''organized'' way, that is, according to LEPC jurisdiction. As stated above we intend to provide paper copies of OCA information, free of charge, for facilities on the basis of LEPC jurisdiction to LEPCs, SERCs, and others interested in providing read-only access. For local and state officials with limited electronic resources, we also intend to provide paper copies of OCA information for facilities within their state.

I. Other Provisions

The proposed rule also included provisions prohibiting government officials, as well as researchers who receive OCA information under CAA section 112(r)(7)(h)(vii), from disseminating OCA information and ''OCA rankings'' to the public except as authorized by the rule or a specified provision of CSISSFRRA. The proposed rule defined ''OCA rankings'' as ''any statewide or national ranking of identified stationary sources derived from OCA information.'' One commentor criticized that definition, claiming that it is vague and raises due process issues. The commentor also was concerned that the definition would prevent state or local officials from ranking facilities based on parameters similar or even identical to the data reported in the OCA sections of RMPs.

The proposed definition was drawn virtually verbatim from CSISSFRRA, which prohibits government officials and qualified researchers from disseminating to the public OCA information ''or any statewide or national ranking of identified stationary sources from such information'' (CAA section 112(r)(7)(H)(v)(I)). We believe the statutory language, and thus the regulatory definition, are not unconstitutionally vague, as individuals clearly can identify in advance what constitutes a ranking of stationary sources, on a statewide or nationwide basis, and whether the OCA information provided to them was used to create the ranking. We do not believe the definition prevents state or local officials from using information other than OCA information to rank facilities. ''OCA information'' is defined by CSISSFRRA and the rule as the OCA portions of RMPs and any EPA database created from those portions; ''RMP'' is defined as the risk management plan submitted to EPA pursuant to the RMP rule. If state or local officials, without resort to OCA information, have developed or gained access to data similar or even identical to the OCA data reported in RMPs, they are not precluded from using that data to rank facilities.

III. Discussion of Final Rule

After considering the comments received, we have sought to craft a final rule that meets CSISSFRRA's requirements and reflects consideration of both assessments' findings. CSISSFRRA's requirements include providing any member of the public with access to paper copies of OCA information for a ''limited number'' of facilities (CAA section 1129r)(7)(H)(ii)(II)(aa)) and other access ''as appropriate'' (CAA section 112(r)(7)(H)(ii)(II)(bb)). The risk assessment concluded that posting certain portions of OCA information on the Internet would increase the risk that terrorists or other criminals will attempt to cause an industrial chemical release in the United States. Easy access to OCA information would assist someone seeking to identify the most lethal potential targets from among the 15,000 facilities that have submitted OCA information. The benefits assessment, however, concluded that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. Widespread access to OCA information would serve the functions Congress originally intended in enacting the CAA and requiring the collection of OCA information to inform members of the public of potential environmental hazards and to allow them to participate in decisions that affect their lives and communities.

While chemical accidents take a significant toll on life, property, and the environment each year, we believe that the property damage, personal injuries, and loss of life resulting from a single, successful terrorist attack on a chemical facility could be considerable and would likely cause more damage than would many accidental chemical releases. We therefore have attempted to balance those concerns by making as much OCA information as appropriate available online, but not posting the information that the risk assessment found would, if disseminated without restriction, pose a significant risk for terrorist or criminal purposes. Although

the Internet provides a tremendous benefit by offering people easy access to a wealth of information, we also recognize that it provides a new means for criminals and terrorists to carry out traditional criminal activities. The final rule provides several means for individuals to obtain OCA information not only for facilities within their community but also for a sufficient number of facilities located elsewhere, thereby enabling individuals to compare facilities' safety and prevention measures and records. Those means are described below.

Both the proposed and final rules have been approved by the Director of OMB.

A. Access to Paper Copies of OCA Information

The final rule creates federal reading rooms to fulfill CSISSFRRA's requirement to provide individuals with access to paper copies of OCA information of a limited number of facilities. A minimum of 50 federal reading rooms will be geographically located across the United States, with approximately one federal reading room per state. The number and location of those reading rooms may be adjusted based upon public demand and the agencies' experience in administering them.

Under the rule, any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources per calendar month located anywhere in the country, without geographical restriction. In addition, the final rule directs federal reading rooms to provide access to paper copies of OCA information for facilities located within the LEPC jurisdictions where the individual lives or works and for any additional facilities that have vulnerable zones that extend into those LEPC jurisdictions. Individuals will be allowed to read and take handwritten notes from, but not remove or mechanically reproduce, the paper copy of OCA information.

Reading room personnel will be required to ascertain a requestor's identity by viewing a photographic identification for an individual issued by a government agency and obtain a signature on a sign-in sheet and a certification before providing that person with access to OCA information for up to 10 facilities per month without geographical restriction. Similarly, reading room personnel will be required to view documentation of where an individual lives or works and obtain a signature on a sign-in sheet before providing any person with access to the OCA information that the LEPC in whose jurisdiction lives or works would be authorized to provide. Reading rooms will also be required to keep records to ensure that no individual receives OCA information beyond the limits established by the rule.

B. Enhanced Access to Local OCA Information

Several provisions of the final rule are designed to enhance the public's access to OCA information for local stationary sources. In response to comments regarding the appropriate governmental agencies to provide enhanced access, EPA and DOJ have modified the final rule to permit related local government agencies and related state government agencies, as defined in the regulation, to provide access. The rule authorizes and encourages LEPCs and related local government agencies to provide read-only access to OCA information for sources located within an LEPC's jurisdiction and for any other stationary sources that have a vulnerability zone extending into that jurisdiction. Likewise, SERCs and related state government agencies are authorized and encouraged to provide read-only access to the same OCA information that the LEPC in whose jurisdiction the person lives or works would be authorized to provide. Federal reading rooms are similarly authorized to provide read-only access to OCA information. Such information will not be subject to the 10 facility per month limit.

The final rule also codifies the statutory provisions of CSISSFRRA that allow any member of an LEPC or SERC or any other state or local government official to convey to the public any OCA data elements orally or in writing, provided that the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database that EPA has developed that includes OCA data elements.

C. Vulnerable Zone Indicator System

The final rule establishes a ''vulnerable zone indicator system'' (VZIS) which provides persons located in any state with a means of obtaining, via electronic mail or other inquiry, information regarding the risk expressed by OCA information without providing Internet access to the OCA information itself. Members of the public will be able to learn whether a specific address (such as that of a home, school, or place of employment) falls within a reported ''vulnerable zone'' (*i.e.,* within any RMP facility's worst-case or alternative release scenario's ''distance to endpoint''). Electronic mail inquiries will usually receive a response within two working days. Members of the public who do not have access to the Internet will be able to obtain the same information by calling an EPA toll-free number or by sending regular mail to the Administrator of EPA. VZIS will consist primarily of query and response software located in RMP*Info.

VZIS will also provide individuals with information on how to identify the specific facilities affecting the address submitted to VZIS. It will also provide contact information and sources of additional information explaining chemical accident risk. Any federal reading room or local reading room providing enhanced access under this rule, for example, may be a source for identifying the facility or facilities whose vulnerable zones extend to the address entered into the indicator system, as well as the location of the facilities. System users will be provided with the addresses and telephone numbers of the federal reading rooms. The system will also supply users with up-to-date contact information for the SERCs and LEPCs, and note that only some LEPCs provide local OCA information access services. The indicator system will advise users that, once they know the name of the facility, they can use RMP*Info to learn more about the facility's chemical accident history and its accident prevention measures, and they may contact the facility directly to gain access to OCA information.

D. Internet Access to Selected OCA Information

The final rule makes some items of OCA information available to the public through the Internet by posting it on EPA's website. Those provisions of the final rule are identical to those in the proposed rule. The items of information that will be posted on the Internet are those that the risk assessment found would pose the least serious security risk if posted on the Internet. The following items of OCA information will be posted on the Internet, along with other RMP data elements available in EPA's RMP*Info:

- The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);
- The physical state of the chemical (RMP Sections 2.2; 3.2);
- The duration of the chemical release for the worst-case scenario (RMP Section 2.7);
- The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);
- The endpoint used for flammables for the worst-case scenario (RMP Section 4.5);
- The wind speed during the chemical release (RMP Sections 2.8; 3.8);

- The atmospheric stability (RMP Sections 2.9; 3.9);
- The topography of the surrounding area (RMP Sections 2.10; 3.10);
- The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and
- The active mitigation systems considered (RMP Sections 3.16; 5.11).

The final rule precludes the following items of OCA information from being posted on the EPA website based upon the risk assessment's findings that their release on the Internet would pose significant security concerns:

- The name of the chemical involved (RMP Sections 2.1.a; 3.1.a; 4.1; 5.1);
- The scenario involved (RMP Sections 2.4; 3.4; 4.3; 5.3);
- The quantity of chemical released (RMP Sections 2.5; 3.5; 4.4; 5.4);
- The release rate of the chemical involved for the worst-case scenario (RMP Section 2.6);
- The release rate of the chemical involved in the alternative release scenario (RMP Section 3.6);
- The duration of the chemical release in the alternative release scenario (RMP Section 3.7);
- The distance to endpoint (RMP Sections 2.11; 3.11; 4.6; 5.6);
- The endpoint used for flammables for the alternative release scenario (RMP Section 5.5);
- The residential population within the distance to endpoint (RMP Sections 2.12; 3.12; 4.7; 5.7);
- The public receptors within the distance to endpoint (RMP Sections 2.13; 3.13; 4.8; 5.8);
- The environmental receptors within the distance to endpoint (RMP Sections 2.14; 3.14; 4.9; 5.9); and
- Any map or other graphic used to illustrate a scenario (RMP Sections 2.16; 3.17; 4.11; 5.12).

E. Additional Information on Chemical Accident Risk

As a supplement to the provisions of this rule, EPA will make available to the public additional information on chemical accident risk through an Internet website. Some of that information is currently available through EPA's website. RMPs (except for the OCA information, sections 2 through 5) are currently accessible to the public through RMP*Info. Through Envirofacts, the public can easily access other information about facilities that have submitted RMPs. EPA's website also has links to a web-based chemical guide (*http://chemicalguide.com*). Another helpful link found on the EPA website that provides valuable information to the public is the NSC website (*http://www.nsc.org/xroads.cfm*), which is aimed at the news media and provides suggestions for information to request of facility management and local officials, for approaches to sifting through the information, and for presenting the information in a way that helps communities interpret local RMPs.

EPA is also developing new sources of information through which the public can learn about chemical accident risk. Research on accident histories based on the data provided in RMPs and other sources, both national and international in nature, will be posted on the EPA website. Moreover, EPA will expand the number of links to environmental organizations, industry trade groups, and academic institutions to provide the public with a comprehensive means of finding chemical risk and safety information. EPA will also provide guidance that it, along with other organizations, has developed to assist community members and interested groups to work with facility management and local officials to better understand and manage the risks posed by the storage of large quantities of toxic or flammable chemicals. EPA is developing examples of facilities and industries that can serve as models for ''best practices'' in chemical accident risk prevention and successful practices in RMP implementation. EPA and other organizations are developing background information about the nature of chemical accident risk, and that information will be posted on EPA's website when it becomes available. In addition, through a cooperative agreement, EPA and Clean Air Action (a non-profit organization) will develop a primer for lay persons on basic risk management terms and principles that help to provide a basis for understanding chemical accident risks. EPA will be making available an updated list of LEPC, SERC, and other emergency response contacts.

That information is intended to give the public a better understanding of the general nature of the risks associated with potential accidental releases posed by hazardous chemicals. In combination with OCA data about specific facilities, that information, we expect, will better enable the public to engage in productive dialogues at the local, state, and federal levels to prevent chemical accidents and to minimize the consequences of accidents that occur. EPA will provide that information through its Internet website, *http://www.epa.gov/ceppo.* Much of that information is already available there. EPA will continue to supplement that information as necessary or appropriate to provide the public with a full understanding of chemical accident risk and prevention.

F. Access to OCA Information by Government Officials and Other Provisions

The final rule adopts the proposed provisions for access to OCA information by federal, state, and local government officials, as well as qualified researchers. In accordance with CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee), the final rule provides state or local government officials with access, for official use, to OCA information for facilities located in their states, and, at the officials' request, for facilities located in other states. Also in keeping with that section, the final rule allows state or local government officials to share for official use OCA information for facilities within their state with one another and with state or local government officials in contiguous states. Similarly, the final rule allows federal government officials to share OCA information with each other for official use.

The final rule also establishes the other necessary provisions of the distribution system for OCA information. Specifically, it prohibits the dissemination of OCA information by government officials and qualified researchers (researchers who receive OCA information under CAA section 112(r)(7)(H)(vii)) to the public and to state and local officials except as authorized by the rule and a related CAA provision. It also authorizes the Administrator to disseminate OCA information as required by two other CAA provisions concerning qualified researchers and a read-only information technology system (CAA section 112(r)(7)(H)(viii)).

G. Effective Date and Implementation Schedule

The final rule is effective immediately so that we may continue to make OCA information available to government officials (''covered persons'') without interruption. CSISSFRRA and its legislative history make clear that Congress intended government officials to have ongoing access to OCA information to help them perform their jobs, as related to chemical emergency planning, prevention, and response. CAA section 112(r)(7)(H)(iv) requires EPA to make OCA information available to government officials during the ''transition period,'' the year following the enactment of CSISSFRRA when the assessments and the rulemaking must be conducted. (see 145 Cong. Rec. S7545, daily ed. June 23, 1999 (statement of Sen. Chafee)). However, that authority

ends on the earlier of the date of promulgation of the regulations or the one-year anniversary of the enactment of CSISSFRRA, August 5, 2000. In order to avoid a gap in government officials' access to OCA information, we believe that there is good cause to make the final rule effective immediately, pursuant to 5 U.S.C. 553(d)(3).

We will need time to implement and coordinate the operation of the federal reading room system. We believe we can complete that process within three months and begin opening reading rooms soon thereafter. We anticipate that federal reading room access will be available by December 31, 2000. To provide public access to OCA information as soon as possible, we will not wait for every reading room to be operational before opening any reading room. We will begin operating reading rooms as they become available, and will post on EPA's website the locations of reading rooms as they open.

The vulnerable zone indicator system will begin operation no later than October 5, 2000. That will permit us to develop, test, and deploy the software systems necessary for the implementation of VZIS. Further, the OCA information to be disseminated on the EPA website will be posted by December 31, 2000.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information that we considered in the development of this rule. The docket is a dynamic file because it allows members of the public and industry readily to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record for purposes of judicial review. *See* CAA section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).

The official record for this rulemaking has been established under Docket No. A–2000–20 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address specified in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866

OMB has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). OMB also has determined that this rule would not be economically significant because it would have an annual effect on the economy of less than $100 million and would not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Under the terms of Executive Order 12866, OMB has reviewed the rule.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 5, 1996).

D. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), does not apply to this rule because it is not economically significant under Executive Order 12866.

E. Executive Order 13084

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' section 3, Consultation (63 FR 27655, May 19, 1998), federal agencies may not promulgate a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the regulating agencies consult with those governments before formal promulgation of the rule. This rule does not significantly or uniquely affect the communities of Indian tribal governments or impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nonetheless, we consulted two tribal organizations that represent tribal environmental officials (Tribal Association on Solid Waste & Emergency Response, and National Tribal Environmental Council) and neither expressed any concerns with the provisions of this rule.

F. Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires federal agencies to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, a federal agency may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency issuing the regulation consults with state and local officials early in the process of developing the proposed regulation. A federal agency also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have 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, as specified in Executive Order 13132. The statute itself—CSISSFRRA—currently restricts the dissemination of OCA information by state and local officials and supersedes inconsistent provisions of state or local law. This rule only slightly narrows those statutory restrictions, allowing certain state and local entities to provide the public with read-only access to OCA information for local facilities. Nevertheless, we have consulted with seven organizations that represent state and local elected officials in developing this rule (*i.e.,* National Governors Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council on State Governments, International City/County Management Association, National Association of Counties, and National Association of Towns and Townships). We have also consulted with state and local

representatives of the Accident Prevention Subcommittee of the CAA Advisory Committee (under the Federal Advisory Committee Act (FACA)) about the implementation of the OCA provisions of CSISSFRRA. In response to concerns some have raised about the potential chilling effect of CSISSFRRA's restrictions on state and local officials' willingness to obtain OCA information and to communicate the substance of that information to the public, this rule includes a provision clarifying that state and local officials can share OCA data with the public as long as they do so in a way that does not disseminate or permit mechanical replication of the OCA sections of RMPs or provide access to EPA's OCA database. As noted above, this rule also authorizes some state and local officials to share OCA information itself in certain ways.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the agency's area of regulatory responsibility. Consequently, we consulted to the extent practicable with the seven organizations mentioned above. Other than requesting further clarification on the proposed rule, none of those organizations raised federalism concerns with the rule's approach.

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, agencies are required to give special consideration to the effect of federal regulations on small entities and to consider regulatory options that might mitigate any such effect. However, an agency need not prepare a regulatory flexibility analysis if the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

In accordance with 5 U.S.C. 605(b), we certify that this rule does not have a significant economic impact on a substantial number of small entities. Although the rule authorizes small government jurisdictions to provide read-only access to OCA information, it does not require those jurisdictions to provide that access. This rule contains a prohibition on local government officials (and other government officials) disclosing OCA information to the public except in authorized ways, but that prohibition already existed under CAA section 112(r)(7)(H)(v). Moreover, we do not expect that any burden resulting indirectly from the provisions of this rule will have a significant economic impact on the operations of local governments.

H. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1981.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; by e-mail at *farmer.sandy@epamail.epa.gov;* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The ICR for the proposed rule was listed as ICR No. 1656.08. To avoid confusion with the ICR for the full RMP Program (*i.e.,* RMP Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the CAA), the ICR has been changed for the final rule. The information requirements are not enforceable until OMB approves them.

This rule will impose minimal information collection requirements but will require record keeping. The respondent universe for this rule is state and local officials and members of the public.

None of the respondent activities for state and local agencies are mandatory and all depend on the state or local agency deciding to obtain OCA information and/or communicating the substance of the information or the information itself to the public. The respondent activities for those agencies include reading and understanding the Security Notice to federal, state, and local officials and researchers; requesting OCA information and certifying that they are covered persons; providing secure storage for the CD Rom or paper copies when not in use; learning how to use the database and software, if needed, to produce a copy of OCA information; providing a location for the public to review OCA information for local facilities; ensuring that members of the public do not remove or mechanically copy OCA information they review; and making OCA data available in formats other than the RMP format.

The number of respondents undertaking one or more of these activities is estimated to be at least one agency in each state, territory, and the District of Columbia. These agencies are assumed to be the SERCs and may be environmental protection agencies, emergency management agencies, or both. Based on a recent survey, EPA estimates that there are 1,500 active LEPCs (in compliance with EPCRA). These agencies may request OCA information from EPA for their own use for emergency planning. Out of these, we estimate that only 1,000 LEPCs will be providing local access by the third year covered by this ICR. EPA estimates the total burden hours for state and local agencies to be 86,000 hours annually (258,000 hours for three years) at a cost of $2,400,000 annually ($7,200,000 for three years).

For members of the public, the respondent activity includes calling for an appointment, displaying photographic identification, and signing a sign-in sheet and a certification form at a federal reading room. If an individual would like to obtain information on local facilities, he or she would need to provide documentation demonstrating his or her place of residence or employment. In addition, members of the public are assumed to use the VZIS system and to make follow-up calls to obtain additional information. It is assumed that approximately 20,000 people will use the VZIS system each year and that 5,000 of those will seek additional information. Those individuals without access to the Internet will be able to call an EPA toll-free number or send the request by mail. The total burden hours for the public are estimated to be 14,000 hours annually (42,000 hours for three years) at a cost of $293,000 annually ($879,000 for three years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. That includes the time needed to review instructions to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and

providing information; to adjust existing ways to comply with any previously applicable instructions and requirements; to train personnel; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection 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 OMB control numbers for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

I. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it contains no requirements that might significantly or uniquely affect small governments. This rule requires small governments that wish to obtain OCA information to request it, and once they obtain it, they will be prohibited from disseminating it except in accordance with the rule. We do not expect that those provisions will impose a significant burden. Moreover, certain members of small governments would be authorized, but not required, to provide public access to OCA information in a manner that is less burdensome than would be required of federal covered persons. Therefore, no actions are deemed necessary under the Unfunded Mandates Reform Act of 1995.

J. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective August 4, 2000.

V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged later in civil or criminal proceedings brought to enforce these requirements. This rule has been promulgated pursuant to CAA section 307(d).

List of Subjects in 40 CFR Part 1400

Environmental protection, Chemicals, Chemical accident prevention.

Dated: July 31, 2000.

Janet Reno,

Attorney General.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA and DOJ establish chapter IV of title 40 of the Code of Federal Regulations, consisting of subchapter A, part 1400, as follows:

CHAPTER IV—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF JUSTICE

SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(r)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1400—DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

Subpart A—General

Sec.

Subpart B—Public Access

Subpart C—Access to Off-Site Consequence Analysis Information by Government Officials

Subpart D—Other Provisions

Authority: 42 U.S.C. 7412(r)(7)(H)(ii).

Subpart A—General

§ 1400.1 Purpose.

Stationary sources subject to the Chemical Accident Prevention Provisions of 40 CFR part 68 are required to analyze the potential harm to public health and welfare of hypothetical chemical accidents and submit the results of their analyses to the U.S. Environmental Protection Agency as part of risk management plans. This part governs access by the public and by government officials to the portions of risk management plans containing the results of those analyses and certain related materials. This part also restricts dissemination of that information by government officials.

§ 1400.2 Definitions.

For the purposes of this part:

(a) Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) *Administrator* means the Administrator of the U.S. Environmental Protection Agency or his or her designated representative.

(c) *Attorney General* means the Attorney General of the United States or his or her designated representative.

(d) *Federal government official* means—

(1) An officer or employee of the United States; and

(2) An officer or employee of an agent or contractor of the federal government.

(e) *State or local government official* means—

(1) An officer or employee of a state or local government;

(2) An officer or employee of an agent or contractor of a state or local government;

(3) An individual affiliated with an entity that has been given, by a state or local government, responsibility for preventing, planning for, or responding to accidental releases, such as a member of a Local Emergency Planning Committee (LEPC) or a State Emergency Response Commission (SERC), or a paid or volunteer member of a fire or police department; or

(4) An officer or employee or an agent or contractor of an entity described in paragraph (e)(3) of this section.

(f) *LEPC* means a Local Emergency Planning Committee created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq*.

(g) *Member of the public or person* means an individual.

(h) *Official use* means an action of a federal, state, or local government agency or an entity described in paragraph (e)(3) of this section intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(i) *Off-site consequence analysis (OCA) information* means sections 2 through 5 of a risk management plan (consisting of an evaluation of one or more worst-case release scenarios or alternative release scenarios) for an identified facility and any electronic database created by the Administrator from those sections.

(j) *Off-site consequence analysis (OCA) data elements* means the results of the off-site consequence analysis conducted by a stationary source pursuant to 40 CFR part 68, subpart B, when presented in a format different than sections 2 through 5 of a risk management plan or any Administrator-created electronic database.

(k) *Off-site consequence analysis (OCA) rankings* means any statewide or national rankings of identified stationary sources derived from OCA information.

(l) *Qualified researcher* means a researcher who receives OCA information pursuant to 42 U.S.C. 7412(r)(7)(H)(vii).

(m) *Related local government agencies* means local government agencies, such as police, fire, emergency management, and planning departments, that are involved in chemical emergency planning, prevention, or response.

(n) *Related state government agencies* means state government agencies, such as emergency management, environmental protection, health, and natural resources departments, that are involved in chemical emergency planning, prevention, or response.

(o) *Risk management plan (RMP)* means a risk management plan submitted to the Administrator by an owner or operator of a stationary source pursuant to 40 CFR part 68, subpart G.

(p) *SERC* means a State Emergency Response Commission created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq*.

(q) *State* has the same meaning as provided in 42 U.S.C. 7602(d) (a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(r) *Stationary source* has the same meaning as provided in 40 CFR part 68 subpart A, § 68.3.

(s) *Vulnerable zone* means the geographical area that could be affected by a worst-case or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan pursuant to the applicable requirements of 40 CFR Part 68. It is defined as a circle, the center of which is the stationary source and the radius of which is the ''distance-to-endpoint,'' or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.

Subpart B—Public Access

§ 1400.3 Public access to paper copies of off-site consequence analysis information.

(a) *General.* The Administrator and the Attorney General shall ensure that any member of the public has access to a paper copy of OCA information in the manner prescribed by this section.

(b) *Reading-room access.* Paper copies of OCA information shall be available in at least 50 reading rooms geographically distributed across the United States and its territories. The reading rooms shall allow any person to read, but not remove or mechanically reproduce, a paper copy of OCA information, in accordance with paragraphs (c) through (g) of this section and procedures established by the Administrator and Attorney General.

(c) *Limited number.* Any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources located anywhere in the country, without geographical restriction, in a calendar month.

(d) *Additional access.* Any person also shall be provided with access to a paper copy of the OCA information for stationary sources located in the jurisdiction of the LEPC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEPC's jurisdiction.

(e) *Personal identification for access to OCA information without geographical restriction.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (c) of this section only after a reading room representative has

(1) Ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person; and

(2) Obtained the person's signature on a sign-in sheet and a certification that the person has not received access to OCA information for more than 10 stationary sources for that calendar month.

(f) *Personal identification for access to local OCA information.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (d) of this section only after a reading room representative has

(1) Ascertained where the person lives or works by viewing appropriate documentation; and

(2) Obtained the person's signature on a sign-in sheet.

(g) *Record keeping.* Reading room personnel shall keep records of reading room use and certifications in accordance with procedures established by the Administrator and the Attorney General. These records shall be retained for no more than three years. Federal reading rooms will not index or otherwise manipulate the sign-in sheets according to individuals' names, except in accordance with the Privacy Act.

§ 1400.4 Vulnerable zone indicator system.

(a) *In general.* The Administrator shall provide access to a computer-based indicator that shall inform any person located in any state whether an address specified by that person might be within the vulnerable zone of one or more stationary sources, according to the data reported in RMPs. The indicator also shall provide information about how to obtain further information.

(b) *Methods of access.* The indicator shall be available on the Internet or by request made by telephone or by mail to the Administrator to operate the indicator for an address specified by the requestor. SERCs, LEPCs, and other related state or local government agencies are authorized and encouraged to operate the indicator as well.

§ 1400.5 Internet access to certain off-site consequence analysis data elements.

The Administrator shall include only the following OCA data elements in the risk management plan database available on the Internet:

(a) The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);

(b) The physical state of the chemical (RMP Sections 2.2; 3.2);

(c) The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);

(d) The endpoint used for flammables in the worst-case scenario (RMP Section 4.5);

(e) The duration of the chemical release for the worst-case scenario (RMP Section 2.7);

(f) The wind speed during the chemical release (RMP Sections 2.8; 3.8);

(g) The atmospheric stability (RMP Sections 2.9; 3.9);

(h) The topography of the surrounding area (RMP Sections 2.10; 3.10);

(i) The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and

(j) The active mitigation systems considered (RMP Sections 3.16; 5.11).

§ 1400.6 Enhanced local access.

(a) OCA data elements. Consistent with 42 U.S.C. 7412(r)(7)(H)(xii)(II), members of LEPCs and SERCs, and any other state or local government official, may convey to the public OCA data elements orally or in writing, as long as the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database developed by the Administrator from those sections. Disseminating OCA data elements to the public in a manner consistent with this provision does not violate 42 U.S.C. 7412(r)(7)(H)(v) and is not punishable under federal law.

(b) OCA information. (1) LEPCs and related local government agencies are authorized and encouraged to allow any member of the public to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs (i.e., sections 2 through 5) for stationary sources located within the jurisdiction of the LEPC and for any other stationary source that has a vulnerable zone that extends into that jurisdiction.

(2) LEPCs and related local government agencies that provide read-only access to the OCA sections of RMPs under this paragraph (b) are not required to limit the number of stationary sources for which a person can gain access, ascertain a person's identity or place of residence or work, or keep records of public access provided.

(3) SERCs and related state government agencies are authorized and encouraged to allow any person to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs for the same stationary sources that the LEPC in whose jurisdiction the person lives or works would be authorized to make available to that person under paragraph (b)(1) of this section.

(4) Any LEPC, SERC, or related local or state government agency that allows a person to read the OCA sections of RMPs in a manner consistent with this paragraph (b) shall not be in violation of 42 U.S.C. 7412(r)(7)(H)(v) or any other provision of federal law.

Subpart C—Access to off-site consequence analysis information by government officials.

§ 1400. 7 In general.

The Administrator shall provide OCA information to government officials as provided in this subpart. Any OCA information provided to government officials shall be accompanied by a copy of the notice prescribed by 42 U.S.C. 7412(r)(7)(H)(vi).

§ 1400.8 Access to off-site consequence analysis information by federal government officials.

The Administrator shall provide any federal government official with the OCA information requested by the official for official use. The Administrator shall provide the OCA information to the official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

§ 1400.9 Access to off-site consequence analysis information by state and local government officials.

(a) The Administrator shall make available to any state or local government official for official use the OCA information for stationary sources located in the official's state.

(b) The Administrator also shall make available to any state or local government official for official use the OCA information for stationary sources not located in the official's state, at the request of the official.

(c) The Administrator shall provide OCA information to a state or local government official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

(d) Any state or local government official is authorized to provide, for official use, OCA information relating to stationary sources located in the official's state to other state or local government officials in that state and to state or local government officials in a contiguous state.

Subpart D—Other Provisions

§ 1400.10 Limitation on public dissemination.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers are prohibited from disseminating OCA information and OCA rankings to the public. Violation of this provision subjects the violator to criminal liability as provided in 42 U.S.C. 7412(r)(7)(H)(v) and civil liability as provided in 42 U.S.C. 7413.

§ 1400.11 Limitation on dissemination to state and local government officials.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers are prohibited from disseminating OCA information to state and local government officials. Violation of this provision subjects the violator to civil liability as provided in 42 U.S.C. 7413.

§ 1400.12 Qualified researchers.

The Administrator is authorized to provide OCA information, including facility identification, to qualified researchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

§ 1400.13 Read-only database.

The Administrator is authorized to establish, pursuant to 42 U.S.C. 7412(r)(7)(H)(viii), an information technology system that makes available to the public off-site consequence analysis information by means of a central database under the control of the federal government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

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Stemme GmbH & Co.; published 7-26-00¶

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JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

District of Columbia Code—

Prisoners serving sentences; published 7-26-00

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Thunder on the Narrows hydroplane races; published 8-2-00¶

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POSTAL SERVICE

International Mail Manual:

Global Package Link Service—

European Union, Australia, and Japan; published 7-18-00

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Ports and waterways safety:

Peekskill Bay, NY; safety zone; published 8-2-00

COMMENTS DUE NEXT WEEK

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Historic Preservation, Advisory Council

Protection of historic and cultural properties; comments due by 8-10-00; published 7-11-00

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Meats, prepared meats, and meat products; grading, certification, and standards:

Livestock and poultry products; equipment used in slaughter, processing, and packaging; certification of sanitary design and fabrication; comments due by 8-7-00; published 6-6-00

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; comments due by 8-7-00; published 7-6-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Mexican Hass avocados; comments due by 8-9-00; published 5-11-00

AGRICULTURE DEPARTMENT

Food and Nutrition Service

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National school lunch and school breakfast programs—

Blended beef, pork, poultry, or seafood products; identification; comments due by 8-7-00; published 6-8-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Alaska; fisheries of Exclusive Economic Zone—

Gulf of Alaska groundfish; comments due by 8-10-00; published 6-26-00

Caribbean, Gulf of Mexico, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 8-11-00; published 7-12-00

Marine mammals:

Humpback whales in Alaska; approach prohibition; comments due by 8-10-00; published 6-26-00

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Patent and Trademark Office

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Commodity Exchange Act:

Clearing organizations; regulatory framework; comments due by 8-7-00; published 6-22-00

Exemption for bilateral transcations; regulatory framework; comments due by 8-7-00; published 6-22-00

Intermediaries of commodity interest transactions; regulatory framework; comments due by 8-7-00; published 6-22-00

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EDUCATION DEPARTMENT

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ENERGY DEPARTMENT

Federal Energy Regulatory Commission

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Business practice standards; comments due by 8-7-00; published 7-7-00

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Arizona; comments due by 8-10-00; published 7-11-00

Connecticut; comments due by 8-11-00; published 7-12-00

Massachusetts; comments due by 8-11-00; published 7-12-00

Minnesota; comments due by 8-11-00; published 7-12-00

New Hampshire, Rhode Island, and Vermont; comments due by 8-9-00; published 7-10-00

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 ''P L U S'' (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. 1791/P.L. 106–254

Federal Law Enforcement Animal Protection Act of 2000 (Aug. 2, 2000; 114 Stat. 638)

H.R. 4249/P.L. 106–255

Cross-Border Cooperation and Environmental Safety in Northern Europe Act of 2000 (Aug. 2, 2000; 114 Stat. 639)

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