8–8–00 Tuesday
Vol. 65 No. 153 August 8, 2000
Pages 48347–48600

Federal Register

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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.

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Presidential Documents

Title 3—

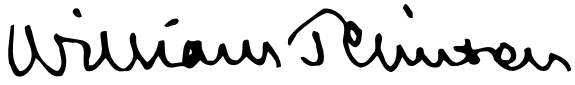
The President

Notice of August 3, 2000

Continuation of Emergency Regarding Export Control Regulations

On August 19, 1994, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), I issued Executive Order 12924. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 19, 1994, must continue in effect beyond August 19, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12924.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
August 3, 2000.

[FR Doc. 00–20178
Filed 8–7–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00–929–4 IFR]

Cranberries Grown in States of Massachusetts, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the assessment rate established for the Cranberry Marketing Committee (Committee) for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.06 per barrel of cranberries. The Committee locally administers the marketing order which regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1, 1999, and ends August 31, 2000. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: August 9, 2000. Comments received by October 10, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.06 per barrel of cranberries.

The cranberry marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–1997 fiscal period, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

In August of 1999, the Committee recommended, and the Department administratively approved, 1999–2000

expenditures of $548,231. The Committee met on March 30, 2000, and unanimously recommended additional 1999–2000 expenditures of $127,108 for total 1999–2000 expenditures of $675,339 and an assessment rate of $.06 per barrel of cranberries. An increased assessment rate has been recommended by the Committee because the industry is in a surplus situation and has recommended that a volume regulation be implemented for the 2000–2001 season. The Committee would have additional startup costs to implement such a program. Also, the Committee has held meetings to discuss the volume regulation which were not contemplated in the original budget.

The major increased expenditures recommended by the Committee for the 1999–2000 fiscal period include $128,239 for administration costs, $120,307 for personnel, and $81,700 for Committee meetings. Budgeted expenses for these items in the original 1999–2000 budget were $63,531 for administration, $93,407 for personnel, and $49,200 for Committee meetings.

In deriving the recommended assessment rate increase, the Committee used the actual assessable production of 6,355,413 barrels. This figure is 1,005,413 barrels more than the 5,350,413 barrels estimated at the beginning of the fiscal period. This increased rate is expected to generate an additional $127,108 for a total of $341,108 in assessment income. This amount plus interest income, funds from other sources, and funds in the reserve will be sufficient to cover budgeted expenses. Funds in the reserve (currently $45,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of cranberry handlers and producers may be classified as small businesses.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.06 per barrel of cranberries. In August of 1999, the Committee recommended, and the Department administratively approved, 1999–2000 expenditures of $548,231. On March 30, 2000, the Committee met and unanimously recommended additional expenditures of $127,108 for total 1999–2000 expenditures of $675,339. The assessment rate of $0.06 is $0.02 higher than the previous rate. The quantity of assessable cranberries for the 1999–2000 year is 6,355,413 barrels, 1,005,413 barrels more than the 5,350,000 estimated at the beginning of the fiscal period. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major increased expenditures recommended by the Committee for the 1999–2000 fiscal period include $128,239 for administration costs, $120,307 for personnel, and $81,700 for Committee meetings. Budgeted expenses for these items in the original 1999–2000 budget were $63,531 for administration, $93,407 for personnel, and $49,200 for Committee meetings.

An increased assessment rate has been recommended by the Committee because the industry is in a surplus situation and has recommended that a volume regulation be implemented for the 2000–2001 season. The Committee would have additional startup costs to implement such a program. Also, the Committee has held meetings to discuss the volume regulation which were not contemplated in the original budget.

The Committee discussed the alternative of continuing the existing assessment rate, but concluded that the Committee could run out of funds if a volume regulation program is implemented. In deriving the recommended assessment rate increase, the Committee used the actual assessable production for the crop year of 6,355,413 barrels. This amount plus adequate supplies in the reserve will be sufficient to cover budgeted expenses. Funds in the reserve (currently $45,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 30, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on September 1, 1999, and ends on August 31, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period; (2) the Committee needs the additional funds to begin implementation of a volume regulation program, if approved by the Department; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 929.236 is revised to read as follows:

§ 929.236 Assessment rate.

On and after September 1, 1999, an assessment rate of $0.06 per barrel is established for cranberries.

Dated: August 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19988 Filed 8–3–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–17–AD; Amendment 39–11842; AD 2000–15–10]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Model 4HFR34C653/L106FA–0

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McCauley Propeller Systems 4HFR34C653/L106FA–0 model propellers that are installed on Jetstream Series 3200 airplanes. This action is also applicable to 4HFR34C653/L106FA–0 model propellers that are installed on Ayres S2R–G5 and S2R–G10 airplanes if the propeller was previously installed on Jetstream Series 3200 airplanes or if installation history of the propeller is unknown. This action requires one-time and repetitive eddy current inspections of the camber side of the blade surface. This amendment is prompted by a report of a crack on the camber side of the blade surface. The crack was found during a dye penetrant inspection as part of a normal overhaul process. The actions specified in this AD are intended to detect cracks that could cause failure of the propeller blade, which can result in loss of control of the airplane.

DATES: Effective August 23, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–17–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from McCauley Propeller Systems, A Textron Company, 3535 McCauley Drive, Vandella, Ohio 45377. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone 847–294–7132, fax 847–294–7834.

SUPPLEMENTARY INFORMATION: In December, 1999, an FAA approved repair station found a crack in the camber side of a propeller blade during a dye penetrant inspection. The dye penetrant inspection was being done as part of an overhaul. This condition, if not corrected, could result in failure of the propeller blade, which can result in loss of control of the airplane.

Manufacturer's Service Documentation

The FAA has reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) 234, dated May 1, 2000. That ASB describes procedures for eddy current and dye penetrant inspections of the camber side of the propeller blade, and procedures for the evaluation of suspect indications.

Actions Required by This AD

Since an unsafe condition has been identified that is likely to exist or develop on other McCauley Propeller Systems 4HFR34C653/L106FA–0 model propellers of the same type design, this AD is being issued to detect cracks that could cause failure of the propeller blade, which can result in loss of control of the airplane. This AD requires one-time and repetitive eddy current inspections or dye penetrant inspections of the camber side of any propeller blade that is installed on, or has at any time been installed on, Jetstream series 3200 airplanes. The inspection requirements and the qualification requirements for the test technicians are based on the criticality of the potential failure condition. These same actions

are required to be done on propellers that are installed on Ayres S2R–G5 and S2R–G10 airplanes, if the propeller was previously installed on Jetstream Series 3200 airplanes, or if the installation history of the propeller is unknown. The inspections must be done within 200 flight hours after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, and, thereafter, every 600 flight hours after the last inspection. The inspections must be accomplished in accordance with the ASB described previously.

Immediate Adoption of This AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–17–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

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

2000–15–10 McCauley Propeller Systems: Amendment 39–11842: Docket 2000–NE–17–AD.

Applicability: McCauley Propeller Systems 4HFR34C653/L106FA–0 model propellers that are installed on Jetstream series 3200 airplanes; and 4HFR34C653/L106FA–0 model propellers installed on Ayres S2R–G5 and S2R–G10 airplanes, if the propeller was previously installed on Jetstream Series 3200 airplanes, or if the installation history of the propeller is unknown.

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

Compliance: Compliance with the requirements of this AD is required within 200 flight hours after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs earlier, and, thereafter, every 600 flight hours after the last inspection.

To prevent failure of the propeller blade, which can result in loss of control of the airplane, perform EITHER of the following inspections:

Eddy Current Inspection

(a) Do initial and repetitive eddy current inspections of the camber side of the propeller blade in accordance with McCauley Propeller Systems Alert Service Bulletin (ASB) 234 as follows:

(1) Inspect in accordance with Section I, Eddy Current Inspection, paragraph 1.a. through Section I, Part I, paragraph l.

(2) Evaluate suspect indications in accordance with Section I, Part II, Evaluation of Suspect Indications, paragraph a. through paragraph g.

Dye Penetrant Inspection

(b) Or, remove the propeller, and perform initial and repetitive dye penetrant inspections of the camber side of the propeller blade in accordance with ASB 234, Section II, Dye Penetrant Inspection, paragraph a. through paragraph f.

Personnel Requirements

(c) Individuals performing inspections defined in paragraph (a) and paragraph (b) of this AD must have a specialized rating in the applicable inspection method. Personnel must be qualified and certified to the minimum recommended requirements of ''Level II'' as described in Aerospace Industries Standard —NAS 410 or the equivalent national or international standard.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (CHIACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add

comments and then send it to the Manager, CHIACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the CHIACO.

Special Flight Permits

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

Incorporation by Reference

(f) The inspection must be done in accordance with McCauley Alert Service Bulletin 234, dated May 1, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McCauley Propeller Systems, A Textron Company, 3535 McCauley Drive, Vandella, Ohio 45377. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(g) This amendment becomes effective on August 23, 2000.

Issued in Burlington, Massachusetts, on July 28, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–19665 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–10–AD; Amendment 39–11841; AD 2000–15–09]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TFE731–2, –3, –4, and –5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Honeywell International, Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) high pressure compressor (HPC) impellers installed on TFE731–2, –3, –4, and –5 series turbofan engines. This AD requires the removal and inspection of the HPC impeller and, if necessary, replacement of the HPC impeller with a serviceable impeller. This amendment is prompted by an incident of an uncontained impeller failure due to cracking in the seal relief area of the HPC impeller. The actions specified by this AD are intended to prevent HPC impeller failure due to fatigue cracking.

DATES: Effective October 10, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell Engines and Systems (formerly AlliedSignal) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial), fax: (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial). This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5246, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) applicable to Honeywell International, Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) high pressure compressor (HPC) impellers installed on TFE731–2, –3, –4, and –5 series turbofan engines was published in the **Federal Register** on July 28, 1999 (64 FR 40789). That action proposed to require replacement of the HPC impeller with a serviceable impeller, which has been eddy-current inspected, at the next core zone inspection (CZI) or at the next access to the HPC module, and repetitive inspections at each subsequent CZI or each subsequent access to the HPC impeller for cause if the impeller has more than 1,000 cycles since the last eddy current inspection (ECI). The NPRM was prompted by the failure of a high pressure compressor (HPC) impeller, part number (P/N) 3073394–1, that separated and exited from a TFE731–3R–1D turbofan engine. Following that event, low-temperature fatigue testing with a sustained peak hold time (dwell) at higher than engine-operating stresses indicated that normal cyclic fatigue lives may be influenced by dwell times and an unfavorable titanium macrostructure. The FAA determined that low-cycle fatigue (LCF) cracking in high stressed areas of the HPC impeller may lead to an uncontained impeller separation.

The FAA received a number of comments on that proposal. As a result of those comments, the FAA published a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 7, 2000 (65 FR 11942). This supplemental NPRM revised the proposed rule by eliminating the terminating action and adding impeller P/Ns to the suspect impeller population. The supplemental NPRM also clarified certain portions of the proposed AD based on comments received from the public.

Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the supplemental proposal or the FAA's revised economic analysis. All comments on the original NPRM were addressed in the discussion of the supplemental notice. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 7,510 engines of the affected design in the worldwide fleet. The FAA estimates that 5,482 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately three work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The FAA also estimates that some of the impellers will be replaced and that each impeller will cost approximately $45,000. Based on these figures, the FAA estimates the total cost impact of the AD on U.S. operators for the next four years will be $2,201,760.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–09 Honeywell International Inc.: Amendment 39–11841. Docket 99–NE–10–AD.

Applicability

Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TFE731–2, –3, –4, and –5 series turbofan engines with high pressure compressor (HPC) impeller part numbers (P/Ns) 3073393–1, 3073394–1, 3073433–1, 3073434–1, 3073398-All (All denotes all dash numbers), 3073435-All, and 3075171-All, installed on, but not limited to, Avions Marcel Dassault-Breguet Aviation (AMD–BA) Falcon 10, Dassault-Aviation Mystere-Falcon 50, and 900 series airplanes; Dassault Aviation Mystere-Falcon 20 series airplanes; Learjet Inc. Models 31, 35, 36, and 55 series airplanes; Lockheed-Georgia Corporation 1329–23 and 25 series airplanes; Israel Aircraft Industries Ltd. 1124 series and 1125 Westwind series airplanes; Cessna Aircraft Co. Model 650 Citation III, VI, and VII series airplanes; Raytheon Aircraft Co. HS–125 series airplanes; and Sabreliner Corporation NA–265–65 airplanes.

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

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the HPC impeller due to fatigue cracking, accomplish the following:

Initial Inspection

(a) Remove and inspect the applicable HPC impeller in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A72–3641, Revision 1, dated October 20, 1999, or ASB TFE731–A72–3641 dated November 24, 1998, and, if necessary, replace the impeller with a serviceable impeller at the earlier of the following:

(1) At the next core zone inspection (CZI) after the effective date of this AD; or

(2) At the next access to the HPC module after the effective date of this AD.

Repetitive Inspection

(b) Thereafter, remove and inspect the applicable HPC impeller in accordance with Section 2.A. of the Accomplishment Instructions of ASB TFE731–A72–3641, dated November 24, 1998, or ASB TFE731–A72–3641, Revision 1, dated October 20, 1999, and, if necessary, replace the impeller with a serviceable impeller, whenever either of the following conditions are met:

(1) At every CZI; or

(2) At access to the HPC module if the impeller has accumulated more than 1,000 cycles since the last Eddy Current Inspection (ECI).

Definitions

(c) This AD defines access to the HPC module as whenever the low pressure compressor case is removed from the compressor interstage diffuser.

(d) For the purposes of this AD, a serviceable impeller is defined as an impeller that complies with all applicable visual, dimensional, and fluorescent penetrant inspections requirements for the level of maintenance being accomplished, as contained in the Heavy Maintenance Manual, and is either an impeller with fewer than 1000 engine operation cycles since new or an impeller with fewer than 1000 engine operation cycles since last ECI.

Alternative Method of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

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

Documents Incorporated by Reference

(g) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. Alert Service Bulletins:

Document No.	Pages	Revision	Date
TFE731–A72–3641 ..... Total pages: 10	10	Original	November 24, 1998.
TFE731–A72–3641 ..... Total pages: 12	12	1	October 20, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Engines and Systems (formerly AlliedSignal) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial), fax: (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial). Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on October 10, 2000.

Issued in Burlington, Massachusetts, on July 10, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–19666 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–89–AD; Amendment 39–11847; AD 2000–15–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes, that currently requires inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. This amendment also requires inspecting for metallic particles in the lubrication for the jackscrew assembly of the horizontal stabilizer and surrounding area to detect any discrepancy; follow-on actions; and corrective actions, if necessary. This amendment is prompted by numerous reports from operators that indicate instances of metallic shavings in the vicinity of the jackscrew assembly and gimbal nut of the horizontal stabilizer. The actions specified in this AD are intended to prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in reduced controllability of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin MD90–27A034, Revision 02, dated March 30, 2000; and Boeing Alert Service Bulletin 717–27A0002, Revision 02, dated March 30, 2000; as listed in the regulations; is approved by the Director of the Federal Register as of August 23, 2000.

The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034, dated February 11, 2000; and Boeing Alert Service Bulletin 717–27A0002, dated February 11, 2000; as listed in the regulations; was approved previously by the Director of the Federal Register as of March 6, 2000 (65 FR 10379, February 28, 2000).

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from The Boeing Company, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L52 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Structures Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5325; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On February 17, 2000, the FAA issued AD 2000–03–51, amendment 39–11595 (65 FR 10379, February 28, 2000), applicable to all McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes, to require inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. That action was prompted by a report from an operator that indicated two instances of metallic shavings in the vicinity of the jackscrew assembly and gimbal nut of the horizontal stabilizer. The actions required by that AD are intended to prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in loss of vertical control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–03–51, the FAA has received numerous reports of incidents in which metallic particles (including slivers and dust, as well as shavings and flakes) were found imbedded within the grease on the threaded portion of the jackscrew assembly of the horizontal stabilizer actuator and on the area directly below the jackscrew assembly. Findings by the manufacturer indicate that such metallic particles can be identified as a non-magnetic metallic substance which is golden in color.

New Service Information

Since the issuance of the previous rule, the FAA has reviewed and approved the following new Boeing Alert Service Bulletins, which have been approved as alternative methods of compliance to the requirements of AD 2000–03–51:

- DC9–27A362, Revision 02, dated March 30, 2000 (for Model DC–9 and Model MD–88 airplanes);
- MD90–27A034, Revision 02, dated March 30, 2000 (for Model MD–90–30 airplanes); and
- 717–27A0002, Revision 02, dated March 30, 2000 (for Model 717–200 airplanes).

Revision 02 of the alert service bulletins revises certain procedures included in the original issue of the alert service bulletins, which were referenced in AD 2000–03–51 as the appropriate sources of service information. Revision 02 describes new procedures for detailed visual inspections to detect the presence of metallic particles (including slivers and dust, as well as shavings and flakes) in the lubrication for the jackscrew assembly. In addition, Revision 02 revises certain follow-on and corrective actions. Follow-on actions include performing repetitive inspections, testing the horizontal shutoff controls, and lubricating the jackscrew of the horizontal stabilizer actuator. Corrective actions include removing dirt/grease from exposed jackscrew threads, performing wear checks of the jackscrew (endplay and freeplay checks), adjusting the trim system and shutoff control system of the horizontal stabilizer, and replacing the jackscrew assembly of the horizontal stabilizer actuator with a new or serviceable unit.

Revision 02 also revises certain replacement procedures. For certain discrepancies, although the original issue of the alert service bulletins specifies replacement of the jackscrew assembly with a new or serviceable assembly, Revision 02 specifies such replacement action only if the wear check results are found to be outside specified limits.

Revision 02 describes procedures for follow-on and corrective actions, if necessary, following accomplishment of the inspection of the horizontal stabilizer actuator jackscrew and nut specified in Phase 2 of the Accomplishment Instructions. The original issue of the alert service bulletins did not specifically include the follow-on and corrective actions; however, the original issue referenced certain airplane maintenance manuals as additional sources of service information for accomplishing the follow-on and corrective actions, as well as the inspection.

FAA's Determination

In consideration of new findings by the manufacturer regarding the types of material found in the jackscrew assembly of the horizontal stabilizer since issuance of AD 2000–03–51, the FAA has determined that the required inspections should be expanded to include metallic particles such as slivers and dust, as well as the metal shavings and flakes identified in AD 2000–03–51. The inspections, tests, and follow-on and corrective actions of the applicable alert service bulletins described previously are intended to minimize the possibility of failure of the horizontal stabilizer jackscrew assembly to maintain controllability of the airplane.

In addition, the FAA has determined that it is necessary for operators to report the results of the endplay checks required by paragraphs (a) and (b) of this AD to the manufacturer. These results are necessary to provide information regarding the wear rates of the jackscrew assembly. The FAA will use these data to confirm that the repetitive intervals of 650 flight hours, as specified by paragraph (a) of this AD, and the repetitive intervals of 2,000 flight hours, as specified by paragraph (b) of this AD, are appropriate compliance times for accomplishment of the endplay check and are adequate for ensuring the safety of the fleet.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2000–03–51. This AD continues to require inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. This amendment also requires inspecting for metallic particles (including slivers and dust, as well as shavings and flakes) in the lubrication for the jackscrew assembly of the horizontal stabilizer and surrounding area to detect any discrepancy; follow-on actions; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the alert service bulletins described previously. This AD also requires operators to submit the results of the endplay check to the manufacturer.

Interim Action

This is considered to be interim action until final action is identified.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–89–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11595 (65 FR 10379, March 6, 2000), and by adding a new airworthiness directive (AD), amendment 39–11847, to read as follows:

2000–15–15 McDonnell Douglas: Amendment 39–11847. Docket 2000–NM–89–AD. Supersedes AD 2000–03–51, Amendment 39–11595.

Applicability: All Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and follow-on and corrective actions accomplished prior to the effective date of this AD in accordance with Revision 1 of Boeing Alert Service Bulletin MD90–27A034, Revision 01, DC9–27A362, Revision 01, and 717–27A0002, Revision 01; all dated February 12, 2000; are considered acceptable for compliance with the applicable actions required by this AD that are specified in the original issue of the applicable alert service bulletin.

To prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in reduced controllability of the airplane, accomplish the following:

Inspections, Check, and Test (Phase 1)

(a) Prior to the accumulation of 650 hours total time-in-service (TTIS), or within 72 hours after March 6, 2000 (the effective date of AD 2000–03–51, amendment 39–11595), whichever occurs later, accomplish the actions required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this AD; in accordance with Phase 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000 (original issue), or Revision 02, dated March 30, 2000 (for Model DC–9 and Model MD–88 airplanes); MD90–27A034, dated February 11, 2000 (original issue), or Revision 02, dated March 30, 2000 (for Model MD–90–30 airplanes); or 717–27A0002, dated February 11, 2000 (original issue), or Revision 02, dated March 30, 2000 (for Model 717–200 airplanes); as applicable. Repeat the actions required by paragraph (a) of this AD thereafter at intervals not to exceed 650 flight hours. As of the effective date of this AD, the repetitive inspections required by this paragraph must be accomplished as detailed visual inspections in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(1) Perform a general visual inspection of the lubricating grease on the jackscrew assembly and the area directly below the jackscrew and surrounding areas for the presence of metallic particles (including slivers, dust, shavings, and flakes) in accordance with Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin. If the presence of metallic particles is detected, prior to further flight, remove and replace the jackscrew assembly with a new or serviceable assembly; or accomplish the detailed visual inspections, follow-on actions, and corrective actions, as applicable; in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(2) Perform a general visual inspection of the jackscrew assembly to detect the presence of corrosion, pitting, or distress in accordance with Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin. If any corrosion, pitting, or distress is detected, prior to further flight, remove and replace the jackscrew assembly with a new or serviceable assembly; or accomplish the detailed visual inspections, follow-on actions, and corrective actions, as applicable; in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(3) During any inspection conducted prior to the effective date of this AD, check the condition of the jackscrew assembly lubricant in accordance with Phase 1 of the Accomplishment Instructions of the original issue of the applicable alert service bulletin. If the jackscrew assembly is dry, prior to further flight, lubricate the assembly in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

Note 3: During other inspections required by this AD, lubrication of the jackscrew is checked in accordance with Phase 1 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin.

(4) Inspect the horizontal stabilizer jackscrew upper and lower mechanical stops for general condition in accordance with the Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin; and record the condition.

(5) Perform a test of the horizontal stabilizer shutoff controls in accordance with Phase 1 of the Accomplishment Instructions of either the original issue or Revision 02 of the applicable alert service bulletin. If the mechanical stop on the jackscrew contacts the mechanical stop on the acme nut prior to limit switch shutoff, prior to further flight, adjust the horizontal stabilizer trim system in accordance with operator-approved maintenance instructions.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 5: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Note 6: Accomplishment of steps (b) through (e) of BOECOM message number M–7200–00–00456, dated February 9, 2000, constitutes compliance with paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD.

Wear Checks (Phase 2)

(b) Within 2,000 flight hours since the last endplay check of the jackscrew and acme nut conducted in accordance with the McDonnell Douglas DC–9 Maintenance Manual, Chapter 27–40–1; McDonnell Douglas MD–80 Maintenance Manual, Chapter 27–40–01; McDonnell Douglas MD–90 Maintenance Manual, Chapter 27–41–10; or Boeing 717 Maintenance Manual, Chapter 27–41–04; or within 30 days after March 6, 2000, whichever occurs later: Perform endplay and freeplay checks of the jackscrew and acme nut in accordance with Phase 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000, or Revision 02, dated March 30, 2000 (for Model DC–9 and Model MD–88 airplanes); MD90–27A034, dated February 11, 2000, or Revision 02, dated March 30, 2000 (for Model MD–90–30 airplanes); or 717–27A0002, dated February 11, 2000, or Revision 02, dated March 30, 2000 (for Model 717–200 airplanes); as applicable. Repeat the endplay and freeplay checks thereafter at intervals not to exceed 2,000 flight hours. As of the effective date of this AD, only Phase 2 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin shall be used to accomplish the requirements of this paragraph (including the corrective actions specified in Phase 2 of the Accomplishment Instructions of Revision 02 of the applicable alert service bulletin).

Note 7: Accomplishment of step (a) of BOECOM message number M–7200–00–00456, dated February 9, 2000, constitutes compliance with paragraph (b) of this AD.

Reporting Requirement

(c) At intervals not to exceed 90 days after accomplishing the endplay checks required by paragraphs (a) and (b) of this AD, submit a report of the results of the endplay checks to The Boeing Company, Long Beach Division, P.O. Box 1771, Long Beach, California 90801, Attention: Senior Manager—Systems, Technical and Fleet Support, Service Engineering D035–0035; fax: (562) 497–5811. Results of the endplay checks may be accumulated and submitted at the intervals required by this paragraph. Information collection requirements contained in this regulation have been

approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

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

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (a)(5) of this AD for adjusting the horizontal stabilizer trim system, the actions shall be done in accordance with Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000; Boeing Alert Service Bulletin DC9–27A362, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin MD90–27A034, dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin 717–27A0002, dated February 11, 2000; or Boeing Alert Service Bulletin 717–27A0002, Revision 02, dated March 30, 2000.

(1) The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, Revision 02, dated March 30, 2000; Boeing Alert Service Bulletin MD90–27A034, Revision 02, dated March 30, 2000; and Boeing Alert Service Bulletin 717–27A0002, Revision 02, dated March 30, 2000; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin DC9–27A362, dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034, dated February 11, 2000; and Boeing Alert Service Bulletin 717–27A0002, dated February 11, 2000; was approved previously by the Director of the Federal Register as of March 6, 2000 (65 FR 10379, February 28, 2000).

(3) Copies may be obtained from The Boeing Company, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L52 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19671 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–183–AD; Amendment 39–11844; AD 2000–15–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. This action requires inspections of a certain component, and corrective action, if necessary. This action is necessary to detect and correct stress corrosion cracking in the front spar of the center section of the horizontal stabilizer, which could result in structural failure of the horizontal stabilizer and loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–183–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, during regular maintenance, operators found stress corrosion cracks in the front spar of the center section of the horizontal stabilizer on two Boeing Model 737–100 and –200 series airplanes. The subject airplanes had 42,700 and 67,100 flight cycles. The front spar is made from 7079–T6 aluminum, a material that was used for this component until the manufacturer determined that the material is susceptible to stress corrosion cracking. Cracks in the front spar will decrease the structural strength of the center section of the horizontal stabilizer. This condition, if not corrected, could result in structural failure of the horizontal stabilizer and loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1071, dated February 24, 2000, which describes procedures for repetitive detailed visual inspections to detect cracking in the front spar of the center section of the horizontal stabilizer, and corrective actions, if necessary. If cracking is within certain limits, corrective actions involve rework of the front spar fitting that includes removing damaged material, performing a high frequency eddy current inspection to detect cracking, and shot

peening the damaged area. If cracking is outside the limits, the alert service bulletin specifies to contact the manufacturer for repair instructions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct stress corrosion cracking in the front spar of the center section of the horizontal stabilizer, which could result in structural failure of the horizontal stabilizer and loss of control of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The service bulletin also provides for a terminating action by replacing the front spar with a spar made from a 7050 or 7075 aluminum forging. However, this AD does not authorize the terminating action proposed in the service bulletin.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–183–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–12 Boeing: Amendment 39–11844. Docket 2000–NM–183–AD.

Applicability: Model 737–100, –200, and –200C series airplanes; line numbers 1 through 315 inclusive, 323, and 324; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking in the front spar of the center section of the horizontal stabilizer, which could result in structural failure of the horizontal stabilizer and loss of control of the airplane, accomplish the following:

Repetitive Detailed Visual Inspections

(a) Within 90 days after the effective date of this AD, perform a detailed visual inspection to detect cracks in the front spar of the center section of the horizontal stabilizer, in accordance with Boeing Alert Service Bulletin 737–55A1071, dated

February 24, 2000. Thereafter, repeat the inspection twice more at intervals not to exceed 200 days, and thereafter at intervals not to exceed 24 months or 4,000 flight cycles, whichever occurs first.

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

Rework

(b) Except as required by paragraph (c) of this AD, if any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish rework of the front spar of the center section of the horizontal stabilizer (including removing damaged material, accomplishing a high frequency eddy current inspection to detect cracking, and shot peening the damaged area), in accordance with Boeing Alert Service Bulletin 737–55A1071, dated February 24, 2000.

Cracking Outside the Limits Specified in the Alert Service Bulletin

(c) If any crack that is outside the limits specified in the alert service bulletin is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–55A1071, dated February 24, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19672 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–218–AD; Amendment 39–11845; AD 2000–15–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel; and correction of incorrect wire termination. That AD also requires that operators submit a report of the inspection results to the FAA. That AD was prompted by incidents in which the wiring of circuit breakers on the overhead switch panel lighting were found to be terminated improperly during production of the airplane, which bypassed the circuit breaker protection. This amendment expands the applicability of the existing AD to include additional airplanes, and removes the reporting requirement. The actions specified in this AD are intended to prevent smoke and possible fire in the overhead switch panel lighting circuitry due to an overload condition, as a result of lack of circuit breaker protection.

DATES: Effective August 23, 2000.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 1999 (64 FR 19695, April 22, 1999).

The incorporation by reference of certain other publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–218–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount

Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 13, 1999, the FAA issued AD 99–09–04, amendment 39–11136 (64 FR 19695, April 22, 1999), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel; and correction of incorrect wire termination. That AD also requires that operators submit a report of the inspection results to the FAA. That action was prompted by incidents in which the wiring of circuit breakers on the overhead switch panel lighting were found to be terminated improperly during production of the airplane, which bypassed the circuit breaker protection. The actions required by that AD are intended to prevent smoke and possible fire in the overhead switch panel lighting circuitry due to an overload condition, as a result of lack of circuit breaker protection.

The incident that prompted AD 99–09–04 is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Actions Since Issuance of Previous Rule

The applicability statement of AD 99–09–04 lists the manufacturer's fuselage numbers of the affected airplanes, which were provided by the airplane manufacturer and referenced in the effectivity listing of McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999 (which was referenced as the appropriate source of service information for accomplishment of the requirements of that AD). Since the issuance of that AD, the airplane manufacturer has informed the FAA that it inadvertently omitted manufacturer's fuselage numbers 0476 through 0489 inclusive, and 0491 through 0509 inclusive, from the referenced service bulletin. The FAA has determined that airplanes having those manufacturer's fuselage numbers are subject to the identified unsafe condition in addition to those listed in the applicability of AD 99–09–04 (*i.e.*, manufacturer's fuselage numbers 0447 through 0464 inclusive, and 0466 through 0475 inclusive).

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 01, dated June 2, 1999, and Revision 02, dated June 12, 2000, which revise the effectivity listing of the original issue of the service bulletin by including additional manufacturer's fuselage numbers of affected airplanes. The inspection and corrective action are identical to those described in the original version of the service bulletin.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 99–09–04 to continue to require a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel; and correction of incorrect wire termination. This AD also expands the applicability of the existing AD to include additional airplanes.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–218–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11136 (64 FR 19695, April 22, 1999), and by adding a new airworthiness directive (AD), amendment 39–11845, to read as follows:

2000–15–13 McDonnell Douglas: Amendment 39–11845. Docket 2000–NM–218–AD. Supersedes AD 99–09–04, Amendment 39–11136.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0464 inclusive, 0466 through 0475 inclusive; 0476 through 0489 inclusive; and 0491 through 0509 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and possible fire in the overhead switch panel lighting circuitry due to an overload condition, as a result of lack of circuit breaker protection, accomplish the following:

One-Time Inspection

(a) For airplanes having manufacturer's fuselage numbers 0447 through 0464 inclusive, and 0466 through 0475 inclusive: Within 60 days after May 7, 1999 (the effective date AD 99–09–04), perform a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999; Revision 01, dated June 2, 1999; or Revision 02, dated June 12, 2000. As of the effective date of this AD, only Revision 02 of the service bulletin shall be used.

(b) For airplanes having manufacturer's fuselage numbers 0476 through 0489 inclusive, and 0491 through 0509 inclusive: Within 60 days after the effective date of this AD, perform a one-time inspection to verify correct wire terminations of certain circuit breakers in the cockpit overhead switch panel, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000.

Note 2: Inspection of certain circuit breakers in the cockpit overhead switch panel prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, or Revision 01, dated June 2, 1999; is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

Condition 1 (Correct Wire Terminations)

(c) If, during the inspection required by either paragraph (a) or (b) of this AD, all affected circuit breakers are found to have correct wire terminations, no further action is required by this AD.

Condition 2 (Incorrect Wire Terminations)

(d) If, during the inspection required by either paragraph (a) or (b) of this AD, any affected circuit breaker is found to have an incorrect wire termination, prior to further flight, correct termination in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000.

Note 3: Correction of incorrect wire termination prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, or Revision 01, dated June 2, 1999; is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999; McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 01, dated June 2, 1999; or McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 01, dated June 2, 1999, and McDonnell Douglas Alert Service Bulletin MD11–33A027, Revision 02, dated June 12, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A027, dated March 10, 1999, was approved previously by the Director of the Federal Register as of May 7, 1999 (64 FR 19695, April 22, 1999).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19813 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–219–AD; Amendment 39–11846; AD 2000–15–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires repetitive inspections to verify operation of the

remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch, and replacement of any discrepant RCCB with a new RCCB. This action is necessary to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable RCCB of the AC cabin bus switch during smoke and fume isolation procedures. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–219–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents in which certain remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch failed when the switch was pushed to the ''OFF'' position. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes. Investigation revealed that an inoperable RCCB may not trip open (disconnects cabin bus loads) when commanded during smoke and fume isolation procedures. Even though an RCCB may be inoperable, the cabin bus ''OFF'' overhead switch light could still illuminate, which could mislead the flightcrew that all cabin buses have been deenergized. An inoperable RCCB of the AC cabin bus switch during smoke and fume isolation procedures, if not corrected, could result in the propagation of smoke and fumes in the cockpit and passenger cabin.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000, which describes procedures for repetitive inspections to verify operation of the RCCB's of the AC cabin bus switch, and replacement of any discrepant RCCB with a new RCCB.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable RCCB during smoke and fume isolation procedures. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–219–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–14 McDonnell Douglas: Amendment 39–11846. Docket 2000–NM–219–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable remote control circuit breaker (RCCB) of the alternating current (AC) cabin bus switch during smoke and fume isolation procedures, accomplish the following:

Inspection

(a) Within 45 days after the effective date of this AD, perform an inspection to verify operation of the RCCB's of the AC cabin bus switch in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000.

Condition 1 (Proper Operation): Repetitive Inspections

(1) If all RCCB's are operating properly, repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Condition 2 (Improper Operation): Replacement and Repetitive Inspections

(2) If any RCCB is NOT operating properly, prior to further flight, replace the failed RCCB with a new RCCB in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 28, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19814 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–355–AD; Amendment 39–11848; AD 2000–15–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD); applicable to certain Boeing Model 737, 757, 767, and 777 series airplanes; that requires a one-time general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin; and corrective action, if necessary. This amendment is prompted by a report that passengers were unable to activate supplemental oxygen generators during an in-flight decompression due to stress corrosion cracking of the crimped copper alloy

ferrules used to secure loops on the lanyard ends. The actions specified by this AD are intended to prevent failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants.

DATES: Effective September 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2000.

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

FOR FURTHER INFORMATION CONTACT: Susan J. Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2670; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737, 757, 767, and 777 series airplanes was published in the **Federal Register** on November 22, 1999 (64 FR 63762). That action proposed to require a one-time general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin; and corrective action, if necessary.

Comments

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

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Extend Compliance Time

Two commenters request that the FAA extend the compliance time for the actions proposed in paragraph (a) from four years to five years. One commenter states that, to comply with the proposed AD, the oxygen masks would have to be accessed twice: once to determine which masks are affected, so that an adequate number of replacement lanyards can be ordered, and a second time, to install the replacement lanyards. The other commenter states that, due to the amount of time needed to access and repack the oxygen marks, the inspection should be accomplished during a major maintenance visit. Thus, the commenters are requesting that the compliance time be extended to ensure that the inspection can be accomplished on all airplanes during a major maintenance visit.

The FAA concurs with the commenters' request to extend the compliance time for the actions required by paragraph (a) from four years to five years. The FAA concurs that additional maintenance planning and work hours may be necessary to accomplish the inspection. The FAA finds that such an extension of the compliance time will not have an adverse impact on safety. Paragraph (a) has been revised accordingly.

Request To Increase Estimate of Cost Impact

The commenters that request an extension of the compliance time also request that the FAA revise the cost impact information in the proposal to reflect higher work hour estimates. One commenter requests that the work hour estimate be doubled because operators may need to access the oxygen masks twice (as described above). The other commenter states that the estimates in the service bulletin and the proposed rule do not account for the time needed to repack the oxygen masks. The commenter asserts that the masks are generally packed such that the tubing obscures the manufacturer's identification. Thus, it may be necessary to unwrap the tubing to accomplish the inspection, and, following the inspection, the masks would have to be carefully repacked. The commenter estimates that the inspection may actually take 1 to 2 work hours per oxygen mask.

The FAA partially concurs with the commenters' request to increase the cost impact estimate. The FAA does not concur with the commenters' estimates of the number of necessary work hours. The commenter's estimates may include extra time for ''incidental'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur incidental costs in addition to the ''direct'' costs. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

However, as stated previously, the FAA acknowledges that the actions required by this AD may take longer than estimated in the proposed rule. The estimated number of work hours stated in the proposed rule was based on a figure of 0.16 work hour per mask. That figure included the 0.15 work hour needed to accomplish the applicable Boeing service bulletin, plus 0.01 work hour to accomplish the Puritan-Bennett service bulletin referenced in the Boeing service bulletins. In consideration of the fact that additional work hours may be necessary to accomplish certain actions required by this AD (*e.g.,* to identify the manufacturer of the masks), the FAA has revised the cost impact information in this final rule to reflect an estimate of 0.25 work hour per mask, rather than the 0.16 work hour per mask estimated in the proposal.

Request To Remove Requirement for Certain Oxygen Masks

One commenter requests that the FAA revise paragraph (a) of the proposed rule to eliminate the requirement to determine the manufacturing date for oxygen masks not manufactured by Puritan-Bennett. The proposed paragraph (a) specifies a general visual inspection to determine both the manufacturer and the manufacturing date of each oxygen mask. The commenter points out that it is only relevant to determine the manufacturing date for masks manufactured by Puritan-Bennett. The commenter states that if the visual inspection establishes that the mask was not manufactured by Puritan-Bennett, no further inspection should be required. The FAA concurs with the commenter's request, and paragraph (a) has been revised accordingly, and new paragraphs (a)(1) and (a)(2) have been added to this AD. However, the FAA notes that, if the manufacturing date of the mask cannot be determined, or if the manufacturing date is between May 1986 and July 1998 inclusive but the manufacturer of the mask cannot be determined, the lanyard must be replaced. Thus, paragraph (b) of this AD has been revised to provide for such instances.

Request To Allow Replacement of Mask in Lieu of Replacement of Lanyard

One commenter requests that the FAA revise paragraph (b) of the proposed rule to allow replacement of the entire mask with a new mask manufactured by another vendor or manufactured outside the subject timeframe, in lieu of replacement of the lanyard only, if a mask is determined to be manufactured by Puritan-Bennett between May 1986 and July 1998.

The FAA partially concurs with the commenter's request. Replacement of an existing oxygen mask with a new mask manufactured by Puritan-Bennett before May 1986 or after July 1998, or manufactured by another vendor, would be acceptable alternatives to replacement of the lanyard, provided that the replacement mask has the same Boeing part number, or provided that the FAA has approved the replacement mask for installation as a replacement. Paragraph (b) of this AD has been revised to provide such replacement as another option for compliance.

Request To Clarify Justification of Proposed Compliance Time

One commenter, the airplane manufacturer, requests that the FAA revise the proposed rule to clarify that the compliance time recommended by the manufacturer is shorter than the compliance time the FAA proposed. The commenter notes that the section, ''Differences Between Proposed Rule and Service Bulletin'' in the preamble of the proposed rule implies that the FAA proposed a compliance time of four years because the manufacturer's recommendation would not ensure that operators would comply in a timely manner. The commenter points out that the manufacturer's recommendation that the service bulletin be incorporated at the next ''2C'' check would, for most operators, result in accomplishment of the service bulletin earlier than the proposed four-year compliance time.

The FAA acknowledges that the language in the ''Differences Between Proposed Rule and Service Bulletin'' section of the preamble of the proposed rule may have been misleading. However, this section is not restated in this final rule, so no change to this AD is necessary in this regard. The compliance time recommended by the manufacturer in its service bulletin is indeed more conservative than the compliance time specified in this AD. The FAA finds a five-year compliance time for completing the required actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. As stated previously, this compliance time will also allow most operators to accomplish this AD during a major maintenance visit. As explained previously, the compliance time for the requirements of paragraph (a) of this AD has been revised from four years, as proposed, to five years. No other change to the final rule has been made in this regard.

Request To Withdraw Proposed Rule

One commenter requests that the FAA withdraw the proposed rule. The commenter asserts that the proposed AD is not warranted. The commenter points out that tests conducted by the airplane manufacturer show that few lanyards actually failed to hold a ten-pound test load, and those that failed had been subjected to relatively harsh environments where heat and humidity or use of insecticides or ammonia-based cleaning products had been a factor. The commenter states that the inspection and replacement of oxygen masks recommended in the service bulletin is adequate.

The FAA does not concur with the commenter's assertion that this AD is not warranted. This action is based on an in-flight decompression of a Boeing Model 767 series airplane during which about 30 percent of the lanyards failed when passengers attempted to use the oxygen masks. Investigation revealed that the design of the crimped copper alloy ferrules on the lanyards is susceptible to stress corrosion cracking. Though environmental factors can accelerate the rate of cracking, the FAA finds that such cracking would eventually occur on most masks. The FAA acknowledges that many airplanes do not operate in the most severe environments; for this reason, a relatively long compliance time has been set to allow operators to comply with the requirements of this AD during scheduled maintenance. No change to the final rule is necessary in this regard.

Request To Remove Certain Airplanes From Applicability Statement

One commenter requests that the FAA remove Boeing 737–600, –700, and –800 series airplanes from the ''Applicability'' statement of the proposed rule. The commenter provides no justification for its request. The FAA does not concur with the commenter's request. The subject oxygen masks could have been installed on these airplanes either during production or as spares. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 4,547 Model 737, 757, 767, and 777 series airplanes of the affected design in the worldwide fleet. The FAA estimates 2,206 airplanes of U.S. registry will be affected by this AD.

For Model 737 series airplanes (approximately 1,334 U.S.-registered airplanes), it will take approximately 40 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $576 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,969,984, or $2,976 per airplane.

For Model 757 series airplanes (approximately 558 U.S.-registered airplanes), it will take approximately 59 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $846 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,447,388, or $4,386 per airplane.

For Model 767 series airplanes (approximately 280 U.S.-registered airplanes), it will take approximately 69 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $990 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,436,400, or $5,130 per airplane.

For Model 777 series airplanes (approximately 34 U.S.-registered airplanes), it will take approximately 82 work hours per airplane to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $1,170 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $207,060, or $6,090 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–16 Boeing: Amendment 39–11848. Docket 98–NM–355–AD.

Applicability: Model 737 series airplanes, line numbers 1 through 2984 inclusive; Model 757 series airplanes, line numbers 1 through 798 inclusive; Model 767 series airplanes, line numbers 1 through 682 inclusive; and Model 777 series airplanes, line numbers 1 through 083 inclusive; certificated in any category; and equipped with Puritan-Bennett passenger and flight attendant oxygen masks, as listed in Boeing Service Bulletin 737–35–1049, dated September 17, 1998; 757–35–0014, dated September 10, 1998; 767–35–0033, dated September 10, 1998; or 777–35–0005, dated September 3, 1998; as applicable.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants, accomplish the following:

Inspection

(a) Within 5 years after the effective date of this AD, perform a general visual inspection to determine the vendor of all oxygen masks in the passenger cabin in accordance with Boeing Service Bulletin 737–35–1049, including Appendix A, dated September 17, 1998 (for Model 737 series airplanes); Boeing Service Bulletin 757–35–0014, including Appendix A, dated September 10, 1998 (for Model 757 series airplanes); Boeing Service Bulletin 767–35–0033, including Appendix A, dated September 10, 1998 (for Model 767 series airplanes); or Boeing Service Bulletin 777–35–0005, including Appendix A, dated September 3, 1998, (for Model 777 series airplanes); as applicable.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If the oxygen mask is not manufactured by Puritan-Bennett, no further action is required by this AD for that mask.

(2) If the oxygen mask is manufactured by Puritan-Bennett, OR if the manufacturer of the mask cannot be identified, prior to further flight, perform a general visual inspection to determine the manufacturing date of the oxygen mask, in accordance with the applicable service bulletin.

Corrective Action

(b) For each oxygen mask manufactured by Puritan-Bennett or an unidentified manufacturer, if the mask was manufactured between May 1986 and July 1998 inclusive, OR if the manufacturing date cannot be determined: Prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the lanyards on the masks with new lanyards in accordance with Boeing Service Bulletin 737–35–1049, including Appendix A, dated September 17, 1998 (for Model 737 series airplanes); 757–35–0014, including Appendix A, dated September 10, 1998 (for Model 757 series airplanes); 767–35–0033, including Appendix A, dated September 10, 1998 (for Model 767 series airplanes); or 777–35–0005, including Appendix A, dated September 3, 1998 (for Model 777 series airplanes); as applicable.

(2) Replace the existing oxygen mask with a new mask that was manufactured by Puritan-Bennett before May 1986 or after July 1998, or by another vendor, and that has the same Boeing part number, or that is FAA-approved for installation as an alternative to the Puritan-Bennett mask.

Spares

(c) As of the effective date of this AD, no person shall install an oxygen mask manufactured by Puritan-Bennett between May 1986 and July 1998 inclusive, on any airplane, unless the lanyard has been replaced with a new lanyard in accordance with paragraph (b) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–35–1049, including Appendix A, dated September 17, 1998 (for Model 737 series airplanes); Boeing Service Bulletin 757–35–0014, including Appendix A, dated September 10, 1998 (for Model 757 series airplanes); Boeing Service Bulletin 767–35–0033, including Appendix A, dated September 10, 1998 (for Model 767 series airplanes); or Boeing Service Bulletin 777–35–0005, including Appendix A, dated September 3, 1998 (for Model 777 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be

inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 12, 2000.

Issued in Renton, Washington, on July 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19815 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–227–AD; Amendment 39–11849; AD 2000–15–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 Airplanes; and Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes; that requires installation of a pipe support and clamps on the hydraulic lines in the aft fuselage; replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly; and installation of drain tube assemblies and diverter assemblies in the area of the auxiliary power unit (APU) inlet; as applicable. This amendment is prompted by reports of smoke and odor in the passenger cabin and cockpit due to hydraulic fluid leaking into the APU inlet, and subsequently, into the air conditioning system. The actions specified by this AD are intended to prevent such hydraulic fluid leakage due to fatigue vibration and cracking in the flared radius of a hydraulic pipe in the aft fuselage, which could result in smoke and odors in the passenger cabin or cockpit.

DATES: Effective September 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes; was published in the **Federal Register** on January 18, 2000 (65 FR 2555). That action proposed to require installation of a pipe support and clamps on the hydraulic lines in the aft fuselage; replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly; and installation of drain tube assemblies and diverter assemblies in the area of the auxiliary power unit (APU) inlet; as applicable.

Comments

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

Requests for Alternative Methods of Compliance (AMOC)

One commenter requests that operators be allowed to install NAS 1252–10H washers in lieu of the NAS1149D0363H washers specified in McDonnell Douglas Service Bulletin MD80–29–056, dated June 18, 1996 [which was referenced in paragraph (a) of the proposed AD as the appropriate source of service information for accomplishing the required installation]. The commenter states that NAS 1252–10H washers are manufactured from 7075–T6 aluminum alloy and are more wear resistant than NAS1149D0363H washers manufactured from 2024–T3 aluminum alloy.

The FAA partially concurs. The FAA acknowledges that 7075–T6 aluminum alloy material is more durable than 2024–T3 aluminum alloy material. However, the commenter did not provide any data, such as the size or thickness of a NAS 1252–10H washer, to substantiate that this alternative washer would provide an acceptable level of safety. However, under the provisions of paragraph (e) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

One commenter requests that, in lieu of replacing the hydraulic pipe assembly in the aft fuselage with a new pipe assembly having a greater wall thickness [required by paragraph (b) of the proposed AD], operators be allowed to manufacture and install this tube assembly with flares in order to minimize preload. The commenter states that the failure rate of the hydraulic pipe assembly is compounded due to a preload situation at the flanges. Flange failure will consequently occur more often when a pre-assembled tube is installed. The commenter also states that this configuration will improve the reliability of the tube assembly, which would reduce the possibility of smoke/odor in the cabin.

The FAA does not concur. The FAA has received no reports of failure of the new pipe assembly having a greater wall thickness. The FAA has determined that replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly having a greater wall thickness will adequately address the identified unsafe condition. In addition, the commenter did not provide any data to support its request. However, the FAA may consider requests for approval of an AMOC under the provisions of paragraph (e) of this AD if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

One commenter requests that operators be allowed to install the drain tubes and diverter assemblies, as required by paragraph (c) of the proposed AD, using blind rivets rather than solid rivets. The commenter states that blind rivets provide a structurally

sound installation and an equivalent level of safety as the solid rivets.

The FAA does not concur. The FAA finds that blind rivets in the tail area of airplanes are highly susceptible to vibration from the engine and APU, which, over time, could loosen the blind rivets. However, under the provisions of paragraph (e) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

Requests To Revise Certain Compliance Times

Four commenters request that the 18-month compliance time for accomplishing the installation of drain tube assemblies and diverter assemblies required by paragraph (c) of the proposed AD be extended. Each commenter suggested different times (i.e, 3, 4, and 5 years). Three of the commenters state that such an extension would allow the subject installation to be accomplished during a regularly scheduled heavy ''C'' check where trained personnel will be available, if necessary, and will allow time for procurement of additional parts. One commenter states that the airplane manufacturer is currently quoting a 10-month lead time for the availability of all parts needed for accomplishing the required installation.

One of the commenters also requests that the 18-month compliance time for accomplishing the replacement of the hydraulic pipe assembly required by paragraph (c) of the proposed AD be extended to 3 years. The commenter states that a 3-year compliance time would provide operators with more time to investigate the true cause of smoke/odor in the cabin.

The FAA concurs that the compliance time can be extended somewhat. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required modification into affected operators' maintenance schedules in a timely manner. Based on the information supplied by the commenters, the FAA now recognizes that 24 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules for accomplishing the requirements of paragraph (c) of this AD. The FAA has reviewed data submitted by the manufacturer regarding parts availability and finds that there is approximately a 10-month lead time for procuring certain parts. Therefore, the FAA has revised paragraph (c) of the final rule to reflect a compliance time of 36 months. The FAA does not consider that these extensions will adversely affect safety.

Requests That the Installation of Drain Tube and Diverter Assemblies Be Optional

Two commenters request that the requirements (*i.e.*, installation of drain tube assemblies and diverter assemblies) of paragraph (c) of the proposed AD be optional. One commenter states that the installation of the drainage tubing does nothing to increase safety. Another commenter states that it is pursuing the installation of center diverters, and that it does not see the advantage of side diverters. The commenter also states that, based on data collected from cabin smoke/odor events, the occurrences caused by APU engine oil ingestion outnumber those caused by skydrol (hydraulic fluid) ingestion at a ratio of four to one (4:1). The side diverters appear to be focused mainly on the skydrol ingestion. The commenter further states that these instances are the exception rather than the rule and do not warrant the increase in cost and maintenance time.

The FAA does not concur. As discussed in the preamble of the NPRM, the FAA has received several reports of smoke and odor in the passenger cabin and cockpit due to hydraulic fluid leaking into the APU inlet, and subsequently, into the air conditioning system. The FAA is also aware of a similar event that resulted in an emergency evacuation of an airplane and consequent injury to several passengers. Further, the results of drain tests, conducted by the airplane manufacturer, indicate that installation of drain tubes and diverter assemblies prevent fluid from being ingested into the APU when hydraulic fluids leak into the bilge area of the tailcone. The FAA acknowledges that the required installation is mainly focused on preventing skydrol ingestion into the APU inlet and does not prevent any fluid from leaking within the APU or environmental control system of the airplane. However, the FAA has identified an unsafe condition that must be corrected. If any other unsafe condition is identified subsequent to the release of this AD, the FAA may consider further rulemaking. Therefore, in light of these findings, the FAA finds the installation of drain tube assemblies and diverter assemblies in the area of the APU inlet required by paragraph (c) of this AD is warranted.

Request To Devise a Certain Work Hour Estimate

One commenter notes that the FAA estimates 14 work hours per airplane for accomplishing the proposed installation of drain tube assemblies and diverter assemblies, whereas the referenced service bulletins estimate 44.8 work hours per airplane. However, the commenter states that it would take 60 work hours per airplane to accomplish the proposed installation.

From this comment, the FAA infers that the commenter is requesting that the work hour estimate for accomplishing the proposed installation be revised from 14 work hours per airplane to 60 work hours per airplane. The FAA does not concur. The cost impact information, below, describes only the ''direct'' costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required installation of drain tube assemblies and diverter assemblies, specified as 14 in the cost impact information, below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Explanation of Change to Cost Impact

The FAA's estimate of the number of affected airplanes of U.S. registry (*i.e.*, 634 airplanes) in the Cost Impact section of the proposed AD is incorrect. The correct figure is 656. Also, the FAA inadvertently omitted some of the affected airplanes [*i.e.*, 634 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes] from the cost figures for accomplishing the required installation of the drain tube assemblies and diverter assemblies. Therefore, the FAA has revised the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,126 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–987 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 656 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane [for 512 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes] to accomplish the required installation of the pipe support and clamps, at an average labor rate of $60 per work hour. Required parts will cost approximately $226 per airplane. Based on these figures, the cost impact of this installation required by AD on U.S. operators is estimated to be $177,152, or $346 per airplane.

It will take approximately 2 work hours per airplane [for 634 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes] to accomplish the required replacement of the hydraulic pipe assembly, at an average labor rate of $60 per work hour. Required parts will cost approximately $520 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $405,760, or $640 per airplane.

It will take approximately 14 work hours per airplane [for 656 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes] to accomplish the required installation of drain tube assemblies and diverter assemblies, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,503 per airplane. Based on these figures, the cost impact of this installation required by this AD on U.S. operators is estimated to be $3,505,008, or $5,343 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–17 McDonnell Douglas: Amendment 39–11849. Docket 99–NM–227–AD.

Applicability: Models and series of airplanes as listed in the applicable McDonnell Douglas service bulletin(s) specified in Table 1 of this AD, certificated in any category.

TABLE 1

Model of airplane	McDonnell Douglas Service Bulletin(s)
DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes.	MD80–29–056, dated June 18, 1996; MD80–29–062, Revision 01, dated August 3, 1999; and MD80–53–286, dated September 3, 1999.
MD–88 airplanes	MD80–29–062, Revision 01, dated August 3, 1999; and MD80–53–286, dated September 3, 1999.
MD–90–30 series airplanes	MD90–53–018, dated September 3, 1999.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic fluid leakage into the auxiliary power unit (APU) inlet due to fatigue vibration and cracking in the flared radius of a hydraulic pipe in the aft fuselage, which could result in smoke and odors in the passenger cabin or cockpit; accomplish the following:

Installation of a Pipe Support and Clamps

(a) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, as listed in McDonnell Douglas Service Bulletin MD80–29–056, dated June 18, 1996: Within 18 months after the effective date of this AD, install a pipe support and clamps on the hydraulic lines in the aft fuselage in accordance with the service bulletin.

Replacement of the Hydraulic Pipe Assembly

(b) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes, as listed McDonnell Douglas Service Bulletin MD80–29–062, Revision 01,

dated August 3, 1999: Within 18 months after the effective date of this AD, replace the hydraulic pipe assembly in the aft fuselage with a new pipe assembly having a greater wall thickness, in accordance with the service bulletin. Except for Model MD–88 airplanes that have been modified in accordance with McDonnell Douglas MD–80 Service Bulletin 29–54, dated February 2, 1993, or Revision 2, dated December 17, 1993, the requirements of this paragraph must be accomplished concurrently with the requirements of paragraph (a) of this AD.

Installation of Drain Tube Assemblies and Diverter Assemblies

(c) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, as listed in McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Service Bulletin MD90–53–018, dated September 3, 1999: Within 36 months after the effective date of this AD, install drain tube assemblies and diverter assemblies in the area of the APU inlet, in accordance with the applicable service bulletin.

Spares

(d) As of the effective date of this AD, no person shall install a hydraulic pipe assembly, part number 7936907–603, on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80–29–056, dated June 18, 1996; McDonnell Douglas Service Bulletin MD80–29–062, Revision 01, dated August 3, 1999; McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999; or McDonnell Douglas Service Bulletin MD90–53–018, dated September 3, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on September 12, 2000.

Issued in Renton, Washington, on July 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19816 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–320–AD; Amendment 39–11851; AD 2000–15–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That AD also provides for an optional terminating modification that constitutes terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The actions specified by this AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

DATES: Effective September 12, 2000.

The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998, is approved by the Director of the **Federal Register** as of September 12, 2000.

The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notice of Status Change 737–57–1129 NSC 1, dated July 23, 1982; Notice of Status Change 737–57–1129 NSC 2, dated April 14, 1983; and Notice of Status Change 737–57–1129 NSC 3, dated May 18, 1995; as listed in the regulations; was approved previously by the Director of the Federal Register as of September 17, 1996 (61 FR 41957, August 13, 1996).

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–17–04, amendment 39–9712 (61 FR 41957, August 13, 1996), which is applicable to certain Boeing Model 737–100 and –200 series airplanes, was published in the **Federal Register** on March 15, 2000 (65 FR 13919). The action proposed to continue to require inspections to detect cracking of the support fittings of the Krueger flap actuator on each wing; and to mandate replacement of any existing aluminum fitting with a new steel fitting and modification of the actuator aft attachment.

Comments

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

Support for the Proposed Rule

One commenter states that it has no objection to the proposed rule.

Request for Credit for Work Accomplished Previously

One commenter requests that the proposed AD be revised to provide credit for accomplishment of the terminating modification per Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notices of Status Change 737–57–1129 NSC 1, dated July 23, 1982; 737–57–1129 NSC 2, dated April 14, 1983; or 737–57–1129 NSC 3, dated May 18, 1995. The commenter states that it has previously accomplished the terminating modification in accordance with Revision 1 of the service bulletin.

The FAA concurs with the intent of the commenter's request. However, the FAA points out that ''Note 2'' of this AD already provides such credit for accomplishment of the terminating modification prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, as revised by Notices of Status Change 737–57–1129 NSC 1, 737–57–1129 NSC 2, and 737–57–1129 NSC 3. Therefore, no change to the final rule is necessary.

Request To Extend Use of Aluminum Support Fittings

One commenter questions the FAA's rationale for prohibiting installation of new or serviceable aluminum support fittings as of the effective date of this AD, as provided by paragraph (c) of the proposed rule. The commenter states that gradually phasing out the use of aluminum fittings over the five-year compliance time allowed by paragraph (b) of the proposed AD would provide ''an equivalent level of safety.''

The commenter states no justification for its request, and the FAA does not concur with the commenter's request. The FAA's decision to prohibit installation of aluminum support fittings, as required by this AD, is based on the unsatisfactory service history of these parts. Because of the criticality of the unsafe condition addressed in this AD, the FAA finds that it would be inappropriate to continue to allow replacement of existing aluminum fittings with new or serviceable aluminum support fittings after the effective date of this AD. In addition, the FAA notes that paragraph (c) of AD 96–17–04 prohibits installation of aluminum support fittings of four part numbers as of September 17, 1996 (the effective date of that AD). This AD adds four more part numbers of aluminum support fittings to the list of those that cannot be installed after the effective date of this AD. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 727 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 270 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 96–17–04 and retained in this AD take approximately 12 work hours per airplane (6 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $194,400, or $720 per airplane, per inspection.

The replacement and modification required by this AD will take approximately 88 work hours per airplane (44 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $12,226 per airplane. Based on these figures, the cost impact of the replacement and modification required by this AD on U.S. operators is estimated to be $4,726,620, or $17,506 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9712 (61 FR 41957, August 13, 1996), and by adding a new airworthiness directive (AD), amendment 39–11851, to read as follows:

2000–15–18 Boeing: Amendment 39–11851. Docket 99–NM–320–AD. Supersedes AD 96–17–04, Amendment 39–9712.

Applicability: Model 737–100 and –200 series airplanes, line numbers 001 through 813 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible failure of one or more hydraulic systems and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 96–17–04

Repetitive Inspections

(a) Within one year after September 17, 1996 (the effective date of AD 96–17–04, amendment 39–9712), perform an eddy

current inspection to detect cracking of the support fitting of the Krueger flap actuator on each wing, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notices of Status Change 737–57–1129 NSC 1, dated July 23, 1982; 737–57–1129 NSC 2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; or Revision 2, dated May 28, 1998.

(1) If no cracking is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 hours time-in-service.

(2) If any cracking is detected, prior to further flight, accomplish the replacement and modification specified in paragraph (b) of this AD.

New Requirements of This AD:

Terminating Action

(b) Within 5 years after the effective date of this AD: Replace any existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modify the actuator aft attachment, in accordance with Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998. Accomplishment of this replacement and modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Replacement of the existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modification of the actuator aft attachment, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notices of Status Change 737–57–1129 NSC 1, dated July 23, 1982; 737–57–1129 NSC 2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; is considered acceptable for compliance with the modification required by paragraph (b) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane any aluminum support fitting identified in the ''Existing Part Number'' column of Paragraph 2.D. of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notice of Status Change 737–57–1129 NSC 1, dated July 23, 1982; Notice of Status Change 737–57–1129 NSC 2, dated April 14, 1983; and Notice of Status Change 737–57–1129 NSC 3, dated May 18, 1995; or Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981; as revised by Notice of Status Change 737–57–1129 NSC 1, dated July 23, 1982; Notice of Status Change 737–57–1129 NSC 2, dated April 14, 1983; and Notice of Status Change 737–57–1129 NSC 3, dated May 18, 1995; was approved previously by the Director of the Federal Register as of September 17, 1996 (61 FR 41957, August 13, 1996).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 12, 2000.

Issued in Renton, Washington, on July 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19817 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–255–AD; Amendment 39–11850; AD 2000–15–51]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560XL Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2000–15–51 that was sent previously to all known U.S. owners and operators of Cessna Model 560XL airplanes by individual notices. This AD requires, for certain airplanes, repetitive inspections to measure the amount the aileron fairlead tube protrudes beyond the clamp at the aft aileron sector, and modification of the aileron fairlead tubes, which terminates the repetitive inspections to measure the tube protrusion; and, for all airplanes, repetitive general visual inspections, and corrective actions, if necessary, to ensure that the fairlead tube remains flush with the clamp. This action is prompted by reports of two occurrences of improper aileron function discovered during preflight checks. The actions specified by this AD are intended to prevent interference between the aileron cable fairlead tube and the aileron cable sector, which could result in loss of control of the airplane.

DATES: Effective August 14, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–15–51, issued July 19, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 14, 2000.

Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–255–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at

the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: On July 19, 2000, the FAA issued emergency AD 2000–15–51, which is applicable to certain Cessna Model 560XL airplanes.

That action was prompted by reports of two occurrences of improper aileron function discovered during preflight checks. In the first occurrence, the ailerons did not operate within their full range; it was later discovered that the fairlead tube was contacting the aft cable sector. In the second occurrence, the aileron jammed in a ratcheting-type motion and could not be returned to neutral.

If either aileron cable fairlead tube slides aft through its clamps while the airplane is in service, it could jam or otherwise interfere with the aileron cable sector at approximately 60 percent aileron travel (either left roll or right roll). The aileron cannot be returned to neutral from 60 percent or greater aileron travel. This condition can occur only if 60 percent or greater aileron travel is commanded. In certain circumstances, roughness or unusual friction may be detected in the aileron system at high control wheel deflections prior to jamming. Interference between the aileron cable fairlead tube and the aileron cable sector, if not corrected, could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000, which describes procedures for modification of the aileron fairlead tubes. The modification involves trimming the fairlead tube and cementing the clamp to the tube with fuel tank sealer.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–15–51 to prevent interference between the aileron cable fairlead tube and the aileron cable sector, if not corrected, could result in loss of control of the airplane. The AD requires:

- For airplanes having serial numbers –5002 through –5093 inclusive: repetitive general visual inspections to measure the amount the aileron fairlead tube protrudes beyond the clamp at the aft aileron sector.
- For airplanes having serial numbers –5002 through –5093 inclusive: modification of the aileron fairlead tubes, which terminates the repetitive inspections to measure the tube protrusion.
- For all airplanes: repetitive general visual inspections, and corrective actions, if necessary, to ensure that the fairlead tube remains flush with the clamp.

The modification is required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on July 19, 2000, to all known U.S. owners and operators of Cessna Model 560XL airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–255–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–51 Cessna Aircraft Company: Amendment 39–11850. Docket 2000–NM–255–AD.

Applicability: Model 560XL airplanes, certificated in any category; serial numbers (S/N) –5002 and subsequent.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent interference between the aileron cable fairlead tube and the aileron cable sector, which could result in loss of control of the airplane, accomplish the following:

Pre-modification Inspection

(a) For airplanes having S/N –5002 through –5093 inclusive: Before the next flight after the effective date of this AD, perform a general visual inspection to measure how far the aileron fairlead tube protrudes beyond the clamp at the aft aileron sector. This area of the airplane is depicted in Figure 1 of Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. Thereafter, repeat the inspection at intervals not to exceed 5 flight cycles until accomplishment of paragraph (b) of this AD. If, during any inspection required by this paragraph, more than one-half inch of the tube is found to protrude, prior to further flight, accomplish the actions specified by paragraph (b) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Modification

(b) For airplanes having S/N –5002 through –5093 inclusive: Within 25 flight hours or 30 days after the effective date of this AD, whichever occurs first, modify the aileron fairlead tubes (including trimming the fairlead tube and cementing the clamp to the tube with fuel tank sealer) in accordance with Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. Allow 2 hours of cure time before further flight. Accomplishment of the modification terminates the repetitive inspection requirement of paragraph (a) of this AD.

Post-modification Inspection

(c) For all airplanes: At the applicable time specified by paragraph (c)(1) or (c)(2) of this AD, perform a general visual inspection to determine if the fairlead tube is flush with the clamp. This area of the airplane is depicted in Figure 1 of Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. If the tube is not flush, prior to further flight, repeat the actions specified by paragraph (b) of this AD, and notify the Manager, Wichita Aircraft Certification Office (ACO), FAA, Mid-Continent Airport, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4106; fax (316) 946–4407. Repeat the inspection thereafter at intervals not to exceed 110 flight hours.

(1) For airplanes having S/N –5002 through –5093 inclusive: At the next scheduled maintenance or within 110 flight hours after the modification required by paragraph (b) of this AD, whichever occurs first.

(2) For S/N –5094 and subsequent: At the next scheduled maintenance or within 110 flight hours after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The modification shall be done in accordance with Cessna Service Bulletin SB560XL–27–10, including Service Bulletin Supplemental Data, dated July 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 14, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–15–51, issued on July 19, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19818 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 97C–0415]

Listing of Color Additives Exempt From Certification; Luminescent Zinc Sulfide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics. This action is in response to a petition filed by Zauder Bros., Inc.

DATES: This rule is effective September 8, 2000; except as to any provisions that may be stayed by the filing of proper objections. Submit written objections and requests for a hearing by September 7, 2000.

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

FOR FURTHER INFORMATION CONTACT: Aydin O–AE4rstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of October 6, 1997 (62 FR 52136), FDA announced that a color additive petition (CAP 7C0251) had been filed by Zauder Bros., Inc., c/o Schiff & Co., 1129 Bloomfield Ave.,

West Caldwell, NJ 07006. The petition proposed to amend the color additive regulations to provide for the safe use of zinc sulfide as a color additive in externally applied cosmetics. During its review of the petition, the agency determined that the subject color additive is zinc sulfide containing an added copper activator that produces a luminescent color. Therefore, the agency is establishing luminescent zinc sulfide as the common or usual name of the color additive.

II. Identity, Technical Effect, and Specifications

Luminescent zinc sulfide is zinc sulfide containing 0.01 weight percent (100 parts per million) copper (Ref. 1). Copper functions as an activator. Following excitation by daylight or a suitable artificial light, luminescent zinc sulfide produces a yellow-green phosphorescence with a maximum at 530 nanometers (Ref. 1). The petitioner intends to use luminescent zinc sulfide in nail polishes and facial creams to produce a ''glow-in-the-dark'' effect.

The luminescent zinc sulfide that is the subject of the petition contains $100_{\pm}5$ parts per million copper. To ensure that the color additive in finished products contains an effective level of copper consistent with the material identified in the petition, the agency is establishing the range of copper as $100_{\#}5$ parts per million in new § 73.2995(b).

In addition to copper, other activators, for example cobalt, may also be added to zinc sulfide to obtain pigments with different phosphorescent properties (Ref. 1). However, the petitioner did not request the listing of zinc sulfide containing activators other than copper and the petition contains no relevant safety data. Therefore, phosphorescent zinc sulfide pigments containing activators other than copper are not covered by this final rule.

III. Safety Evaluation

The petitioner proposed to use luminescent zinc sulfide in nail polishes and specialized facial makeup preparations for use on limited occasions such as Halloween. The agency reviewed the data in the petition and determined that luminescent zinc sulfide is not a dermal irritant or dermal sensitizer. The agency also reviewed two skin absorption studies in the petition. The agency determined that these studies showed an apparent low skin absorption of luminescent zinc sulfide, and that the petitioned use of luminescent zinc sulfide in facial makeup preparations is safe (Ref. 2). However, the agency also determined that these absorption studies were limited in their ability to measure skin absorption under all conditions of use. Therefore, new § 73.2995(c)(2) restricts the use of facial makeup preparations containing luminescent zinc sulfide to limited occasions (e.g., Halloween). In other words, under new § 73.2995(c)(2), facial makeup preparations containing luminescent zinc sulfide are not intended for regular or daily use. Furthermore, based on the luminescent zinc sulfide concentrations in facial makeup preparations stated in the petition, new § 73.2995(c)(1) limits the amount of luminescent zinc sulfide in facial makeup preparations to 10 percent by weight of the final product. The agency notes that luminescent zinc sulfide in nail polish would be bound in the polish once it dries on the nail, and hence, the skin contact of luminescent zinc sulfide would be minimal. Therefore, the agency concludes that a limit on the amount of luminescent zinc sulfide in nail polishes is not necessary for safety reasons.

Because the agency is approving the color additive only for limited applications, new § 73.2995(c) provides clear identification of the approved uses. The agency is limiting the approved uses of luminescent zinc sulfide to specific cosmetic product categories listed in § 720.4(c) (21 CFR 720.4). These product categories were proposed by the cosmetics industry in a petition to the agency to establish an FDA-administered Voluntary Cosmetic Registration Program (VCRP). FDA adopted these product categories in 1972 with the establishment of the VCRP (37 FR 7151, April 11, 1972). The agency has determined that referencing the relevant product categories in § 720.4(c) more clearly identifies the products in which use of luminescent zinc sulfide has been approved. Section 720.4(c) includes a category for nail polish (§ 720.4(c)(8)(v), Nail polish and enamel). Although § 720.4(c) does not include a specific category for facial makeup preparations for the specialty use that was proposed in the petition, it includes a category, other makeup preparations (§ 720.4(c)(7)(ix)), which includes this use. Referencing this cosmetic product category in the regulation effectively restricts it from being used in all other categories listed under § 720.4(c)(7), for which use of the color additive was not approved. The agency finds that references to the cosmetic product categories for the approved uses, together with the specific limitations in new § 73.2995(c)(1) and (c)(2) on the use of luminescent zinc sulfide in facial makeup preparations, will effectively define the uses that the agency has reviewed and determined to be safe.

The petition does not request use of luminescent zinc sulfide in the area of the eye, and therefore, contains no data to support the use of luminescent zinc sulfide applied to the area of the eye. Therefore, the agency is not including eye area use of luminescent zinc sulfide in new § 73.2995. However, because the probable use of facial makeup preparations would include use on children's faces at Halloween, the agency is concerned about the potential for the inappropriate use of these preparations in the area of the eye. Therefore, new § 73.2995(d)(2) requires the following statement on the product label: ''Do not use in the area of the eye.''

IV. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the proposed use of luminescent zinc sulfide as a color additive in nail polishes and specialized facial makeup preparations is safe, the additive will achieve its intended technical effect, and therefore, part 73 should be amended as set forth below. In addition, based upon the factors listed in 21 CFR 71.20(b), the agency concludes that certification of luminescent zinc sulfide is not necessary for the protection of the public health.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 7C0251 (62 FR 52136, October 6, 1997). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by September 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. References

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

1. Murayama, Y., ''Luminous Paints,'' in S. Shionoya, and W. M. Yen, editors, *Phosphor Handbook*, pp. 651, 655–656, CRC Press, Boca Raton, FL, 1999.

2. Yourick, J. J., memorandum entitled ''Review of Toxicology Studies Contained in CAP7C0251, Use of Zinc Sulfide as a Color Additive in Cosmetics'' from the Cosmetics Toxicology Branch (HFS–128) to Aydin O–AE4rstan, Direct Additives Branch (HFS–215), Center for Food Safety and Applied Nutrition, FDA, March 14, 2000.

List of Subjects in 21 CFR Part 73

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.2995 is added to subpart C to read as follows:

§ 73.2995 Luminescent zinc sulfide.

(a) *Identity*. The color additive luminescent zinc sulfide is zinc sulfide containing a copper activator. Following excitation by daylight or a suitable artificial light, luminescent zinc sulfide produces a yellow-green phosphorescence with a maximum at 530 nanometers.

(b) *Specifications*. Luminescent zinc sulfide shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Zinc sulfide, not less than 99.8 percent.
Copper, $100_{\pm}5$ parts per million.
Lead, not more than 20 parts per million.
Arsenic, not more than 3 parts per million.
Mercury, not more than 1 part per million.
Cadmium, not more than 15 parts per million.

(c) *Uses and restrictions*. The color additive luminescent zinc sulfide may be safely used for coloring externally applied facial makeup preparations (included under § 720.4(c)(7)(ix) and (c)(8)(v) of this chapter) subject to the following restrictions:

(1) The amount of luminescent zinc sulfide in facial makeup preparations shall not exceed 10 percent by weight of the final product.

(2) Facial makeup preparations containing luminescent zinc sulfide are intended for use only on limited, infrequent occasions, e.g., Halloween, and not for regular or daily use.

(d) *Labeling requirements*. (1) The label of the color additive and any mixtures prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The label of a facial makeup preparation containing the color additive shall bear, in addition to other information required by the law, the following statement conspicuously displayed:

Do not use in the area of the eye.

(e) *Exemption from certification*. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: August 1, 2000.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–19952 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 00F–0119]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Calcium Disodium EDTA and Disodium EDTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of calcium disodium EDTA (ethylenediaminetetraacetate) or disodium EDTA to promote color retention for all edible types of cooked, canned legumes. This action is in response to a petition filed by the National Food Processors Association.

DATES: This rule is effective August 8, 2000. Submit written objections and requests for a hearing by September 7, 2000.

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

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3042.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of January 20, 2000 (65 FR

3242), FDA announced that a food additive petition (FAP 0A4709) had been filed by the National Food Processors Association, 1350 I St. NW., suite 300, Washington, DC 20005. The petition proposed to amend the food additive regulations in §§ 172.120 *Calcium Disodium EDTA* (21 CFR 172.120) and 172.135 *Disodium EDTA* (21 CFR 172.135) to provide for the safe use of calcium disodium EDTA or disodium EDTA to promote color retention for all edible types of cooked, canned legumes.

A review of the petition establishes that the petition proposes the use of 365 parts per million (ppm) of calcium disodium EDTA or 165 ppm disodium EDTA in all cooked, canned legumes, other than those cooked, canned legumes currently listed in § 172.120 or § 172.135. FDA has determined that consumer exposure to calcium disodium EDTA and disodium EDTA will not increase from the proposed use (Ref. 1). The agency notes that consumption of cooked, canned legumes is substitutional, *i.e.,* the consumer will generally eat one type of cooked, canned legume or another at any given time and not increase the overall consumption of cooked, canned legumes. Additionally, the agency expects that no more of the additive will be used than necessary, up to a maximum of 365 ppm for calcium disodium EDTA and up to a maximum of 165 ppm disodium EDTA, to achieve the intended technical effect of promoting color retention in cooked, canned legumes.

II. Conclusions

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additives is safe, that the additives will achieve their intended technical effect, and therefore, that the regulations in §§ 172.120 and 172.135 should be amended as set forth below.

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

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this rule as announced in the notice of filing for FAP 0A4709. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by September 7, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Reference

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

1. Memorandum from M. DiNovi, Division of Product Manufacture and Use, FDA, to M. LaVecchia, Division of Petition Control, FDA, February 8, 2000.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.120 is amended in the table in paragraph (b)(1) by removing the entry for ''Fava beans (cooked canned)'', and by alphabetically adding an entry for ''Legumes (all cooked canned, other than dried lima beans, pink beans, and red beans)'' to read as follows:

§ 172.120 Calcium disodium EDTA.

* * * * *

(b) * * *

(1) * * *

Food	Limitation (parts per million)	Use
* * * * * * *		
Legumes (all cooked canned, other than dried lima beans, pink beans, and red beans).	365	Promote color retention.
* * * * * * *		

* * * * *

3. Section 172.135 is amended in the table in paragraph (b)(1) by removing the entry for ''Canned cooked chickpeas'' and by alphabetically adding an entry for ''Legumes (all cooked canned, other than black-eyed peas)'' to read as follows:

§ 172.135 Disodium EDTA.

* * * * *

(b) * * *

(1) * * *

Food	Limitation (parts per million)	Use
* * * * * * *		
Legumes (all cooked canned, other than black-eyed peas).	165	Promote color retention.
* * * * * * *		

* * * * *

Dated: July 19, 2000.

L. Robert Lake,

Director for Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–19990 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8884]

RIN 1545–AV88

Consolidated Returns-Limitations on the Use of Certain Credits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Thursday, May 25, 2000 (65 FR 33753) relating to consolidated returns-limitations on the use of certain credits.

DATES: This correction is effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Marie C. Milnes-Vasquez (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8884), that were the subject of FR Doc. 00–11901, is corrected as follows:

§ 1.1502–3 [Corrected]

On page 33758, column 1, § 1.1502–3(d)(5), paragraph (iv) of the *Example*, line 6 from the bottom of the paragraph, the language ''contributions to the consolidated section'' is corrected to read ''contribution to the consolidated section''.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–19944 Filed 8–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Pardon Attorney

28 CFR Part 1

[AG ORDER No. 2317–2000]

Rules Governing Petitions for Executive Clemency: Capital Cases

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule supplements the existing regulations on executive clemency to provide specific procedures to be used in seeking clemency by persons sentenced to death by a United States District Court for an offense against the United States. This rule sets forth a deadline for filing a clemency request in a capital case and the general procedures the Department will follow in processing the request. These procedures also provide an opportunity

for defendants' counsel and victims' families each to make an oral presentation to the Pardon Attorney, if they wish to do so.

DATES: This rule is effective August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Susan M. Kuzma, Deputy Pardon Attorney, U.S. Department of Justice, Washington, DC 20530, telephone (202) 616–6070.

SUPPLEMENTARY INFORMATION:

Background

The current clemency regulations, set forth in 28 CFR 1.1 to 1.10, do not prescribe procedures uniquely applicable to capital cases. In order to provide clear notice to capital defendants, their attorneys, and the public of the procedures by which requests for reprieve or commutation of a death sentence imposed by a United States District Court will be handled, the Department of Justice, with the President's approval, now promulgates specific procedures to be followed in capital cases. These procedures are intended to supplement the already existing clemency procedures for non-capital cases. As is true of the existing clemency regulations, the procedures for capital cases are advisory only, do not bind the President, and confer no rights on petitioners for clemency or any other person.

Section-by-Section Discussion

Section 1.10 Procedures Applicable to Prisoners Under a Sentence of Death Imposed by a United States District Court

Paragraph (a) of the new regulation provides that clemency in the form of reprieve or commutation of a death sentence imposed by a United States District Court shall be requested by the person under the sentence of death or by the person's attorney acting with the person's written and signed authorization.

Paragraph (b) addresses issues related to the timing of a clemency petition. The rule provides for a petitioner to exhaust the direct appeal and first petition under 28 U.S.C. 2255 before seeking executive clemency, and to file a petition for commutation of sentence no later than 30 days after receiving notice from the Bureau of Prisons of the scheduled date of execution. It further provides that any papers in support of the clemency petition should be filed no later than 15 days after the petition is filed, and may be excluded from consideration if not filed within that time.

Because clemency is a remedy of last resort, a capital defendant should file his clemency petition only after the predictably available judicial proceedings concerning the case (the appeal of the conviction and sentence and the first petition under 28 U.S.C. 2255) are terminated. At the same time, because of the possible difficulty and complexity of determining whether further judicial avenues of relief (such as a successive petition under 28 U.S.C. 2255) are legally possible, the setting of an execution date should proceed once the generally available remedies have been pursued. Accordingly, once an execution date has been set (which, in the case of an execution date set by the Bureau of Prisons, will normally occur no later than 60 days after the termination of proceedings on the defendant's first section 2255 petition, and which will normally provide at least 120 days' notice of the date of execution), the defendant may file a request for reprieve or commutation of sentence and has up to 30 days to request commutation of sentence. The deadlines for filing the commutation petition and supplemental papers are intended to preserve an appropriate amount of time to process and consider a clemency request.

Paragraph (c) formalizes in capital cases a practice of allowing an oral presentation of reasonable duration to be made to the Office of the Pardon Attorney by both the petitioner's counsel and the family of any victim of a petitioner's capital offense.

Paragraph (d) provides that clemency proceedings may be suspended if a court orders a stay of execution for any reason other than to allow completion of the clemency proceeding. In order to facilitate a prompt and final resolution of whether a defendant's death sentence will be carried out, this rule allows a defendant, after the first petition under section 2255 is terminated, to pursue clemency while litigation is pending, but provides for the suspension of the clemency proceedings when a court-ordered stay of execution is entered for a reason other than to permit the clemency proceedings to be completed. The option of suspending the clemency proceedings is consistent with the view of clemency as a remedy of last resort and helps to ensure that in making a decision about clemency, the President acts only upon a current and complete legal and factual record.

Paragraph (e) provides that only one request for commutation of a death sentence will be processed to completion, absent a clear showing of exceptional circumstances. The limitation is designed to encourage the petitioner to raise all claims in a single request and to contribute to a swifter resolution of the case. However, if changed circumstances make it impossible to have raised all claims previously, additional petitions should be permitted.

Section 1.11 Advisory Nature of Regulations

This section is the current section 1.10, renumbered as 1.11, which expressly acknowledges the advisory nature of the clemency regulations in part 1, and provides that the clemency regulations do not limit the President's exercise of his constitutional authority. Renumbering makes clear that this provision applies to the new capital clemency procedures set forth in the newly enacted section applicable in capital cases, as well as to the existing clemency provisions.

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2). Moreover, to the extent that rulemaking procedures would otherwise be applicable, the Department finds that this rule would be exempted from the requirements of prior notice and comment as a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). Similarly, the effective date of this rule need not be delayed for 30 days after publication because the rule is not a ''substantive rule.'' *See* 5 U.S.C. 553(d).

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly it has not 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 Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

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 the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

As a rule relating to agency management or personnel, this rule is also therefore excluded from the scope of a covered ''rule'' for the purposes of Chapter 8 of Title 5, United States Code. *See* 5 U.S.C. 804(3)(B). Moreover, to the extent that this rule would be considered to be a rule of agency organization, procedure, or practice, it is excluded from the scope of a covered ''rule'' pursuant to 5 U.S.C. 804(3)(C).

Accordingly, because this action is not a covered ''rule,'' it is exempt from the requirement for the Department to submit a report to each House of Congress and the Comptroller General before this rule can take effect as provided in 5 U.S.C. 801(a)(1).

List of Subjects in 28 CFR Part 1

Clemency, Pardon.

With the approval of the President, acting in conformity with his authority as Chief Executive and with Article II, Section 2 of the United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 1 of chapter I of title 28 of the Code of Federal Regulations is amended to read as follows:

PART 1—EXECUTIVE CLEMENCY

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

Authority: U.S. Const., Art. II, sec. 2; authority of the President as Chief Executive; and 28 U.S.C. 509, 510.

§ 1.10 [Redesignated as § 1.11]

2. Part 1 is amended by redesignating § 1.10 as § 1.11.

3. Part 1 is further amended by adding a new § 1.10 to read as follows:

§ 1.10 Procedures applicable to prisoners under a sentence of death imposed by a United States District Court.

The following procedures shall apply with respect to any request for clemency by a person under a sentence of death imposed by a United States District Court for an offense against the United States. Other provisions set forth in this part shall also apply to the extent they are not inconsistent with this section.

(a) Clemency in the form of reprieve or commutation of a death sentence imposed by a United States District Court shall be requested by the person under the sentence of death or by the person's attorney acting with the person's written and signed authorization.

(b) No petition for reprieve or commutation of a death sentence should be filed before proceedings on the petitioner's direct appeal of the judgment of conviction and first petition under 28 U.S.C. 2255 have terminated. A petition for commutation of sentence should be filed no later than 30 days after the petitioner has received notification from the Bureau of Prisons of the scheduled date of execution. All papers in support of a petition for commutation of sentence should be filed no later than 15 days after the filing of the petition itself. Papers filed by the petitioner more than 15 days after the commutation petition has been filed may be excluded from consideration.

(c) The petitioner's clemency counsel may request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney in support of the clemency petition. The presentation should be requested at the time the clemency petition is filed. The family or families of any victim of an offense for which the petitioner was sentenced to death may, with the assistance of the prosecuting office, request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney.

(d) Clemency proceedings may be suspended if a court orders a stay of execution for any reason other than to allow completion of the clemency proceeding.

(e) Only one request for commutation of a death sentence will be processed to completion, absent a clear showing of exceptional circumstances.

(f) The provisions of this § 1.10 apply to any person under a sentence of death imposed by a United States District Court for whom an execution date is set on or after August 1, 2000.

Dated: August 1, 2000.

Janet Reno,

Attorney General.

Approved: August 2, 2000.

William J. Clinton,

President.

[FR Doc. 00–19973 Filed 8–7–00; 8:45 am]

BILLING CODE 4410–29–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–189]

RIN 2115–AA97

Safety and Security Zones: Presidential Visit, Martha's Vineyard, MA

AGENCY: Coast Guard, DOT

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones, with identical boundaries, off the south shore of Martha's Vineyard, Massachusetts, during the President of the United States' visit to Martha's Vineyard, Massachusetts. The security zone is needed to safeguard the public, the area adjoining the Friedman residence and the President and his family from sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety zone is needed to protect the public. Entry into these zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

DATES: This rule is effective from 6 a.m., Tuesday, August 1, 2000, to 12 midnight on Tuesday, August 8, 2000.

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

FOR FURTHER INFORMATION CONTACT: LT David C. Barata at Marine Safety Office Providence, (401) 435–2335.

SUPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less then 30 days after **Federal Register** publication. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the President, the public and the area adjoining the Friedman residence.

Background and Purpose

From August 1, 2000, to August 8, 2000, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, he and his family will reside at the Friedman residence, which is located on Oyster Pond, just inland of the south shore of Martha's Vineyard. The safety and security zones are needed to protect the President and the public from harmful or subversive acts in the vicinity of the Friedman residence. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer, will be prohibited from these zones. The zones encompass a rectangular area of water extending approximately one-half mile along the beach and 500 yards out into the water. The safety and security zones will be marked by buoys. The public will be made aware of these safety zones through a Broadcast Notice to Mariners made from U.S. Coast Guard Group Woods Hole.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The sizes of the zones are the minimum necessary to provide adequate protection of the President. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. Commercial vessels do not normally transit the area of the safety and security zones. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the President and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this proposal will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit along the south shore of Martha's Vineyard from August 1, 2000 to August 8, 2000. The safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the area and commercial vessels do not normally transit the area. Vessels engaged in recreational activities and sightseeing have ample space outside of the safety and security zones to engage in these activities. Before the effective period, we will issue maritime advisories widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT David Barata, telephone (401) 435–2335.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates

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

Taking Of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C,

this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T00–189 to read as follows:

§ 165.T00–189 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.

(a) *Location.* The following area has been declared both a safety zone and a security zone: From a point beginning on land at Latitude 41 degrees 20′ 54″ N, Longitude 070 degrees 36′ 34″ W; thence eastward along the shoreline to a point on land at Latitude 41 degrees 20′ 57″ N, Longitude 070 degrees 35′ 45″ W; thence south 500 yards to an offshore point at Latitude 41 degrees 20′ 42″ N, Longitude 070 degrees 35′ 47″ W; thence west to an offshore point at Latitude 41 degrees 20′ 42″ N, Longitude 070 degrees 36′ 30″ W; thence north to the beginning point. The aforementioned offshore points will be marked by buoys indicating the safety and security zones.

(b) *Effective date.* This rule is effective from 6 a.m. on Tuesday, August 1, 2000, until 12 midnight on Tuesday, August 8, 2000.

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the COTP Providence or the Coast Guard Presidential Security Detail Senior Duty Officer.

(2) No person may swim upon or below the surface of the water within the boundaries of these security and safety zones.

(3) All persons and vessels shall comply with the instructions of the COTP, the Coast Guard Presidential Security Detail Senior Duty Officer, or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The general regulations covering safety and security zones in §§ 165.23 and 165.33, respectively, of this part apply.

Dated: July 27, 2000.

Mark G. Vanhaverbeke,

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

[FR Doc. 00–20116 Filed 8–4–00; 12:50 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–190]

RIN 2115–AA97

Safety and Security Zones: Presidential Visit, Martha's Vineyard, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones, with identical boundaries, around the President of the United States during his vacation on Martha's Vineyard, Massachusetts. The security zone is needed to safeguard the public, the President and adjoining areas from sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety zone is needed to protect the public. Entry into these zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

DATES: This rule is effective from 6 a.m., Tuesday, August 1, 2000, until 12 midnight on Tuesday, August 8, 2000.

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

FOR FURTHER INFORMATION CONTACT: LT David C. Barata at Marine Safety Office Providence, (401) 435–2335.

SUPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the President, the public and adjoining areas.

Background and Purpose

From August 1, 2000, to August 8, 2000, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, the President may participate in a variety of activities including boating or fishing trips, swimming, jogs along the beach, dinners at waterfront restaurants, and golfing, all of which will place him on or in close proximity to the navigable waters of the United States. This temporary rule establishes moving safety and security zones around the President extending 500 yards in all directions. The zones will be activated when the President is on or near the waters of the United States. The zones are needed for the safety and security of the President and to protect the public and adjacent areas from sabotage or other subversive acts, accidents, or other causes of a similar nature.

It is not possible to predict the President's exact movements on Martha's Vineyard. Accordingly, the Coast Guard Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer will activate the safety and security zones when necessary. Notice of the exact location of the safety and security zones will be given via loud hailer, channels 16 and 22 VHF, or through Safety Maine Information Broadcasts, as appropriate. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer, will be prohibited from these zones. The activation and enforcement of these zones will be coordinated with the Secret Service pursuant to their authority under 18 U.S.C. 3056.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040;

February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The sizes of the zones are the minimum necessary to provide adequate protection of the President. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. If the President is onboard a vessel, the zones may impact ferries or other commercial vessels. In order not to place undue hardships on these vessels and their passengers, provided there is adequate protection for the President and the public, vessels may be allowed to transit through the zones. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the President and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT David Barata, telephone (401) 435–2335.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

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

List of Subjects in CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T00–190 to read as follows:

§ 165.T00–190 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.

(a) *Location.* The following area is a moving safety zone and a security zone: A five hundred (500) yard radius around the President of the United States at all times designated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer.

(b) *Effective date.* This rule is effective from 6 a.m. on Tuesday, August 1, 2000, until 12 midnight on Tuesday, August 8, 2000. The security and safety zones established by this regulation will be activated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer as necessary to protect the President and the public. As appropriate, notice of the activation of these zones may be made via loud hailer, Channels 16 and 22 VHF, or through Safety Marine Information Broadcasts.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the COTP Providence or the Coast Guard Presidential Security Detail Senior Duty Officer.

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

(3) The general regulations covering safety and security zones in section §§ 165.23 and 165.33, respectively, of this part apply.

Dated: July 27, 2000.

Mark G. Vanhaverbeke,

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

[FR Doc. 00–20126 Filed 8–4–00; 3:08 pm]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) Claimed at DBMC Rates

AGENCY: Postal Service.

ACTION: Amended final rule.

SUMMARY: On May 19, 2000, the Postal Service published in the **Federal Register** (65 FR 31815) a final rule setting forth Domestic Mail Manual (DMM) standards adopted by the Postal Service requiring mailers to utilize one Labeling List (L605) for palletized mailings of Standard Mail (A) packages of flats, letter trays, and sacks prepared on pallets, regardless of whether the mail is prepared for entry at destination bulk mail center (DBMC) rates; to require mailers to utilize Labeling List L605 for Standard Mail (A) and Standard Mail (B) machinable parcels prepared in sacks or on pallets for pieces claimed at DBMC rates; to implement package reallocation between auxiliary service facilities (ASFs) and BMCs for Standard Mail (A) packages of flats placed on pallets; and to utilize Labeling List L605 for the preparation of all Standard Mail (B) that is claimed at DBMC rates and for Bound Printed Matter other than machinable parcels prepared on pallets.

This document amends the final rule by requiring mailers to utilize revised Labeling List L602—ASFs and Labeling List L601—Bulk Mail Centers instead of L605 for palletized mailings of Standard Mail (A) and Bound Printed Matter packages of flats, letter trays (Standard Mail (A) only), and sacks prepared on pallets, regardless of whether the mail is prepared for entry at DBMC rates. Labeling Lists L601 and L602 will be used together for Standard Mail (A) and Standard Mail (B) machinable parcels prepared in sacks or on pallets when DBMC rates are claimed for mail deposited at both ASFs and BMCs. Only Labeling List L601 will be used to prepare machinable parcels when no mail for ASFs is claimed at DBMC rates.

DATES: *Effective Date:* December 15, 2000.

Implementation Date: It is anticipated that the implementation of the rates resulting from the R2000–1 rate case will be sometime in early January 2001. Compliance with this rule will be required on the date that coincides with implementation of the rates resulting from the R2000–1 rate case, and notice of that implementation date will be published in the **Federal Register**. Until such notice is published, compliance with this rule is optional beginning on December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Karen A. Magazino, (202) 268–3854 or Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: On May 19, 2000, the Postal Service published a final rule (65 FR 31815) that required mailers to use Labeling List L605 for all Standard Mail (A) flats, letter trays, and sacks prepared on pallets regardless of whether DBMC rates are claimed. This amended final rule will instead require mailers to use revised Labeling List L602—ASFs when there is sufficient volume to create an ASF pallet, and Labeling List L601—Bulk Mail Centers when there is not sufficient volume for an ASF pallet to be prepared.

This will ensure that the eight ASFs always are included in presort logic hierarchy and that ASF pallets are prepared when the volume warrants and will also prevent mail for an ASF and/or its parent BMC service area from falling to sacks. For trays and sacks on pallets it will also prevent mail from falling to a mixed BMC pallet when there is sufficient volume to prepare a DBMC pallet using Labeling List L601 although the volume does not warrant a separate ASF pallet.

Using L601 and L602 together will benefit the Postal Service and mailers by reducing the volume of sacked mail likely to be deposited at origin. It will also provide more opportunities for mailers to create ASF and BMC pallets that can be drop shipped or cross-docked to destination entry facilities, including BMC pallets that contain mail for offshore ZIP Codes, because L601 includes those ZIP Codes within their respective BMC service areas.

As noted in 65 FR 31815 (May 19, 2000), mail for offshore ZIP Codes and for ASF ZIP Codes prepared on destination BMC pallets using L601 will continue to be ineligible for DBMC rates.

Utilization of Labeling Lists L601 and Revised L602 for Preparation of Standard Mail (A)

If mailers were to use Labeling List L605, as provided in the original final rule, when there is not sufficient volume to warrant creation of an ASF pallet, then packages of Standard Mail (A) flats for the ASF would be required to be prepared in sacks. Trays or sacks would fall to mixed BMC pallets. In addition, if mailers were to use L605 when there is insufficient volume to prepare an ASF pallet or a separate pallet for the parent BMC, then packages of flats will fall to sacks, and trays and sacks will fall to mixed BMC pallets, even if there is sufficient volume to create a DBMC pallet by combining the mail for the ASF and the parent BMC. This would occur because the ASF service area ZIP Codes are not included with the parent BMC service areas on Labeling List L605 as they are on Labeling List L601.

Upon further review of the standards prescribed in the original final rule, the Postal Service, presort software vendors, and mailers who are members of the MTAC Presort Optimization Work Group that originally proposed these changes agreed that the standards would not be optimal. It was agreed that the original intent was to create ASF pallets when volume warranted and to allow mailers to place offshore mail with mail for the parent BMC. Using revised Labeling List L602, which includes only the ASFs, in conjunction with Labeling List L601 will ensure that this outcome is fully realized and will have the added benefit of keeping packages of flats from falling to sacks and sacks and trays from falling to mixed BMC pallets when volume warrants.

The following are examples of outcomes that would result from using Labeling List L605, as prescribed in the original final rule:

(1) A mailing contains 220 pounds of mail for the Buffalo ASF service area and 300 pounds for the Pittsburgh BMC service area. All mail would fall to sacks if presort software parameters are set at the required minimum pallet weight of 500 pounds.

(2) A mailing includes 50 pounds of mail for the Buffalo ASF service area and 600 pounds for the Pittsburgh BMC service area. A Pittsburgh BMC pallet would be prepared, but the Buffalo mail would fall to sacks.

(3) A mailing contains 700 pounds of mail for Buffalo ASF and 200 pounds for Pittsburgh BMC. A Buffalo ASF pallet would be prepared and the Pittsburgh mail would fall to sacks.

In lieu of using Labeling List L605, and instead using Labeling Lists L602 (revised) and L601 together, as set forth in this amended final rule, all mail in examples (1) and (2) above will be prepared on a destination BMC Pittsburgh pallet and no mail will be prepared in sacks. This will provide

mailers with greater opportunities to drop ship pallets to destination BMCs and move mail for ASF service areas closer to its destination, even though the mail for the ASF service area would not be entitled to the DBMC rates. Mailers would be unlikely to drop ship this mail if it were sacked. This will also allow the Postal Service to cross-dock pallets that are not drop shipped and avoid additional sack handlings. In example (3) above, when using L602 and L601, the ASF pallet will still be prepared and the mail for the BMC will fall to sacks unless the mailer chose to use package reallocation to protect the BMC pallet. Using package reallocation with the pallet minimum set at 500 pounds, the ASF pallet would be eliminated and the ASF mail would be placed on a destination BMC pallet with other mail for the BMC service area (mail for the ASF ZIP Codes would be ineligible for DBMC rates).

Labeling List L601 will continue to be applicable for Standard Mail (A) machinable parcels, except that revised Labeling List L602 will be used when DBMC rates are claimed for machinable parcels deposited at ASFs.

The ZIP Code ranges for DBMC rate eligibility, currently in Labeling List L602, will appear instead in DMM Module E as prescribed in the original final rule.

Standard Mail (A) Package Reallocation To Protect the BMC Pallet

This amended final rule does not change the standards in 65 FR 31815 (May 19, 2000) that allow mailers to choose to reallocate packages from the ASF pallet to protect mail for the parent BMC service area using the parent-child table in DMM M045, Exhibit 6.1 and PAVE-certified presort software.

Preparation of Standard Mail (B)

This amended final rule also changes the standards contained in 65 FR 31815 (May 19, 2000) for palletized Bound Printed Matter. Bound Printed Matter will be prepared using L601 and revised L602 together instead of L605 for sortation of packages of flats and sacks to both BMC and ASF pallets. L601 will continue to be used for sortation of Bound Printed Matter machinable parcels both in sacks and on pallets.

For Parcel Post (Parcel Select) machinable parcels, mailers claiming the DBMC rates may continue the current practice of opting to sort mail using L601 (BMC sortation only) under the condition that mail for 3-digit ZIP Codes served by an ASF in Exhibit E652.1.3d is not eligible for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit E652.1.3d. Revised L602 must be used when Parcel Select mail for an ASF is claimed at the DBMC rates.

L605 will continue to be used for BMC Presort and OBMC Presort mailings of nonmachinable Parcel Post as stated in the original final rule. L605 delineates the ASF service areas and also includes the ZIP Codes for the offshore destinations within their respective BMC service areas. L601 will continue to be required for machinable parcels claiming BMC Presort and OBMC Presort rates.

This amended final rule, published below in its entirety for ease of use, affects only the following DMM sections published in 65 FR 31815 (May 22, 2000): E651.5.5a; E652.1.1a; E652.1.3a; L601 (heading and introductory paragraph revised); current L602 (this list was deleted in 65 FR 31815 (May 22, 2000)) (heading, introductory paragraph, and contents revised); L605 (heading revised, introductory paragraph deleted); M011.1.2n; M045.4.1e; M045.4.2b and c; M073.1.6a (2) and (3); M610.5.2b and c; and M630.6.2b and c.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c) regarding proposed rulemaking by 39 U.S.C. 410(c), the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

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

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

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

Domestic Mail Manual (DMM)

E ELIGIBILITY

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

5.0 DBMC DISCOUNT

(Amend 5.1 by replacing ''L602'' with ''E651.5.0 Exhibit 5.1'' to read as follows:)

5.1 Definition

For this standard, destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASFs) as shown in Exhibit 5.1.

(Add new Exhibit 5.1.)

Exhibit 5.1 BMC/ASF—DBMC RATES

Eligible destination ZIP Codes	Entry facility
005, 068–079, 085–098, 100–119, 124–127, 340	BMC NEW JERSEY NJ 00102
010–067, 120–123, 128, 129	BMC SPRINGFIELD MA 05500
130–136, 140–149	ASF BUFFALO NY 140
150–168, 260–266, 439–447	BMC PITTSBURGH PA 15195
080–084, 137–139, 169–199	BMC PHILADELPHIA PA 19205
200–212, 214–239, 244, 254, 267, 268	BMC WASHINGTON DC 20499
240–243, 245–249, 270–297, 376	BMC GREENSBORO NC 27075
298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399	BMC ATLANTA GA 31195
299, 313–316, 320–339, 341, 342, 344, 346, 347, 349	BMC JACKSONVILLE FL 32099
369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729	BMC MEMPHIS TN 38999
250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474	BMC CINCINNATI OH 45900
434–436, 465–468, 480–497	BMC DETROIT MI 48399
500–516, 520–528, 612, 680, 681, 683–689	BMC DES MOINES IA 50999
498, 499, 540–551, 553–564, 566	BMC MPLS/ST PAUL MN 55202
570–577	ASF SIOUX FALLS SD 570
565, 567, 580–588	ASF FARGO ND 580
590–599, 821	ASF BILLINGS MT 590
463, 464, 530–532, 534, 535, 537–539, 600–611, 613	BMC CHICAGO IL 60808

Eligible destination ZIP Codes	Entry facility
420, 423, 424, 475–479, 614–620, 622–631, 633–639	BMC ST LOUIS MO 63299
640, 641, 644–658, 660–662, 664–679, 739	BMC KANSAS CITY KS 64399
730, 731, 734–738, 740, 741, 743–746, 748, 749	ASF OKLAHOMA CITY OK 730
706, 710–712, 718, 733, 747, 750–799, 885	BMC DALLAS TX 75199
690–693, 800–816, 820, 822–831	BMC DENVER CO 80088
832–834, 836, 837, 840–847, 898, 979	ASF SALT LAKE CTY UT 840
850, 852, 853, 855–857, 859, 860, 863, 864	ASF PHOENIX AZ 852
865, 870–875, 877–884	ASF ALBUQUERQUE NM 870
889–891, 893, 900–908, 910–928, 930–935	BMC LOS ANGELES CA 90901
894, 895, 897, 936–966	BMC SAN FRANCISCO CA 94850
835, 838, 970–978, 980–986, 988–994	BMC SEATTLE WA 98000

(Delete current 5.2 and 5.3 and replace with new 5.2 through 5.5. Redesignate current 5.4 and 5.5 as 5.6 and 5.7.)

5.2 General Eligibility

Pieces in a mailing that meet the standards in 1.0 through 5.0 are eligible for the DBMC rate when they meet all of the following conditions: (1) Are deposited at a BMC or ASF; (2) are addressed for delivery to one of the 3-digit ZIP Codes served by the BMC or ASF where deposited that are listed in Exhibit 5.1; and (3) are placed in a tray, sack, or pallet (subject to the standards for the rate claimed) that is labeled to the BMC or ASF where deposited, or labeled to a postal facility within that BMC's or ASF's service area (see Exhibit 5.1). If packages of flats on pallets are reallocated from an ASF pallet to a BMC pallet under M045.6.0, mail for the ASF ZIP Codes placed on the BMC pallet is not eligible for the DBMC rates. DBMC rate mail must also be eligible for Presorted, automation, or Enhanced Carrier Route rates, subject to the corresponding standards for those rates.

5.3 Eligibility for ADC or AADC Sortation

All pieces in an ADC sack or tray or AADC tray are eligible for the DBMC discount if the ADC or AADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the BMC or ASF as shown in Exhibit 5.1 at which the sack or tray is deposited. All pieces in a palletized ADC package or bundle are eligible for the DBMC discount if the ADC facility that is the destination of the package or bundle (determined by using the label to ZIP Code in Column B of L004) is within the service area of the BMC or ASF as shown in Exhibit 5.1 at which it is deposited.

5.4 Eligibility in Mixed ADC Sacks or Trays or Mixed AADC Trays

Mail in mixed ADC or mixed AADC sacks or trays qualify for the DBMC rates only if all the pieces in the sack or tray are for the service area of the DBMC or DASF as shown in Exhibit 5.1. Mailers who opt to claim the DBMC rates for mail in mixed ADC Sacks or trays or mixed AADC trays must prepare separate Mixed ADC sacks or trays or Mixed AADC trays for pieces eligible for and claimed at the DBMC rate and for pieces not claimed at the DBMC rate. Otherwise applicable restrictions (e.g., minimum volume, number of less-than-full trays) are excepted when necessary to comply with this standard.

5.5 Additional Standards for Machinable Parcels

a. *Destination BMC/ASF Containers.* Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. When machinable parcels are sorted to both destination BMCs and ASFs under L601 and L602, they qualify for DBMC rates under 5.2. Sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. Mailers may opt to sort some or all machinable parcels for ASF service area ZIP Codes to ASFs *only* when the mail will be deposited at the respective ASFs where the DBMC rate is claimed, under applicable volume standards, using L602, otherwise mailers must sort machinable parcels only to destination BMCs under L601. If machinable parcels are sorted under L601, only mail for 3-digit ZIP Codes served by a BMC as listed in Exhibit E651.5.1 are eligible for DBMC rates (i.e., mail for 3-digit ZIP Codes served by an ASF in Exhibit 5.1 is not eligible for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit 5.1).

b. *Mixed BMC Containers.* Pieces in mixed BMC sacks or on mixed BMC pallets that are sorted to the origin BMC under M045 or M610 are eligible for the DBMC rates if both of the following conditions are met: (1) The mixed BMC sack or pallet is entered at the origin BMC facility to which it is labeled; and (2) the pieces are for 3-digit ZIP Codes listed as eligible destination ZIP Codes for that BMC in Exhibit 5.1.

* * * * *

E652 Parcel Post

1.0 BASIC STANDARDS

1.1 Definitions

* * * * *

(Amend 1.1a to include a reference to L601 to read as follows:)

a. A destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASFs) under L601 and L602, and designated sectional center facilities (SCFs) under 5.0.

* * * * *

1.2 General

(Revise 1.2 to read as follows:)

For Parcel Post mailings claimed at DBMC, DSCF, or DDU rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following criteria:

a. May be bedloaded, on pallets, in pallet boxes on pallets, in sacks, or in other authorized containers as specified in 2.0 through 6.0, depending on the facility at which the pieces are deposited.

b. Is not plant-loaded.

c. Be part of a single mailing of 50 or more pieces that are eligible for and claimed at any Parcel Post rate or rates.

d. Be deposited at a destination BMC (DBMC) or destination auxiliary service facility (DASF) or other equivalent facility; destination sectional center (DSCF); or destination delivery unit (DDU) as applicable for the rate claimed and as specified by the USPS.

e. Be addressed for delivery within the ZIP Code ranges that the applicable entry facility serves.

(Revise 1.3 to read as follows:)

1.3 DBMC Rates

For DBMC rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following:

a. Pieces must be part of a Parcel Post mailing that is deposited at a BMC or ASF under L601 or L602.

b. Pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

c. Pieces must be within a ZIP Code eligible for DBMC rates under Exhibit 1.3, and if sacked or palletized must be prepared in accordance with M041 and M045 or M630. Mail meeting the additional criteria in 4.0 may be deposited at a designated facility other than the BMC or ASF where the DBMC parcels would otherwise be deposited.

(Add new Exhibit 1.3.)

(Redesignate 1.3 (e) and (f) as 1.4 (a) and (b).)

Exhibit 1.3 BMC/ASF—DBMC RATE ELIGIBILITY

Eligible destination ZIP Codes	Entry facility
005, 068–079, 085–098, 100–119, 124–127, 340	BMC NEW JERSEY NJ 00102
010–067, 120–123, 128, 129	BMC SPRINGFIELD MA 05500
130–136, 140–149	ASF BUFFALO NY 140
150–168, 260–266, 439–447	BMC PITTSBURGH PA 15195
080–084, 137–139, 169–199	BMC PHILADELPHIA PA 19205
200–212, 214–239, 244, 254, 267, 268	BMC WASHINGTON DC 20499
240–243, 245–249, 270–297, 376	BMC GREENSBORO NC 27075
298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399	BMC ATLANTA GA 31195
299, 313–316, 320–339, 341, 342, 344, 346, 347, 349	BMC JACKSONVILLE FL 32099
369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729	BMC MEMPHIS TN 38999
250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474	BMC CINCINNATI OH 45900
434–436, 465–468, 480–497	BMC DETROIT MI 48399
500–516, 520–528, 612, 680, 681, 683–689	BMC DES MOINES IA 50999
498, 499, 540–551, 553–564, 566	BMC MPLS/ST PAUL MN 55202
570–577	ASF SIOUX FALLS SD 570
565, 567, 580–588	ASF FARGO ND 580
590–599, 821	ASF BILLINGS MT 590
463, 464, 530–532, 534, 535, 537–539, 600–611, 613	BMC CHICAGO IL 60808
420, 423, 424, 475–479, 614–620, 622–631, 633–639	BMC ST LOUIS MO 63299
640, 641, 644–658, 660–662, 664–679, 739	BMC KANSAS CITY KS 64399
730, 731, 734–738, 740, 741, 743–746, 748, 749	ASF OKLAHOMA CITY OK 730
706, 710–712, 718, 733, 747, 750–799, 885	BMC DALLAS TX 75199
690–693, 800–816, 820, 822–831	BMC DENVER CO 80088
832–834, 836, 837, 840–847, 898, 979	ASF SALT LAKE CTY UT 840
850, 852, 853, 855–857, 859, 860, 863, 864	ASF PHOENIX AZ 852
865, 870–875, 877–884	ASF ALBUQUERQUE NM 870
889–891, 893, 900–908, 910–928, 930–935	BMC LOS ANGELES CA 90901
894, 895, 897, 936–966	BMC SAN FRANCISCO CA 94850
835, 838, 970–978, 980–986, 988–994	BMC SEATTLE WA 98000

(Redesignate 1.4 through 1.5 as 1.5 through 1.6 and insert new number 1.4 to read as follows:)

1.4 DSCF and DDU Rates

For DSCF and DDU rates, pieces must meet the applicable standards in 1.0 through 1.6 and the following criteria:

* * * * *

L LABELING LISTS

L000 General Use

* * * * *

L600 Standard Mail

(Amend the heading of Labeling List 601 by removing ''Machinable Parcels'' to read as follows:)

L601 BMCs

(Revise introductory paragraph to read as follows:)

Use this list for:

(1) Standard Mail (A) machinable parcels except ASF mail prepared and claimed at DBMC rates.

(2) Standard Mail (A) packages, bundles, letter trays, or sacks on pallets.

(3) Bound Printed Matter machinable parcels.

(4) Bound Printed Matter packages of flats or sacks on pallets.

(5) Parcel Post except for ASF mail prepared and claimed at DBMC rates and non-machinable BMC or OBMC presort rate mail.

(6) Presorted Special Standard Mail and Presorted Library Mail to BMC destinations.

* * * * *

(Amend the heading of Labeling List 602 by removing ''BMCs/'' and ''-DBMC Rates''; revise the introductory paragraph; remove BMC Destination ZIP Codes from Column A and BMC ''Label to'' information from Column B, to read as follows:)

L602 ASFs

Use this list for:

(1) Standard Mail (A) machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

(2) Standard Mail (A) packages, bundles, letter trays, or sacks on pallets.

(3) Bound Printed Matter packages or sacks on pallets.

(4) Parcel Post machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

Column A—destination ZIP Codes	Column B—label to
130–136, 140–149	ASF BUFFALO NY 140
570–577	ASF SIOUX FALLS SD 570
565, 567, 580–588	ASF FARGO ND 580
590–599, 821	ASF BILLINGS MT 590
730, 731, 734–738, 740, 741, 743–746, 748, 749	ASF OKLAHOMA CITY OK 730
832–834, 836, 837, 840–847, 898, 979	ASF SALT LAKE CTY UT 840
850, 852, 853, 855–857, 859, 860, 863, 864	ASF PHOENIX AZ 852

Column A—destination ZIP Codes	Column B—label to
865, 870–875, 877–884	ASF ALBUQUERQUE NM 870

* * * * *

(Revise the heading of Labeling List 605 to read as follows:)

L605 BMCs/ASFs—Nonmachinable Parcel Post BMC/OBMC Presort

(Remove the introductory paragraph.)

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.2 Presort Levels

(Amend 1.2 by revising 1.2n to read as follows:)

Terms used for presort levels are defined as follows:

* * * * *

n. ASF/BMC: all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF) or bulk mail center (BMC) (see L601, L602, or L605, as applicable).

* * * * *

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

5.1 Presort

(Amend 5.1 by revising the last two sentences of 5.1 to read as follows:)

* * * The standards for package reallocation to protect the SCF or BMC pallet (M045.5.0 and 6.0) are optional methods of pallet preparation designed to retain as much mail as possible at the SCF or BMC level. These standards may result in some packages of Periodical flats and irregular parcels and Standard Mail (A) flats that are part of a mailing job prepared in part as palletized flats at automation rates not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation (package reallocation is optional, but if performed, it must be done for the complete mailing job).

5.2 Required Preparation

(Amend 5.2a by revising 5.2a to read as follows:)

These standards apply to:

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats and irregular parcels on pallets prepared under the standards for package reallocation to protect the SCF pallet (M045.5), not all mail for a required 5-digit scheme or 5-digit destination is required to be on a 5-digit scheme or 5-digit destination pallet. For packages of Standard mail (A) flats on pallets, not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit/scheme pallet. For packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation to protect the BMC pallet (M045.6.0), not all mail for a required ASF pallet is required to be on an ASF pallet. Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE MAILPIECES

* * * * *

6.4 Standard Mail (A)

(Amend 6.4 by revising the first sentence to read as follows:)

To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently sorted packages from each mailing to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0 or 6.0, using the package reallocation option, may not always result in all packages being placed on the finest pallet level possible .* * *

* * * * *

M045 Palletized Mailings

* * * * *

4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays on Pallets

(Amend 4.1 by revising 4.1e to read as follows:)

Preparation sequence and Line 1 labeling:

* * * * *

e. As appropriate:

(1) Periodicals: ADC: required; for Line 1, use L004.

(2) Standard Mail:

(i) Destination ASF: required, except that an ASF may not be required if using package reallocation used under 6.0. For Line 1 use L602. Exhibit E651.5.1 determines DBMC rate eligibility.

(ii) Destination BMC: required; for Line 1 use L601. Exhibit E651.5.1 determines DBMC rate eligibility.

* * * * *

4.2 Machinable Parcels—Standard Mail

(Amend 4.2 by revising 4.2b and 4.2c to read as follows:)

Preparation sequence and Line 1 labeling:

* * * * *

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate; for Line 1, use L602. Exhibit E651 5.1 or Exhibit E652.1.3 determines DBMC rate eligibility.

c. Destination BMC: required; for Line 1, use L601. Exhibit E651 5.1 or Exhibit E652.1.3 determines DBMC rate eligibility.

* * * * *

(Amend heading of 5.0 by adding ''TO PROTECT SCF PALLET'' to read as follows:)

5.0 PACKAGE REALLOCATION TO PROTECT SCF PALLET FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

5.1 Basic Standards

(Amend 5.1 by revising the first sentence to read as follows:)

Package reallocation to protect the SCF pallet is an optional preparation

method (if performed, package reallocation must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 5.2 through 5.4.* * *

* * * * *

(Redesignate 6.0 through 14.0 as 7.0 through 15.0, respectively; insert new 6.0 to read as follows:)

6.0 PACKAGE REALLOCATION TO PROTECT BMC PALLET FOR STANDARD MAIL (A) FLATS ON PALLETS

6.1 Basic Standards

Package reallocation to protect the BMC pallet level is an optional preparation method (if performed, package reallocation to protect the BMC pallet must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 6.2 through 6.4. The software will determine if mail for a BMC service area would fall beyond the BMC level when ASF pallets are prepared. Reallocation is performed only when there is mail for the BMC service area that would fall beyond the BMC pallet level as a result of an ASF pallet being prepared. The amount of mail required bringing the mail that would fall beyond the BMC pallet level back to a BMC level is the minimum volume that would be reallocated from an ASF pallet, when possible. The following ''parent'' BMCs can be protected with package reallocation by using mail from the ASF ''child'' pallets indicated in Exhibit 6.1

''PARENT'' BMC/''CHILD'' ASF

Exhibit 6.1, ''Parent'' BMC/''Child'' ASF

''Parent'' BMC Service Areas	''Child'' ASF ZIP Code Areas Served
Pittsburgh BMC	Buffalo ASF: 130–136; 140–149.
Denver BMC	Albuquerque ASF: 865, 870–875, 877–884. Phoenix ASF: 850, 852, 853, 855–857, 859, 860, 863, 864. Salt Lake City ASF: 832–834, 836, 837, 840–847, 898, 979. Billings ASF: 590–599, 821.
Dallas BMC	Oklahoma City ASF: 730, 731, 734–738, 740, 741, 743–746, 748, 749.
Des Moines BMC	Sioux Falls ASF: 570–577.
Minneapolis BMC	Fargo ASF: 565, 567, 580–588.

6.2 General Reallocation Rules

In general, when reallocating:

a. The reallocation process does not affect package preparation. Reallocate only complete packages and only the minimum number of packages necessary to create a BMC pallet that meets the 250-pound minimum pallet weight. Based on the weight of individual pieces within a package and packaging parameters, the weight of mail that is reallocated may be slightly more than the minimum volume required creating a BMC pallet.

b. Use Exhibit 6.1 to reallocate packages from the ASF pallet to create a BMC pallet. The ASF pallet may be eliminated to protect the BMC pallet.

c. Reallocate mail only from one ASF pallet. Package reallocation is only to be used between the ''parent'' BMC and the ''child'' ASF. Mail from finer levels of pallets (e.g., SCF pallets) may not be reallocated.

d. Mailers may use any minimum pallet weight(s) permitted by standard and may use different minimum weights for different pallet levels in conjunction with package reallocation.

6.3 Reallocation of Packages from ASF pallets

When reallocating packages from ASF pallets:

a. Use Exhibit 6.1, to identify an ASF pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the BMC level back to the BMC level without eliminating the ASF pallet. A sufficient amount of mail must remain on the ASF pallet after reallocation to meet the ASF pallet weight minimum of 250-pounds. If an ASF pallet of adequate weight is available, then create a BMC pallet by combining the reallocated mail from the ASF pallet with the mail that would fall beyond the BMC pallet level.

b. If no single ASF pallet within the BMC service area contains an adequate volume of mail to allow reallocation of the portion of the mail on a pallet as described in 6.3a, then eliminate one ASF pallet and reallocate all of the mail to create a BMC pallet.

6.4 Documentation

Mailings must be supported by documentation produced by PAVE-certified software meeting the standards in P012.

* * * * *

10.0 PALLETS OF MACHINABLE PARCELS

* * * * *

(Amend redesignated 10.3, by removing the second sentence to read as follows:)

10.3 DBMC Rate

If applicable, a BMC pallet may include pieces that are eligible for the DBMC rate and pieces that are ineligible.

* * * * *

M073 Combined Mailings Of Standard Mail (A) And Standard Mail (B) Parcels

1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC PRESORT, BMC PRESORT, DSCF, AND DDU

* * * * *

1.6 Sack Preparation

(Amend 1.6 by adding an introductory sentence and by revising 1.6a(2) and 1.6a(3) to read as follows:)

The requirements for sack preparation are as follows:

a. Sack size, preparation sequence, and Line 1 labeling:

* * * * *

(2) Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pounds, smaller volume not permitted); for Line 1 use L602. DBMC rate eligibility is determined by Exhibit E651.1.3.

(3) Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L602 if DBMC rate is claimed for mail deposited at ASF under 4.2b; otherwise, use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

M610 Presorted Standard Mail (A)

* * * * *

5.0 MACHINABLE PARCELS

* * * * *

5.2 Sack Preparation

(Amend 5.2 by revising 5.2(b) and 5.2(c) to read as follows:)

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pounds, smaller volume not permitted); for Line 1 use L602. DBMC rate eligibility is determined by Exhibit E651.1.3.

c. Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

M630 Standard Mail (B)

* * * * *

6.0 MACHINABLE PARCELS

* * * * *

6.2 Sack Preparation

(Amend 6.2 by revising 6.2b and 6.2c to read as follows:)

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L602. Exhibit E652.1.3d determines DBMC rate eligibility.

c. Destination BMC: required (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L601. Exhibit E652.1.3d determines DBMC rate eligibility.

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P012 Documentation

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

2.2 Format and Content

(Amend 2.2 by replacing last two sentences of 2.2d(4) to read as follows:)

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

(4) * * * Document SCF or BMC pallets created as a result of package reallocation under M045.5.0 or 6.0 on the USPS Qualification Report by designating the protected pallet with an identifier of ''PSCF'' (for a SCF pallet) or ''PBMC'' (for a BMC pallet). These identifiers are required to appear only on the USPS Qualification Report; they are not required to appear on pallet labels or in any other mailing documentation.

* * * * *

2.4 Sortation Level

(Amend 2.4 by inserting new sortation level and abbreviation immediately below SCF pallets created from package reallocation to read as follows:)

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below.

Sortation level	Abbreviation
* * * *	*
BMC [pallets created from package reallocation]	PBMC
* * * *	*

An appropriate amendment to 39 CFR 111.3 will be made to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19579 Filed 8–7–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001; FRL–6847–9]

Withdrawal of Direct Final Rule on Operating Permit Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct Final Rule.

SUMMARY: Due to adverse comments, EPA is withdrawing the direct final rule published in the **Federal Register** on June 13, 2000 (65 FR 37049) promulgating full approval of the operating permit program submitted by the State of Montana for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuign operating permits to all major stationary sources, and to certain other sources. As stated in the **Federal Register** document if EPA receives adverse comment by July 13, 2000, EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect on August 14, 2000. Therefore, due to receiving the final rule (which will delay the effective date of the Montana operating permit program) and will address all public comments received in a subsequent final rule based on the proposed rule also published on June 13, 2000 (65 FR 37091). EPA will not institute a second comment period on this document.

DATES: The direct final rule, published on June 13, 2000 (65 FR 37049), is withdrawn as of August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, Air and Radiation Program 8P–AR, Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 312–6435.

SUPPLEMENTARY INFORMATION: On June 13, 2000, EPA published a direct final rule (65 FR 37049) and a parallel proposal (65 FR 37091) to grant full approval of 40 CFR part 70 Montana operating permit program. The purpose of this action was to grant full authority to the State of Montana to meet the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

The EPA stated in the direct final rule (65 FR 37049) that if adverse comments were received by July 13, 2000, EPA would publish a notice to withdraw the direct final rule before its effective date of August 14, 2000. The EPA received an adverse comment on the direct final rule and, therefore, is withdrawing the direct final rulemaking action. The adverse commenter stated concern that the program would not adequately protect public health and the environment. The EPA will address the specific comments in a subsequent final action.

Dated: August 1, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, VIII.

[FR Doc. 00–20025 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6847–6]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Immediate Final Rule.

SUMMARY: We are withdrawing the immediate final rule for Montana: Final Authorization of State Hazardous Waste Management Program Revision published on May 9, 2000, which approved the third revision to Montana's Hazardous Waste Rules. We stated in the immediate final rule that if we received comments that oppose this authorization, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that oppose this action. We will address these comments in a subsequent final action based on the proposed rule also published on May 9, 2000, at 65 FR 26802.

DATES: As of August 8, 2000, we withdraw the immediate final rule published on May 9, 2000, at 65 FR 26750.

FOR FURTHER INFORMATION CONTACT: Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441–1130 ext 239, or Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Kris Shurr (8P–HW), phone number: (303) 312–6312, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION: Because we received comments that oppose this authorization, we are withdrawing the immediate final rule for Montana: Final Authorization of State Hazardous Waste Management Program Revision published on May 9, 2000, at 65 FR 26750, which intended to grant authorization for the third revision to Montana's Hazardous Waste Rules. We stated in the immediate final rule that if we received comments that opposed this action, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that oppose this action. We will address all comments in a subsequent final action based on the proposed rule previously published on May 9, 2000, at 65 FR 26802. We will not provide for additional public comment during the final action.

Dated: July 31, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–20022 Filed 8–4–00; 12:50 pm]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 102

Federal Management Regulation

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of regulatory development.

SUMMARY: This document is an update on the continuing development of the Federal Management Regulation (FMR). Originally named the Federal Property and Administrative Services Regulation, parts of the FMR are now in effect.

FOR FURTHER INFORMATION CONTACT: Rod Lantier, Director, Regulatory Secretariat, Federal Acquisition Policy Division, (202) 501–2647, e-mail Rodney.Lantier@gsa.gov.

SUPPLEMENTARY INFORMATION: The FMR is the successor regulation to the Federal Property Management Regulations (FPMR), both of which the Administrator of General Services is authorized to issue to govern and guide Federal agencies. The General Services Administration (GSA) and other executive agency officials use these materials to regulate and prescribe policies, procedures, and delegations of authority pertaining to the management of property and other programs and activities administered by GSA. An exception pertains to the procurement and contract matters covered in the Federal Acquisition Regulation.

Presented in a plain language question and answer format, the FMR contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material describing how to do business with GSA. ''How to'' materials will become available in customer service guides, handbooks, brochures and on other websites provided by GSA.

The contents of the FPMR are moving to the FMR according to subject area as each is rewritten. Until the migration to the FMR is complete, agencies must reference both the FMR and the FPMR. In an effort to make this as convenient as possible for users, GSA issues all new FMR materials as changes to the FPMR in a looseleaf format. In this manner, both regulations are kept up to date throughout the transition.

Additionally, GSA has established an FMR/FPMR website. The url for this site is:

http://policyworks.gov/org/main/mv/fmr/index.htm

Although the site remains under construction, FMR content is up to date. The site will soon include the FPMR as it existed on November 1, 1999, before the first migration of its content into the FMR. This full version of the FPMR will be archived for agencies' future reference. GSA will also post a version of the FPMR that is updated as its content is migrated into the FMR. Thus, there will be Internet access to the FMR and any portions of the FPMR that remain in effect.

Finally, the FMR appears in Chapter 102 of Title 41. Once conversion to the FMR is complete, the FPMR, which now appears in Chapter 101 of Title 41, will be reserved in its entirety.

Dated: August 1, 2000.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 00–19979 Filed 8–7–00; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–35

RIN 3090–AG03

Relocation of FIRMR Provisions Relating to the Use of Government Telephone Systems and GSA Services and Assistance

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule; extension of expiration date.

SUMMARY: The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding management and use of telecommunications resources.

DATES: Effective Date: The interim rule published at 61 FR 41003 was effective August 8, 1996.

Expiration Date: The expiration date of the interim rule published at 61 FR 41003 is extended through August 8, 2001.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Office of Governmentwide Policy, telephone 202–501–4469.

SUPPLEMENTARY INFORMATION: FPMR interim rule F–1 was published in the **Federal Register** on August 7, 1996, 61 FR 41003. The expiration of the interim rule was August 8, 1998. A supplement published in the **Federal Register** on May 20, 1998, 63 FR 27682, extended the expiration date through August 8, 1999. A supplement published in the **Federal Register** on July 19, 1999, 64 FR 38588, extended the expiration date through August 8, 2000. This supplement further extends the expiration date through August 8, 2001.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

PART 101–35—[AMENDED]

Therefore the expiration date for interim rule F–1 adding 41 CFR part 101–35 published at 61 CFR 41003, August 7, 1996, and extended until August 8, 2000 at 64 FR 38588, is further extended through August 8, 2001.

Dated: August 2, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–20090 Filed 8–7–00; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WT Docket No. 96–86; FCC 00–242]

Priority Access Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allows commercial mobile radio service to offer Priority Access Service (PAS) to public safety personnel at the Federal, State and local levels to help meet the national security and emergency preparedness (NSEP) needs of the Nation. Additionally, the Commission adopts rules to implement its decision. Specifically, the Commission determines that it will permit, but not require, commercial mobile radio service (CMRS) providers to offer PAS to NSEP personnel. PAS will allow authorized NSEP users in emergencies to gain access to the next available wireless channel; priority calls would not, however, preempt calls in progress.

DATES: Effective October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD–PERM, Office of Managing Director at (202) 418–0217. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445—12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Commission's *Second Report and Order,* FCC 00–242 in WT Docket No. 96–86, adopted on July 3, 2000, and released on July 13, 2000. The full text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445—12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231—20th Street, NW., Washington, DC 20037. The full text also may be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Report and Order

2. The *Second Report and Order* implements another step of the Commission's responsibility to provide in the most efficient manner access to communications infrastructures in order to respond effectively to emergency and disaster situations. It documents the Commission's belief that there is a need and a demand for PAS, both by government agencies and by non-government NSEP personnel (*e.g.,* utilities) that were not entitled to the 24 MHz of additional spectrum recently provided to the public safety community. The *Second Report and Order* makes clear that the Commission will allow, but will not require, CMRS providers to offer PAS to NSEP. It provides that if carriers choose to offer PAS, they will be required to adhere to uniform operating protocols concerning the number of priority levels and the priority level for particular NSEP users. The *Second Report and Order* establishes the reasoning for the Commission's belief that uniform operating protocols will: (a) Ensure the compatibility of a peacetime PAS system with a wartime system, (b) allow federal and out-of-region NSEP personnel to avail themselves of PAS, and (c) enable a PAS system to be far more effective. It also concludes that: (a) PAS will include five priority levels, with non-government NSEP personnel receiving entitlement to a priority level as appropriate; (b) access to PAS should be limited to key personnel and those with leadership responsibilities; and (c) the National Communications System (NCS) will have responsibility for the day-to-day administration of PAS, with oversight responsibilities residing with the Commission. The Commission, however, will not require carriers to adhere to particular technical standards to implement PAS. The *Second Report and Order* further provides that a carrier's provision of PAS in accordance with Commission Rules being implemented will be *prima facie* lawful under federal law, thereby imposing a heavy burden on any complainant who claims a violation of the Communications Act, in particular, a violation of 202's anti-discrimination provisions. Otherwise, without such protection from liability, carriers are unlikely to offer PAS. Appendix C of the *Second Report and Order* contains the final PAS rules.

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the proposal of the Commission's rules regarding Priority Access Service, *Second Notice of Proposed Rulemaking,* (SNPRM) FCC 97–353, 62 FR 60199 (Nov. 7, 1997). The Commission sought written public comment on the proposals in the SNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Need for, and Objectives of, the Second Report and Order

2. The Commission has determined that there is a need and demand for Priority Access Service (PAS) by national security and emergency preparedness (NSEP) and other public safety personnel to enhance NSEP. Consequently, the Commission's objective is to authorize the voluntary provision by CMRS providers for such service. In the *Second Report and Order,* we determine that we will permit, but not require, CMRS providers

to offer PAS to NSEP personnel. If carriers choose to offer PAS, we are requiring them to adhere to uniform operating protocols. We also are adopting the PAS priority levels proposed by NCS and designate NCS as the day-to-day administrator of PAS.

II. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

3. In the IRFA, The Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. 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, if adopted. 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 which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) 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. ''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. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

5. *CMRS Providers.* CMRS providers include cellular licensees, broadband personal communications service (PCS) licensees, specialized mobile radio (SMR) licensees, and other mobile service providers. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We also note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or PCS services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this *Second Report and Order.*

6. *Broadband Personal Communications Service (PCS).* 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. The SBA has approved these regulations defining ''small entity'' in the context of broadband PCS auctions. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were ninety winning bidders that qualified as small entities in the Block C auctions. A total of ninety-three small and very small business bidders won approximately forty percent of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the ninety winning C Block bidders and the ninety-three qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

7. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. It is not possible to determine which of these licensees were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 900 MHz SMR geographic area licensees affected by this rule modification is at least sixty.

8. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. We conclude that the number of 800 MHz SMR geographic area licensees for the upper 200 channels affected by this rule modification is at least ten.

9. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses under the Commission's $15 million size standard. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be

affected by this rule modification is at least 3325.

10. With respect to licensees operating under extended implementation authorizations, approximately 6800 such firms provide 800 MHz or 900 MHz SMR service. However, we do not know how many of these qualify as small businesses under the $15 million size standard. Therefore, we conclude that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is up to 6800.

11. *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 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

12. *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 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 three 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% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

13. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA approved this definition for paging services on December 12, 1999. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Carrier Locator data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. We do not have data specifying the number of these carriers that meet this two-tiered definition, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the decisions and rules adopted in the *Second Report and Order.*

14. *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.

15. *Air-to-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.

16. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

17. *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 in the *Second Report and Order* includes these eight entities.

18. *National Security/Emergency Preparedness Personnel.* As a general matter, NSEP personnel include personnel from state and local government, police and fire departments, and emergency medical services. As indicated supra in paragraph four of this FRFA, all governmental entities with populations

of less than 50,000 fall within the definition of a small entity.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

19. The *Second Report and Order* adopts rules that will require service users that seek PAS assignments to file applications with their authorizing agents and will require authorizing agents to evaluate those applications. The form of the applications and the information required will be determined by NCS at a later date. The *Second Report and Order* also adopts rules that will require service providers that offer PAS to maintain a database of authorized users. The rules permit but do not require service users, authorizing agents, and service providers to participate in PAS. The Commission believes that these requirements are the minimum necessary to implement PAS.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. We have reduced economic burdens wherever possible. The rules adopted permit but do not require CMRS providers to offer PAS to NSEP personnel. Because any offering is voluntary, we believe that we have minimized the economic impact on small entities. While the rules require CMRS providers that do offer PAS to adhere to a set of uniform operating protocols, we do not believe that the protocols will be significantly more expensive to implement, if at all, than other priority systems that CMRS providers might otherwise have chosen to adopt. Significant alternatives considered but rejected were: (1) Do not permit PAS in the first place. We rejected this alternative because we concluded that the recent grant of additional spectrum for public safety does not obviate the need for PAS. (2) Make PAS mandatory. We rejected this alternative because not all CMRS systems, including some small systems, are technically able to offer PAS and because some commenters to the SNPRM believe they would have to spend large amounts of capital to upgrade their systems.

21. The item also limits access to PAS to key personnel. In this regard, it requires NSEP personnel that wish to avail themselves of PAS to apply for authorization. We believe that the economic burden this requirement imposes on small entities that are potential users is minimal but is necessary in order to ensure that the full benefits of PAS are realized.

Report to Congress

The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commisison will send a copy of the *Second Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) also will be published in the **Federal Register**.

Paperwork Reduction Analysis. The *PAS Report and Order* does not contain either a proposed or modified information collection.

List of Subjects 47 CFR Part 64

Civil defense, Radio, Reporting and recordkeeping requirements.

Federal Communicaitons Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.401 is revised to read as follows:

§ 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

The communications common carrier shall maintain and provision and, if disrupted, restore facilities and services in accordance with policies and procedures set forth in Appendix A to this part.

3. A new Section 64.402 is added as follows:

§ 64.402 Policies and procedures for the provision of priority access service by commercial mobile radio service providers.

Commercial mobile radio service providers that elect to provide priority access service to National Security and Emergency Preparedness personnel shall provide priority access service in accordance with the policies and procedures set forth in Appendix B to this part.

4. A new appendix B to Part 64 is added as follows:

Appendix B to Part 64—Priority Access Service (PAS) for National Security and Emergency Preparedness (NSEP)

1. Authority

This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended. Under these sections, the Federal Communications Commission (FCC) may permit the assignment and approval of priorities for access to commercial mobile radio service (CMRS) networks. Under section 706 of the Communications Act, this authority may be superseded by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to CMRS providers and users to comply with policies and procedures establishing the Priority Access Service (PAS). This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues:

(1) To implement responsibilities assigned in section 3 of this appendix, or

(2) For use in the event this appendix is superseded by the President's emergency war powers. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priority access service both before and after invocation of the President's emergency war powers.

2. Background

a. Purpose. This appendix establishes regulatory authorization for PAS to support the needs of NSEP CMRS users.

b. Applicability. This appendix applies to the provision of PAS by CMRS licensees to users who qualify under the provisions of section 5 of this appendix.

c. Description. PAS provides the means for NSEP telecommunications users to obtain priority access to available radio channels when necessary to initiate emergency calls. It does not preempt calls in progress and is to be used during situations when CMRS network congestion is blocking NSEP call attempts. PAS is to be available to authorized NSEP users at all times in equipped CMRS markets where the service provider has voluntarily decided to provide such service. Authorized users would activate the feature on a per call basis by dialing a feature code such as *XX. PAS priorities 1 through 5 are reserved for qualified and authorized NSEP users, and those users are provided access to CMRS channels before any other CMRS callers.

d. Definitions. As used in this appendix:

1. *Authorizing agent* refers to a Federal or State entity that authenticates, evaluates and makes recommendations to the Executive Office of the President regarding the assignment of priority access service levels.

2. *Service provider* means an FCC-licensed CMRS provider. The term does not include

agents of the licensed CMRS provider or resellers of CMRS service.

3. *Service user* means an individual or organization (including a service provider) to whom or which a priority access assignment has been made.

4. The following terms have the same meaning as in Appendix A to Part 64:

(a) Assignment;

(b) Government;

(c) National Communications System;

(d) National Coordinating Center;

(e) National Security Emergency Preparedness (NSEP) Telecommunications Services (excluding the last sentence);

(f) Reconciliation;

(g) Revalidation;

(h) Revision;

(i) Revocation.

e. Administration. The Executive Office of the President will administer PAS.

3. Responsibilities

a. The *Federal Communications Commission* will provide regulatory oversight of the implementation of PAS, enforce PAS rules and regulations, and act as final authority for approval, revision, or disapproval of priority assignments by the Executive Office of the President by adjudicating disputes regarding either priority assignments or the denial thereof by the Executive Office of the President until superseded by the President's war emergency powers under Section 706 of the Communications Act.

b. The *Executive Office of the President (EOP)* will administer the PAS system. It will:

1. Act as the final approval or denial authority for the assignment of priorities and the adjudicator of disputes during the exercise of the President's war emergency powers under section 706 of the Communications Act.

2. Receive, process, and evaluate requests for priority actions from authorizing agents on behalf of service users or directly from service users. Assign priorities or deny requests for priority using the priorities and criteria specified in section 5 of this appendix. Actions on such requests should be completed within 30 days of receipt.

3. Convey priority assignments to the service provider and the authorizing agent.

4. Revise, revalidate, reconcile, and revoke priority level assignments with service users and service providers as necessary to maintain the viability of the PAS system.

5. Maintain a database for PAS related information.

6. Issue new or revised regulations, procedures, and instructional material supplemental to and consistent with this appendix regarding the operation, administration, and use of PAS.

7. Provide training on PAS to affected entities and individuals.

8. Enlarge the role of the Telecommunications Service Priority System Oversight Committee to include oversight of the PAS system.

9. Report periodically to the FCC on the status of PAS.

10. Disclose content of the NSEP PAS database only as may be required by law.

c. An *Authorizing agent* shall:

1. Identify itself as an authorizing agent and its community of interest (State, Federal Agency) to the EOP. State Authorizing Agents will provide a central point of contact to receive priority requests from users within their state. Federal Authorizing Agents will provide a central point of contact to receive priority requests from federal users or federally sponsored entities.

2. Authenticate, evaluate, and make recommendations to the EOP to approve priority level assignment requests using the priorities and criteria specified in section 5 of this appendix. As a guide, PAS authorizing agents should request the lowest priority level that is applicable and the minimum number of CMRS services required to support an NSEP function. When appropriate, the authorizing agent will recommend approval or deny requests for PAS.

3. Ensure that documentation is complete and accurate before forwarding it to the EOP.

4. Serve as a conduit for forwarding PAS information from the EOP to the service user and vice versa. Information will include PAS requests and assignments, reconciliation and revalidation notifications, and other information.

5. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

6. Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

7. Disclose content of the NSEP PAS database only to those having a need-to-know.

d. *Service users* will:

1. Determine the need for and request PAS assignments in a planned process, not waiting until an emergency has occurred.

2. Request PAS assignments for the lowest applicable priority level and minimum number of CMRS services necessary to provide NSEP telecommunications management and response functions during emergency/disaster situations.

3. Initiate PAS requests through the appropriate authorizing agent. The EOP will make final approval or denial of PAS requests and may direct service providers to remove PAS if appropriate. (Note: State and local government or private users will apply for PAS through their designated State government authorizing agent. Federal users will apply for PAS through their employing agency. State and local users in states where there has been no designation will be sponsored by the Federal agency concerned with the emergency function as set forth in Executive Order 12656. If no authorizing agent is determined using these criteria, the EOP will serve as the authorizing agent.)

4. Submit all correspondence regarding PAS to the authorizing agent.

5. Invoke PAS only when CMRS congestion blocks network access and the user must establish communications to fulfill an NSEP mission. Calls should be as brief as possible so as to afford CMRS service to other NSEP users.

6. Participate in reconciliation and revalidation of PAS information at the request of the authorizing agent or the EOP.

7. Request discontinuance of PAS when the NSEP qualifying criteria used to obtain PAS is no longer applicable.

8. Pay service providers as billed for PAS.

9. Comply with regulations and procedures that are issued by the EOP which are supplemental to and consistent with this appendix.

e. *Service providers* who offer any form of priority access service for NSEP purposes shall provide that service in accordance with this appendix. As currently described in the Priority Access and Channel Assignment Standard (IS–53–A), service providers will:

1. Provide PAS levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from the EOP and remove PAS for specific users at the direction of the EOP.

2. Ensure that PAS system priorities supersede any other NSEP priority which may be provided.

3. Designate a point of contact to coordinate with the EOP regarding PAS.

4. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

5. As technically and economically feasible, provide roaming service users the same grade of PAS provided to local service users.

6. Disclose content of the NSEP PAS database only to those having a need-to-know or who will not use the information for economic advantage.

7. Comply with regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

8. Insure that at all times a reasonable amount of CMRS spectrum is made available for public use.

9. Notify the EOP and the service user if PAS is to be discontinued as a service.

f. The *Telecommunications Service Priority Oversight Committee* will identify and review any systemic problems associated with the PAS system and recommend actions to correct them or prevent their recurrence.

4. Appeal

Service users and authorizing agents may appeal any priority level assignment, denial, revision or revocation to the EOP within 30 days of notification to the service user. The EOP will act on the appeal within 90 days of receipt. If a dispute still exists, an appeal may then be made to the FCC within 30 days of notification of the EOP's decision. The party filing the appeal must include factual details supporting its claim and must provide a copy of the appeal to the EOP and any other party directly involved. Involved parties may file a response to the appeal made to the FCC within 20 days, and the initial filing party may file a reply within 10 days thereafter. The FCC will provide notice of its decision to the parties of record. Until a decision is made, the service will remain status quo.

5. PAS Priority Levels and Qualifying Criteria

The following PAS priority levels and qualifying criteria apply equally to all users and will be used as a basis for all PAS assignments. There are five levels of NSEP priorities, priority one being the highest. The five priority levels are:

1. Executive Leadership and Policy Makers
2. Disaster Response/Military Command and Control
3. Public Health, Safety and Law Enforcement Command
4. Public Services/Utilities and Public Welfare
5. Disaster Recovery

These priority levels were selected to meet the needs of the emergency response community and provide priority access for the command and control functions critical to management of and response to national security and emergency situations, particularly during the first 24 to 72 hours following an event. Priority assignments should only be requested for key personnel and those individuals in national security and emergency response leadership positions. PAS is not intended for use by all emergency service personnel.

A. Priority 1: Executive Leadership and Policy Makers.

Users who qualify for the Executive Leadership and Policy Makers priority will be assigned priority one. A limited number of CMRS technicians who are essential to restoring the CMRS networks shall also receive this highest priority treatment. Examples of those eligible include:

(i) The President of the United States, the Secretary of Defense, selected military leaders, and the minimum number of senior staff necessary to support these officials;

(ii) State governors, lieutenant governors, cabinet-level officials responsible for public safety and health, and the minimum number of senior staff necessary to support these officials; and

(iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials.

B. Priority 2: Disaster Response/Military Command and Control

Users who qualify for the Disaster Response/Military Command and Control priority will be assigned priority two. Individuals eligible for this priority include personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority. Examples of those eligible include:

(i) Federal emergency operations center coordinators, *e.g.,* Manager, National Coordinating Center for Telecommunications, National Interagency Fire Center, Federal Coordinating Officer, Federal Emergency Communications Coordinator, Director of Military Support;

(ii) State emergency Services director, National Guard Leadership, State and Federal Damage Assessment Team Leaders;

(iii) Federal, state and local personnel with continuity of government responsibilities;

(iv) Incident Command Center Managers, local emergency managers, other state and local elected public safety officials; and

(v) Federal personnel with intelligence and diplomatic responsibilities.

C. Priority 3: Public Health, Safety, and Law Enforcement Command

Users who qualify for the Public Health, Safety, and Law Enforcement Command priority will be assigned priority three. Eligible for this priority are individuals who direct operations critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include:

(i) Federal law enforcement command;

(ii) State police leadership;

(iii) Local fire and law enforcement command;

(iv) Emergency medical service leaders;

(v) Search and rescue team leaders; and

(vi) Emergency communications coordinators.

D. Priority 4: Public Services/Utilities and Public Welfare

Users who qualify for the Public Services/Utilities and Public Welfare priority will be assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of those eligible include:

(i) Army Corps of Engineers leadership;

(ii) Power, water and sewage and telecommunications utilities; and

(iii) Transportation leadership.

E. Priority 5: Disaster Recovery

Users who qualify for the Disaster Recovery priority will be assigned priority five. Eligible for this priority are those individuals responsible for managing a variety of recovery operations after the initial response has been accomplished. These functions may include managing medical resources such as supplies, personnel, or patients in medical facilities. Other activities such as coordination to establish and stock shelters, to obtain detailed damage assessments, or to support key disaster field office personnel may be included. Examples of those eligible include:

(i) Medical recovery operations leadership;

(ii) Detailed damage assessment leadership;

(iii) Disaster shelter coordination and management; and

(iv) Critical Disaster Field Office support personnel.

6. Limitations

PAS will be assigned only to the minimum number of CMRS services required to support an NSEP function. The Executive Office of the President may also establish limitations upon the relative numbers of services that may be assigned PAS or the total number of PAS users in a serving area. These limitations will not take precedence over laws or executive orders. Limitations established shall not be exceeded.

[FR Doc. 00–19945 Filed 8–7–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 153
Tuesday, August 8, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–52–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 60 series airplanes. This proposal would require inspecting the routing of oxygen tubing to ensure that there is adequate clamping of the tubing and adequate clearance between the tubing and electrical wiring or electrical contacts, and taking corrective action, if necessary. The actions specified by the proposed AD are intended to prevent electrical arcing between the oxygen tubing and an electrical source which could result in an oxygen fire.

DATES: Comments must be received by September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–52–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–52–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of a fire resulting from the puncture of an oxygen tube by an electrical arc from the generator control unit. The arcing is the result of improper clamping and inadequate spacing between the oxygen tubing and electrical sources, such as wires and contacts. The incident occurred during a routine functional test of the oxygen system on the production line. Improper clamping and inadequate spacing, if not corrected, could cause electrical arcing between the oxygen tubing and an electrical source, which could result in an oxygen fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999, which addresses certain Learjet Model 60 airplanes. That service bulletin describes procedures for inspecting the oxygen tubing system for adequate clamping and adequate clearance between the tubing and electrical wiring or electrical contacts and for adjusting the clamping of the tubing or the clearance between the tubing and electrical wiring or electrical contacts, as necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and Proposed AD

Operators should note that, although the service bulletin recommends accomplishing the required inspection within 15 days after receipt of the service bulletin, the proposed AD specifies a compliance time of 60 days or 80 flight hours after the effective date of the AD, whichever comes first.

In developing this compliance time, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the unsafe condition, the schedule of regular maintenance, and the average utilization of the affected fleet. In light of these factors, the FAA finds that the proposed compliance time represents an appropriate interval allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 58 airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. There would be no parts required. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $2,400, or $60 per airplane.

Should an operator be required to adjust the clamping or the clearance of the oxygen tubing, the FAA estimates that it would take approximately 3 work hours per airplane and that the average labor rate is $60 per work hour. The cost of required parts, such as clamps, nuts, bolts, and washers, would be negligible. Based on these figures, the cost impact of adjusting the clamping or the clearance of the tubing is estimated to be $7,200, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket 2000–NM–52–AD.

Applicability: Model 60 airplanes, serial numbers 104 through 168 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the oxygen tubing and an electrical source which could result in an oxygen fire, accomplish the following:

Inspection

(a) Within 60 days or 80 flight hours after issuance of this AD, whichever occurs first, perform a detailed visual inspection of the oxygen tubing for adequate clamping and adequate clearance from electrical wiring and electrical contacts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999. If adequate clamping and adequate clearance, as specified in the service bulletin, is found, no further action is required by this AD.

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

Adjustment

(b) If clamping or clearance of the oxygen tubing from electrical wiring or contacts is not adequate as specified in Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999, the clamping or the clearance must be adjusted, in accordance with the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Issued in Renton, Washington, on August 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20003 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–63–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 750 airplanes. This proposal would require removal of a certain existing bulkhead web doubler, installation of left and right bulkhead web doublers, and enlargement of the lightening holes. This action is necessary to prevent jamming of the roll control system, due to inadequate clearance between the control cable and the web, which could result in reduced controllability of the airplane.

DATES: Comments must be received by September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000 NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232 or be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–63–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–NM–63–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an aileron had jammed temporarily on a Cessna Model 750 airplane, causing difficulty in rolling the airplane to the left. The roll control system (ailerons and spoilers) can jam due to inadequate clearance between the control cable and the bulkhead web and result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin 750–53–19, dated January 20, 2000, which describes procedures for removing a certain existing bulkhead web doubler, installing new left and right bulkhead web doublers, and enlarging the lightening holes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 95 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,600, or $480 per airplane.

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

are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. 2000–NM–63 AD.

Applicability: Model 750 airplanes, having manufacturer's serial numbers –0001 through –0102 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the roll control system (ailerons and spoilers), which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Removal

(a) Within 200 flight hours or 180 days after the effective date of this AD, whichever occurs first, inspect the bulkhead web for an existing round bulkhead web doubler, in accordance with the Accomplishment Instructions of Cessna Service Bulletin 750–53–19, dated January 20, 2000. If there is a round bulkhead web doubler having part number (P/N) 6711093–38, prior to further flight, remove the doubler in accordance with the service bulletin.

Installation

(b) Within 200 flight hours or 180 days after the effective date of this AD, whichever occurs first, install a new right bulkhead web doubler having P/N 6791213–4 and a left bulkhead web doubler having P/N 6791213–3 and enlarge the lightening holes, in accordance with the Accomplishment Instructions of Cessna Service Bulletin 750–53–19, dated January 20, 2000.

(c) As of the effective date of this AD, no person shall install a bulkhead web doubler having P/N 6711093–38, on any airplane.

Alternative Method of Compliance

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

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

Special flight Permits

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

Issued in Renton, Washington on August 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20004 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–03–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800A (U–125A) and Hawker 800XP Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800A (U–125A) and Hawker 800XP series airplanes. This proposal would require inspecting the roller clearance in the nose landing gear drag stay and making any necessary adjustments. The proposal is prompted by reports indicating multiple findings of roller clearances that are in excess of specifications. The actions specified by the proposed AD are intended to prevent the inability to extend the nose landing gear, which could result in damage to the airplane upon landing.

DATES: Comments must be received by September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–03–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached

electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–03–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of multiple instances of clearance of the roller in the nose landing gear drag stay rigging which were in excess of specification. Excessive clearance of the roller requires a larger than normal force to extend the landing gear. Investigation revealed that this excessive clearance would likely increase over time as a result of seating of the stops and wear of the paint on the drag stay arm in the nose landing gear. This condition, if not corrected, could result in the inability to extend the nose landing gear, which could result in damage to the airplane upon landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999, which describes procedures for removing the paint from the drag stay arm at the point of contact with the stop bolts, inspecting the roller clearance in the nose landing gear drag stay, and adjusting the roller clearance, if needed. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed inspection and any necessary adjustments, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,000, or $420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action and that no operator would accomplish those actions in the future, if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket 2000–NM–03–AD.

Applicability: Model Hawker 800XP and Hawker 800A (U–125A) series airplanes, as specified in Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to extend the nose landing gear due to excessive clearance of the roller in the drag stay rigging, which could result in damage to the airplane upon landing, accomplish the following:

Inspection and Adjustment

(a) Within 50 hours time-in-service after the effective date of this AD: Remove the paint from the drag stay arm of the nose landing gear at its point of contact with the stop bolt, do a check of the roller clearances, and make any necessary adjustments, in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999.

(b) Airplanes which have had the 600-hour inspection specified in the Aircraft Maintenance Manual before the effective date of this AD or which will have the 600-hour inspection within 50 hours time-in-service after the effective date of this AD are considered to be in compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on August 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20001 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–46–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP and Hawker 800 (U–125A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model Hawker 800XP and Hawker 800 (U–125A) series airplanes. This proposal would require inspection of the wire bundle to relay 'KT' on panel 'JA' for correct routing, adequate clearance from the fuel cross-feed valve operating lever, and the presence of chafing; this proposal also would require corrective action, if necessary. This action is intended to detect and correct chafing of the wire bundle exiting panel 'JA' due to insufficient clearance from the fuel cross-feed valve operating lever. Such chafing of the wire bundle could result in a fire in the area of the fuel system in a confined space. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–46–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–46–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the wire bundle to relay 'KT' on panel 'JA' has been installed too close to the fuel cross-feed valve operating lever, due to misinterpretation of engineering drawings. Thus, there is inadequate clearance between the wire bundle and the fuel cross-feed valve operating lever. If this inadequate clearance is not corrected, it could result in chafing of the wire bundle exiting panel 'JA' which could cause a fire in the area of the fuel system in a confined space.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletins SB24–3212, dated August 1999, and SB 24–3213, Revision 1, dated February 2000, which describe procedures for a one-time inspection of the wire bundle to relay 'KT' on panel 'JA' for correct routing, adequate clearance, and signs of chafing, caused by interference with the fuel cross-feed valve operating lever. The service bulletins also describe procedures for repairing the wire bundle, if chafing is detected, and for modifying the routing of the wire bundle and ensuring adequate clearance between the wire bundle and the fuel cross-feed valve operating lever throughout its range of travel. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 148 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

No estimate is provided for the cost impact of repairing the wire bundle or modifying the routing of the wire bundle or ensuring adequate clearance between the wire bundle and the fuel cross-feed valve operating lever, because these costs will depend on the extent of the repairs or modifications required.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket 2000–NM–46–AD.

Applicability: Model Hawker 800XP series airplanes, as listed in Raytheon Service Bulletin SB24–3212, dated August 1999, and Hawker 800 (U–125A) series airplanes, as listed in Raytheon Service Bulletin SB24–3213, dated February 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle to relay 'KT' on panel 'JA' due to insufficient clearance from the fuel cross-feed valve operating lever, which could result in a fire in the area of the fuel system in a confined space, accomplish the following:

Inspection and Corrective Actions

(a) Within 50 flight hours or 6 months after the effective date of this AD, whichever comes first, conduct a one-time detailed visual inspection of the panel ''JA'' wire bundle in accordance with the Accomplishment Instructions of Raytheon Aircraft

Service Bulletin SB 24–3212, dated August 1999 (for Model 800XP series airplanes) or SB 24–3213, Revision 1, dated February 2000 (for Model 800 (U–125A) series airplanes, as applicable.

(1) Ensure that the wire bundle is routed correctly, in accordance with Figure 1 of the applicable service bulletin.

(2) Ensure that a minimum clearance of 0.25-inches exists between the wire bundle from relay ''KT'' and the fuel cross-feed valve operating lever throughout its range of travel.

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

(b) If the wire bundle is routed correctly and sufficient clearance exists, no further action is required by this AD.

(c) If the wire bundle is not routed correctly or if sufficient clearance does not exist, prior to further flight, perform a detailed visual inspection of the wire bundle to relay ''KT'' for chafing, in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 24–3212, dated August 1999 (for Model 800XP series airplanes) or SB 24–3213, Revision 1, dated February 2000 (for Model 800 (U–125A)series airplanes), as applicable.

(1) If no chafing is detected, prior to further flight, ensure that the wire bundle is routed correctly and ensure that a minimum clearance of 0.25-inches exists between the wire bundle and the fuel cross-feed valve operating valve throughout its range of travel, in accordance with the applicable service bulletin.

(2) If any chafing is detected, prior to further flight, repair the chafed wire, ensure that the wire bundle is routed correctly and ensure that a minimum clearance of 0.25-inches exists between the wire bundle and the fuel cross-feed valve operating valve throughout its range of travel, in accordance with the applicable service bulletin.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Issued in Renton, Washington, on August 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20002 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43084; File No. S7–16–00]

RIN 3235–AH95

Disclosure of Order Routing and Execution Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission is proposing two rules to improve public disclosure of order routing and execution practices. Under proposed Rule 11Ac1–5, market centers that trade national market system securities would be required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality on a security-by-security basis. Under proposed Rule 11Ac1–6, broker-dealers that route orders in equity and option securities on behalf of customers would be required to make publicly available quarterly reports that describe their order routing practices and disclose the venues to which customer orders are routed for execution. In addition, broker-dealers would be required to disclose to customers, on request, where their individual orders were routed for execution. By enhancing disclosure of order routing and execution practices, the proposed rules are intended to promote fair and vigorous competition among broker-dealers and among market centers. Finally, this release discusses a number of measures that the Commission currently is considering to strengthen quote and price competition in the securities markets.

DATES: Comments are due on or before September 22, 2000.

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Securities and Exchange 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. S7–16–00. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Susie Cho, Attorney, at (202) 942–0748, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On February 23, 2000, the Securities and Exchange Commission (''Commission'') issued a release (''Fragmentation Release'') requesting the public's views on a broad range of issues relating to market fragmentation—the trading of orders in multiple locations without interaction among those orders.[1] The Fragmentation Release was published along with the proposed rule change by the New York Stock Exchange, Inc. (''NYSE'') to rescind Rule 390, its off-board trading rule. Because the elimination of off-board trading restrictions raised the potential for increased fragmentation of trading interest in exchange-listed equities, the rescission of Rule 390 presented an opportune time to consider the effects of fragmentation on the securities markets.[2]

In undertaking its review of fragmentation issues, the Commission sought to assure that this country's national market system for equities will continue to meet the needs of investors by: (1) Maintaining the benefits of vigorous quote competition and innovative competition among market centers; (2) promoting the price discovery process by encouraging market participants (including investors and dealers) to display trading interest in the public quotes; (3) assuring the practicability of best execution of all investor orders, including limit orders, no matter where they originate in the national market system; and (4) providing the deepest, most liquid markets possible that facilitate fair and orderly trading and minimize short-term price volatility.

The Fragmentation Release requested the public's views on whether fragmentation is now, or may become in the future, a problem that significantly detracts from the fairness and efficiency of the U.S. equities markets. To assist commenters in formulating their views, the Commission briefly described six potential options to address fragmentation, ranging from increased disclosure of order routing and execution practices to the establishment of a national market linkage system that mandated price/time priority for all displayed trading interest. The Commission also noted that decimal pricing of securities would be introduced in the coming months and that a reduced quoting increment could significantly change current market dynamics. It requested commenters to consider the extent to which their views would be affected by the initiation of decimal pricing.

The comments submitted in response to the Fragmentation Release reflected a wide range of views on these issues. Many commenters, especially institutional investors, expressed serious concern about market fragmentation in general and internalization and payment for order flow practices in particular. Most of these commenters supported a nationwide system of price/time priority. Many other commenters, however, believed that such a system would have an overall negative impact because it would impair the ability of market centers to compete.

The Commission recognizes the potentially deleterious effects of mandating price/time priority across competing markets. Commenters presented compelling arguments that the operational and technological problems in imposing such a system under current conditions could be severe. In addition, the Commission recognizes that impending changes in the markets, particularly the move to decimal trading, could have a significant, and not wholly predictable, impact on market structure. It also recognizes that new technologies continually are being introduced to the markets that could change the current patterns of order interaction in fundamental ways. For these reasons, the Commission is not taking action at this time on the price/time priority alternatives described in the Fragmentation Release, but is moving forward with the option to improve disclosure of order routing and execution practices.

Nonetheless, the Commission remains deeply concerned, particularly in light of the unanimous views expressed by investors responding to the Fragmentation Release, about the potential for internalization and payment for order flow arrangements to interfere with order interaction and discourage the display of aggressively-priced quotations. To more fully evaluate these concerns, the Commission's Office of Economic Analysis currently is conducting an in-depth study of trading in equities qualified for inclusion in The Nasdaq Stock Market, Inc. (''Nasdaq'') and equities listed on the NYSE. The study is based on trading in a broad-based, random sample of 200 Nasdaq issues and a matched sample of 200 NYSE issues. Most importantly, the study is utilizing information on orders and order executions for Nasdaq trading that has not previously been available. Comparisons of order execution quality now can be made both for individual market centers trading the same Nasdaq or NYSE security and for trading in general in Nasdaq and NYSE securities. The Commission intends to use the results of this study, as well as its experience with changing market conditions, to determine whether further steps are needed to address internalization and payment for order flow. In addition, the Commission will continue in the coming months to monitor closely how the rescission of off-board trading restrictions affects order-routing practices in exchange-listed equities. As data become available and analyses are completed, the Commission intends to make them publicly available to enhance the opportunity for public debate of these vital issues concerning the structure of the national market system. Finally, in light of many comments on the Fragmentation Release, the Commission is considering further ways to strengthen price competition and price priority within the existing market structures. These options are discussed in section IV below.

II. Summary of Fragmentation Release and Public Comments

The Fragmentation Release presented an overview of the current structure of the national market system. Section 11A

[1] Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (''Fragmentation Release'').

[2] Since publication of the Fragmentation Release, the Commission has approved the rescission of the off-board trading restrictions for the NYSE, American Stock Exchange LLC, Boston Stock Exchange, Incorporated, Chicago Stock Exchange, Incorporated, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175 (NYSE) (''NYSE Rescission Order''); Securities Exchange Act Release No. 42888 (June 1, 2000), 65 FR 36855 (Amex); Securities Exchange Act Release No. 42887 (June 1, 2000), 65 FR 36856 (BSE); Securities Exchange Act Release No. 42886 (June 1, 2000), 65 FR 36859 (CHX); Securities Exchange Act Release No. 42890 (June 1, 2000), 65 FR 36877 (PCX); Securities Exchange Act Release No. 42889 (June 1, 2000), 65 FR 36878 (Phlx).

of the Exchange Act creates a framework for fostering transparency and competition in the securities markets and sets forth findings and objectives that are to guide the Commission in its oversight of the national market system. As developed under this framework, our equity markets are characterized by competition between market centers, price transparency, intermarket linkages, and broker best execution obligations.

Competition between market centers. One of the principal objectives of the national market system is assuring fair competition among market centers.[3] The Commission has sought to establish a market structure that gives the forces of competition room to flourish and develop according to the needs of market participants. Market centers, including exchange markets, over-the-counter (''OTC'') market makers, and alternative trading systems, compete to provide a forum for the execution of securities transactions, particularly by attracting order flow from brokers seeking execution of their customer's orders. As a result, market centers have an incentive to offer improvements in execution quality and to reduce trading costs in order to attract order flow away from other market centers. This competition also encourages ongoing innovation and the use of new technology, all to the benefit of investors.

Price transparency. Price transparency is a minimum essential component of a unified national market system. All significant market centers are required to make available to the public their best prices and the size associated with the prices.[4] This information not only includes the best quotations of market makers, but also the price and size of customer limit orders that improve a market center's quotation. Central processors collect quote and trade information from individual market centers, consolidate the information of individual market centers, determine the national best bid and best offer for each security, and disseminate the information to broker-dealers and information vendors. Thus, the best displayed prices for a particular security are made available to the public, thereby helping to assure that investors are aware of such prices no matter where they arise in the national market system.

Intermarket linkages. Congress has found that the ''linking of all markets for qualified securities through communication and data processing facilities'' will further the objectives of a national market system.[5] Linkages among competing market centers help ensure that brokers can access the best quotes available in the market for their customers. The market centers that trade exchange-listed equities currently are linked through the Intermarket Trading System (''ITS''), which is linked to the National Association of Securities Dealer's (''NASD's'') Computer Assisted Execution System (''CAES''). The market centers that trade Nasdaq equities are linked by the Nasdaq SelectNet System, by telephone, and through private links.

Broker's duty of best execution. 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.

The duty is derived from common law agency principles and fiduciary obligations. It is incorporated both in self-regulatory organization (''SRO'') rules and, through judicial and Commission decisions, in the antifraud provisions of the federal securities laws. The duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.

Although each of the foregoing elements contribute to the fairness and efficiency of the national market system, the Fragmentation Release expressed concern about the possibly harmful effects of market fragmentation, particularly internalization and payment for order flow. The Commission noted that fragmented markets may isolate customer limit orders and dealer quotes from full interaction with other buying and selling interest in today's markets. For example, a customer may enter a limit order to buy at a price higher than the current quote, thus setting a new best price in the market. Even though the customer offers to pay more than any other market participant, market centers holding sell orders have no obligation to route a sell order to fill the price-setting buy order. To the extent that the customer's limit order remains unexecuted and subsequent buying interest is filled at the limit order price, the customer's order has been disadvantaged, and the incentive to improve prices potentially compromised.

Internalization and payment for order flow practices also have contributed to an environment in which vigorous quote competition is not always rewarded. Under such practices, orders are routed to a particular market maker or specialist that can execute the orders as principal without facing significant competition from investors or other dealers to interact with the directed order flow. Even where linkages between market centers exist, there is no requirement that orders be routed to the market center that is displaying the best prices, even if that price represents a customer limit order. One of the initial findings of the ongoing analysis by the Commission's Office of Economic Analysis indicates that approximately 85% of the executed market orders in Nasdaq securities are routed to market centers when they are *not* quoting at the best price.[6] Market makers typically provide a private guarantee to their customers and routing brokers, subject to various conditions, that market orders will be executed at prices that match the best prices displayed elsewhere. These passive, ''price-matching'' business strategies employed by dealers may weaken the incentive to display competitive quotes and blunt the forces that otherwise could lead to less fragmented markets.[7] The Commission is concerned that such practices may ultimately harm the process of public price discovery, increase price volatility, and detract from the depth and liquidity of the markets.

In response to the Fragmentation Release, the Commission received 87 comment letters.[8] Of those letters, 72

[3] Section 11A(a)(1)(C)(ii) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(ii).

[4] *See* Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1; Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4.

[5] Exchange Act Section 11A(a)(1)(D).

[6] This analysis is based on data from the NASD's Order Audit Trail System for a broad-based, random sample of 200 Nasdaq stocks during June 6–9, 2000. It excludes orders routed outside of the continuous trading period and orders with special handling conditions. The 85% figure in the text only includes executed market orders. Consequently, if an order was initially routed to a market center that was not quoting the best price and subsequently routed to a market center that *was* quoting the best price (for example, via SOES or SelectNet), the order is counted only once at the executing market center. The 85% figure is unchanged when the analysis is limited to only 100–499 share market orders.

[7] As Chairman Greenspan noted in his congressional testimony on market structure issues, ''[i]n the long run, unfettered competitive pressures will foster consolidation as liquidity tends to centralize in the system providing the narrowest bid-offer spread at volume. Two or more venues trading the same security or commodity will naturally converge toward a single market. * * * Of course, this process may not be fully realized if there are impediments to competition or if markets are able to establish and secure niches by competing on factors other than price.'' Statement of Allen Greenspan, Chairman, Board of Governors of the Federal Reserve System, before the Committee on Banking, Housing, and Urban Affairs, United States Senate (April 13, 2000), at 2–3.

[8] The comment letters and a comprehensive summary of comments have been placed in Public File SR–NYSE 99–48, which is available for

comment letters specifically addressed market fragmentation issues, while most of the others limited their comments to the rescission of NYSE Rule 390. The comments received by the Commission reflected a wide range of views, as commenters did not reach a consensus on most issues. In particular, the commenters debated whether fragmentation posed a threat to the interests of investors and diminished the opportunity for investor order interaction.

Comments submitted by institutional investors and associations representing such investors consistently said that fragmentation results in a lack of transparency and creates an inefficient and unfair trading environment. They stated that fragmentation hampers the ability of large institutional investors to execute large trades at a favorable price. Comments by and on behalf of investors also frequently asserted that competitive practices associated with increased market fragmentation, such as internalization and payment for order flow, impede price discovery, hinder the best execution of limit orders, and increase stock price volatility. The Consumer Federation of America, for example, noted that ''market centers naturally compete for brokers' low on terms other than just price. While some of these forms of competition may benefit investors, others are less benign. Two practices that have become common—internalization and payment for order flow—clearly contribute to market fragmentation.'' It recommended that improved linkages between market centers ''should be accompanied by new rules to limit practices, such as internalization and payment for order flow, that inappropriately isolate order flow.'' [9]

In contrast, many broker-dealers and regional exchanges generally questioned whether fragmentation was a detriment to the markets. They asserted that the increased number of venues available for executing transactions has invigorated competition to the benefit of public investors and fostered greater innovation, resulting in narrower spreads and lower transaction costs.

Commenters likewise differed considerably on the alternative approaches to address fragmentation that were described in the Fragmentation Release. Commenters were particularly divided over the prospect of a national market linkage system with price/time priority for all displayed trading interest. The commenters who supported the establishment of intermarket price/time priority, including most institutional investors, believed that it would enhance price competition and increase transparency. Numerous commenters, however, believed that intermarket price/time priority would be anti-competitive, hinder innovation, and increase market volatility. These commenters further noted that a single system linking the markets would create a single point of failure.

Several commenters, moreover, urged the Commission not to implement any market structure changes until decimal trading has been instituted. Commenters noted that the impact of decimalization has yet to be determined. It may lead to greater quote competition, or it may reduce the display of limit orders, and the utility of the best published quote. Commenters suggested that market structures dependent on sizeable quotation increments might be counterproductive in a decimal trading environment.

Although commenters did not agree on most of the alternative approaches described in the Fragmentation Release, many voiced their support for greater disclosure to investors of order routing and execution practices. Of the 44 commenters who discussed this option, 32 commenters supported some form of disclosure by market centers and broker-dealers of factors concerning their trade executions and arrangements for handling orders. Commenters supporting increased disclosure believed that it would allow investors to make informed judgments about where to route their orders, as well as enable brokers to evaluate the quality of executions among market centers and fulfill their duty of best execution. Most of those opposing the disclosure option did so because they did not believe it would effectively address fragmentation concerns.

Some of the broker-dealer and SRO commenters further suggested that the current ITS linkage be reformed. Several commenters recommended abolishing the requirement that ITS participants achieve unanimity to enact any proposed change. Others suggested that the time frames for processing ITS commitments be significantly reduced. A few commenters, however, urged the Commission to dismantle ITS entirely. The NYSE argued that ''ITS was designed to address market structure issues'' of floor-based auction markets and that a ''different approach to deal with today's environment is appropriate.'' [10] Other commenters advocated that the Commission oversee the development of new intermarket linkages. They believed that a new linkage would increase transparency and enhance competition among individual market centers. They suggested that a new linkage should employ state of the art technology, provide automatic execution capability, allow representation in the governance of the linkage by all qualified market centers, and provide access to all qualified market centers.[11]

Finally, several commenters recommended that a price priority rule be instituted with a new intermarket linkage. For example, the Market Structure Committee of the Securities Industry Association (''SIA'') strongly endorsed adoption of a Commission rule under which a market center receiving an order would be required either to route the order to a market center displaying the best price or to match the best price.[12] Island ECN Inc. (''Island''), however, disagreed, believing that such a trade-through rule would restrict new automated markets from competing with slower market centers. Island also asserted that a trade-through rule is inconsistent with a customer's freedom of choice as well as a fiduciary's duty of best execution, because such a rule requires an order to be sent to a market solely on the basis of price.[13]

III. Disclosure of Order Routing and Execution Practices

As noted above, a significant majority of the commenters that addressed the Fragmentation Release's alternative of increased disclosure of order routing

inspection in the Commission's Public Reference Room.

[9] Letter from Barbara L. N. Roper, Director of Investor Protection, Consumer Federation of America, to Jonathan G. Katz, Secretary, Commission, dated June 5, 2000, at 2, 5.

[10] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated May 31, 2000 (''NYSE Letter''), at 22–23.

[11] In section IV below, the Commission discusses and requests comment on improving linkages between markets.

[12] Letter from Mark B. Sutton, Chairman, SIA Market Structure Committee, to Jonathan G. Katz, Secretary, Commission, dated May 5, 2000 (''SIA–Market Structure Letter''), at 2, 12.

[13] Letter from Cameron Smith, General Counsel, Island ECN, to Jonathan Katz, Secretary, Commission, dated May 16, 2000 (''Island Letter''), at 5. In section IV below, the Commission discusses and requests comment on an alternative regulatory approach to promote price priority. Trade-throughs would not be prohibited, but would have to be disclosed to the customer, thereby creating an incentive for market participants to develop methods of access to avoid trade-throughs that are not in an investor's best interest. Fiduciaries, however, would continue to have the flexibility to consider factors other than price in meeting their best execution responsibilities. Moreover, the proposed public disclosure of measures of order execution quality may allow market forces to better align the interests of brokers and their customers in light of conflict-of-interest concerns raised by internalization and payment for order flow practices.

and execution practices expressed support for the option. The Commission agrees that there is a need for improved disclosure in this area. Particularly for a significantly fragmented market structure with many different market centers trading the same security, the decision of where to route orders to obtain best execution for investors is critically important. There must be a full and fair opportunity for market centers to compete for order flow based on price, as well as on other factors. Currently, brokerage customers, particularly retail investors, typically submit orders to their brokers and receive confirmations of their transactions, but have little ability to monitor what happens to their order between the time of submission and execution. They also currently possess few tools to evaluate the quality of order executions that might have been provided by other brokers and market centers. Given this lack of information, customers may conclude that the most rational strategy is simply to opt for a broker that offers the lowest commission and a fast execution. As a result, there currently may be limited opportunities for fair competition among brokers and market centers based on the quality of their order routing and execution services.

Section 11A(c)(1) of the Exchange Act grants the Commission authority to promulgate rules necessary or appropriate to assure, among other things, the fairness and usefulness of information on securities transactions (subparagraph B) and that broker-dealers transmit orders for securities in a manner consistent with the establishment and operation of a national market system (subparagraph E).[14] The Commission believes that improved disclosure of order routing and execution practices will further important national market system objectives and therefore has decided to propose two new Exchange Act rules—one for ''market centers'' (generally, exchange specialists, OTC market makers, and alternative trading systems (''ATSs'') that hold themselves out as willing to receive and execute orders) and another for broker-dealers that route orders as agent on behalf of their customers.

A. Need for Improved Disclosure

The heart of the U.S. national market system is the consolidated stream of transaction reports and quotations that is made available to the public on a real-time basis. The best displayed quotations of each significant exchange, OTC market maker, and ATS that executes orders in listed equities and Nasdaq equities are collected by a single processor, which then calculates a consolidated best bid and offer (''consolidated BBO'') and disseminates the information to the public. This centralized source of information, however, may convey an inaccurate impression of the extent to which the quality of order executions can vary among different market centers trading the same security.

For example, the execution of investor market orders can vary widely in relation to the consolidated BBO at the time of order receipt and the price at which the order is executed. The consolidated BBO does not necessarily represent the best price at which a security can be bought or sold. Many market centers offer significant opportunities for execution of orders at prices better than the consolidated BBO. These price improvement opportunities are attributable to undisplayed trading interest that may take many forms. Large investors, for example, often are not willing to display their full trading interest to the general market and therefore seek other ways to interact with other trading interest. The floors of the primary exchanges provide a vehicle for this type of undisclosed trading interest to be represented. In addition, some OTC market makers have adopted algorithms under which price improvement is offered to selected types of orders.

Conversely, some market orders are executed at prices less favorable than the consolidated BBO at the time of order receipt.

One of the initial findings of the research being conducted by the Commission's Office of Economic Analysis indicates, for example, that approximately 5.3% of small Nasdaq market orders (100–499 shares) are executed at prices outside the quotes at the time of order receipt. Similarly, an analysis performed by the NYSE staff indicated that approximately 7.5% of small NYSE market orders (100–499 shares) are executed outside the quotes at the time of order receipt.[15] This type of price disimprovement can occur for several reasons. First, there may be ''quote exhaustion''—multiple orders hit a quote at the same time with cumulative volume greater than the quoted size. Price disimprovement also can occur when order size exceeds the size at which a specialist or market maker is willing to guarantee executions at prices that match the consolidated BBO. Finally, some market orders are executed at prices less favorable than the consolidated BBO at the time the order was executed. This type of price disimprovement—or trade-throughs of the best quote—can occur simply because of mistakes, poor executions, or lack of easy access to the better quoted price. Currently, there is no requirement that price disimprovement for individual transactions be disclosed to customers or that the overall price disimprovement rate for a market center's trading be disclosed to the public.

With both price improvement and price disimprovement, the amounts per share may seem small and therefore can be difficult for investors to detect, particularly when the consolidated BBO is changing rapidly. Nevertheless, they may result in appreciable benefits or costs for investors. A difference in execution price of 1/16th for a 1000 share order equals $62.50, dwarfing the differences between e-brokers' commissions. As commission rates for retail investors have dropped in recent years, the relative significance of order execution costs has correspondingly increased and heightened the need for improved disclosure of execution quality.

From the standpoint of the many investors who use non-marketable limit orders to implement their investment decisions, assessing execution quality among different market centers is, if anything, more difficult. With non-marketable limit orders, the most significant risk is that they will not be executed and will miss the market. Consequently, an important order-routing consideration is the likelihood of execution at a particular market center, which can vary depending on how well the order is handled (for example, speed of public display),[16] the

[14] In addition, Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a), provides that SROs and broker-dealers shall make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

[15] The Nasdaq estimate is based on OATS data for a broad-based, random sample of 200 Nasdaq stocks for the week of June 5–9, 2000. It excludes orders routed outside of the continuous trading period and orders with special handling conditions. The NYSE estimate is based on system orders and is taken from data in Jeffrey Bacidore, Katharine Ross & George Sofianos, *Quantifying Best Execution at the New York Stock Exchange: Market Orders,* NYSE Working Paper No. 99–05, Tables 7 & 14 (Dec. 1999) (available at *http://www.nyse.com*). Approximate price *improvement* rates for these samples of market orders are 8.7% for Nasdaq market orders and 37.3% for NYSE market orders.

[16] The Commission's Office of Compliance, Inspections, and Examinations and Office of Economic Analysis recently issued a report

extent of trading interest at the same price that has priority, and the flow of incoming market orders on the other side of the market. The likelihood of execution also can vary depending on the extent to which ''local'' traders (such as specialists, floor traders, and OTC market makers) are able to step in front of displayed limit orders by improving on the limit price as market orders arrive on the other side of the market.[17] This can lead to another type of trading cost for limit orders that is commonly referred to as ''adverse selection''—the greater likelihood that limit orders will be executed when the market is moving significantly against them. The frequency and skill with which local traders step in front of limit orders can heighten the cost of adverse selection for limit order investors.

Thus, the routing decision for both market and limit orders can be complex. For each individual security, there are a variety of market centers to which orders can be routed. With listed equities, for example, orders can be routed to the primary exchange markets, which employ a single specialist per stock and historically have handled from 70–80% of the volume. Orders in listed equities also are routed to regional exchanges, often pursuant to ''preferencing'' programs under which orders are routed to particular dealers for execution, and to OTC market makers in the ''third market.'' Finally, orders in listed equities can be routed to ATSs, which offer agency limit order books that provide a high degree of internal interaction among investor orders. Indeed, one of the primary reasons the Commission approved the rescission of off-board trading restrictions was to assure an opportunity for fair competition by ECNs in the market for listed equities.[18]

With Nasdaq equities, orders have been routed to an even greater number of distinct market centers. In May 2000, for example, there were an average of 53.5 market makers in the top 1% of Nasdaq issues by daily trading volume, 26.3 market makers in the next 9% of issues, and an overall average of 12.3 market makers per issue.[19] In addition, orders in Nasdaq equities can be routed to an ATS. Finally, several of the regional exchanges trade, or are planning to trade, Nasdaq equities.

Although each exchange specialist, OTC market maker, and ATS represents a distinct trading venue and order executions can vary widely among them, there currently is little publicly available information that allows broker-dealers, much less investors, to compare and evaluate execution quality among different venues. Some market centers make order execution information privately available to independent companies, which then prepare reports on execution quality that are sold to broker-dealers. Other market centers provide reports of execution quality directly to broker-dealers or to their members. The information in these reports generally has not been publicly disseminated. Moreover, some broker-dealers have reported difficulty in obtaining useful information on execution quality from market centers. For example, participants in a Commission roundtable on the on-line brokerage industry indicated that not all market centers were willing to make order execution information available and, even when such information was made available, not all of it was useful or in a form that allowed for cross-market comparisons.[20]

In contrast, the NYSE on occasion has made available to academics sample databases that contain sufficient order and trade information to provide the basis for a useful evaluation of execution quality for orders that are routed to the NYSE.[21] In addition, the NYSE staff itself has published analyses of order executions on the NYSE.[22]

Although many other analyses of U.S. equity trading have been prepared and published, they are necessarily of somewhat limited utility for evaluating order executions because of the limited nature of their data sources. These sources typically include the trades and quotes in a security, but do not include information on the customer orders that resulted in trades. Using this limited data to assess order execution quality is quite difficult given the absence of even the most basic information on the nature of the orders themselves (*e.g.,* buy/sell, market/limit) or the time that orders were received for execution by a market center.[23]

Moreover, even if individual market centers were to make more information on order executions publicly available, the ability to compare execution quality across markets requires uniformity in the underlying data and statistical measures. To enable a true ''apples-to-apples'' comparison of execution quality, the order execution statistics made available by different market centers must reflect uniform procedures, data formats, and calculations. Otherwise, the already complex issues inherent in evaluating order execution quality can become hopelessly confused.[24]

Finally, improved information concerning the quality of order executions available at different market centers will provide little benefit to investors if they do not know where their orders are routed for execution. Currently, there is no market-wide requirement that brokers disclose where they route orders on behalf of

concerning the display of customer limit orders. *Report Concerning Display of Customer Limit Orders* (May 4, 2000). The report cited significant weaknesses in market centers' display of limit orders. It concluded that many exchange specialists and OTC market makers should take steps to improve their systems for limit order display and that many SROs can take steps to ensure better compliance with display requirements. *Id.* at 2–4.

[17] As discussed in section IV.A.1 below, the opportunity for local traders to step ahead of displayed limit orders may increase substantially in a market with penny trading increments. The Commission notes that it intends to consider whether market makers and similarly-situated market participants should be able to step ahead of limit orders by as little as a penny without previously quoting at that price.

[18] See Rule 390 Rescission Order, note 2 above, text accompanying nn. 23–27.

[19] NASD Economic Research, *http://www.marketdata.nasdaq.com* (visited July 8, 2000).

[20] *See* Report by Commissioner Laura S. Unger, *On-Line Brokerage: Keeping Apace of Cyberspace* 40–41 (Nov. 1999) (available at *http://www.sec.gov*). One of the recommendations in Commissioner Unger's Report was that the Commission should consider requiring market centers to make publicly available certain uniform information on execution quality and requiring broker-dealers to provide their customers with plain English information about the execution quality available at different market centers, order handling practices, and the broker-dealer's receipt of inducements for order flow. *Id.* at 45. In addition, one of the largest broker-dealers noted in its comment letter on the Fragmentation Release that even it had been frustrated in its own attempts to obtain useful order execution data from certain markets. Letter from Lon Gorman, Vice Chairman and President, Capital Markets & Trading Group, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated July 5, 2000, at 7.

[21] *See, e.g.,* Lawrence Harris and Joel Hasbrouck, *Market* v. *Limit Orders: The SuperDot Evidence on Order Submission Strategy,* 31 J. Financial and Quantitative Analysis 213 (June 1996).

[22] *See, e.g., Quantifying Best Execution at the New York Stock Exchange: Market Orders,* note 15 above.

[23] The study of trading in Nasdaq and NYSE securities currently being conducted by the Commission's Office of Economic Analysis incorporates the newly available, comprehensive order information collected through the NASD's Order Audit Trail System. This data source provides the basis for much more informative analysis of Nasdaq trading than has been possible in the past.

[24] One of the alternatives to requiring market centers themselves to prepare statistical measures of execution quality is to require them simply to make available raw data on an order-by-order basis. Comment is requested on this alternative in section III.B below. If this type of information were made available to the public, much of the need for required uniform statistics would be eliminated because everyone would have access to the data necessary to calculate whatever statistics they believed most appropriate, as well as evaluate the data supporting statistics generated by others. When the only information available is statistics prepared by market centers, however, the uniformity of such statistics is critically important.

customers. Although NYSE Rule 409(f) requires NYSE members, when confirming transactions, to disclose ''the name of the securities market on which the transaction was made,'' transactions executed at venues other than exchanges typically are classified as ''OTC.'' Thus, the identity of the particular OTC market maker or ATS that executed an order is not required to be disclosed. Moreover, the NYSE's rule does not cover non-members or securities that are not listed on the NYSE.

Consequently, the Commission believes that market-wide rules setting forth uniform measures of execution quality and requiring disclosure of broker-dealer order routing practices will help further many of the vital national market system objectives set forth in Section 11A(a)(1)(C) of the Exchange Act.[25] In particular, greater information about execution quality should assist brokers and investors in finding the best market for orders to be executed, help promote competition among markets and brokers on the basis of execution quality, and ultimately thereby lead to more efficient securities transactions.

In recent years, the interest of individual investors in receiving market-related information has expanded exponentially as advancing technology has allowed such information to be provided efficiently and at reasonable cost. This trend particularly has been reflected in the demand by individual investors for real-time quotes and last sale information.[26] Against this backdrop of expanding market transparency, the scarcity of useful public information on the quality of order executions is striking.[27] As discussed further below, improved technology for processing and disseminating information now offers new alternatives for making available to the public valuable information on order routing and execution practices. By putting this information in the hands of investors and others, the rules proposed today are intended to energize competitive forces that will produce a fairer and more efficient national market system.

B. Proposed Rule 11Ac1–5—Disclosure of Order Execution Information

Proposed Rule 11Ac1–5 would require market centers to prepare and make available to the public monthly reports in electronic form that categorize their order executions and set forth uniform statistical measures of execution quality. The rule as proposed is designed to avoid two serious pitfalls that can arise with such measures of execution quality. First, as noted above, varying and inconsistently calculated measures of execution quality can confuse the already complex task of comparing execution quality across different market centers. To address this problem, the proposed rule adopts certain basic measures of execution quality (such as effective spread, rate of price improvement and disimprovement, fill rates, and speed of execution) and sets forth specific instructions on how the measures are to be calculated.

Second, even uniform statistical measures can be unhelpful or even misleading if they are applied across a wide range of stocks, order types, and order sizes. Overly general statistics can be particularly problematic if a market center is sent many orders that are, for any number of reasons, difficult to fill. There may be a wide disparity in the average effective spreads for the execution of market orders by different market centers if calculated for all stocks and all sizes of orders. This disparity, however, may convey a misleading impression of the execution quality provided by the market centers. For example, if the orders executed by one market center primarily consisted of small orders in the most actively traded stocks, its average effective spread across all orders likely would be relatively small. Conversely, if the orders executed by a second market center primarily consisted of larger orders in less actively traded stocks, its average effective spread across all orders likely would be substantially higher than the first market center. Although the second market center may have offered higher quality executions than the first market center for both small orders in actively traded stocks and medium sized orders in less actively traded stocks, this fact would not be evident if the two classes of orders were not analyzed separately. In sum, overly general statistics for even a high-quality market center can appear less favorable than those of other market centers, not because of poor executions, but because of good execution of tough orders.

Clearly, a mandatory disclosure requirement must not create a disincentive for market centers to accept and execute orders that are difficult to fill. In the past, the only possible solution to this intractable problem would have been for the Commission to attempt, as best it could, to mandate statistics that encompassed a broad range of securities and orders without being overly general. Today, however, advancing technology offers another alternative that would allow competitive forces, rather than regulatory mandate, to determine the most appropriate classes of stocks and orders to provide a basis for cross-market comparisons of execution quality. In particular, improved technologies for processing and disseminating information make it feasible to require disclosures in electronic form that are divided into fairly discrete categories. Under the proposed rule, statistical information would be categorized by individual security, by five types of order (*e.g.,* market and inside-the-quote limit), and four order sizes (*e.g.,* 100–499 shares and 500–1999 shares). As a result, users of the market center reports will have great flexibility in determining how to summarize and analyze statistical information. Order executions could be analyzed for a particular security or for any particular group of securities, as well as for any size or type of orders across those groups of securities.

Primarily because information will be categorized on a stock-by-stock basis, the market center reports generally will contain too much data to be handled in written form. Each market center will be required to generate 20 rows of information for each security that it trades. For example, the report of an OTC market maker that trades 500 securities would include 10,000 rows of information. Clearly, if reports of this size could only be prepared by hand and disseminated in written form, they would be impossibly burdensome to generate. With current data processing capacities, however, the task is vastly simplified. Once systems have been programmed to perform a task once, there is little additional cost or burden associated with performing substantially the same task over and over. In addition, the Internet and private communications networks allow large amounts of data to be transmitted to

[25] These include (1) the availability to broker-dealers and investors of information with respect to transactions in securities, (2) the practicability of brokers executing investors' orders in the best market, (3) fair competition among broker-dealers, exchange markets, and markets other than exchange markets, and (4) the economically efficient execution of securities transactions.

[26] *See* Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613 (''Market Information Concept Release''), text accompanying n. 3 (demand by retail investors for real-time market information expanded by more than 1000% between 1994 and 1998).

[27] Independent third parties currently prepare evaluations of the trade execution services offered by brokers, but must make do with limited sources of information. One such evaluation, for example, rated the order execution services of brokers based on a single market order and a single limit order. The Commission is particularly interested in receiving comment on the proposed rules from independent analysts of order routing and execution practices.

widely dispersed users with little cost or difficulty. Indeed, SROs, broker-dealers, and independent companies currently maintain and process a very large volume of order-by-order raw data to generate their own statistical measures of execution quality.[28] Consequently, the Commission preliminarily believes that requiring market centers to prepare disclosures on a stock-by-stock basis would not be significantly more burdensome than requiring shorter reports with disclosures that were summarized across many stocks. Comment is requested on this issue.

Given the volume of data to be included in the electronic reports by market centers, most individual investors likely would not be interested in receiving and digesting the reports themselves. Rather, the information will need to be summarized and analyzed before it is helpful to investors in general. The Commission anticipates that independent analysts, consultants, broker-dealers, the financial press, and other market centers will analyze this information and produce summaries that respond to the needs of investors. Once basic, uniform information regarding order execution quality is available, the Commission believes that market forces will produce analyses of order execution quality adapted for different types of investors.

Comment is requested on the approach of adopting uniform statistical measures of execution quality, divided into discrete subcategories of security/order type/order size. Is the approach feasible and implementable without undue burden on market centers? Will there be sufficient interest by third parties in collecting and summarizing the electronic reports so that the public and investors in general will have reasonable access to useful information on execution quality?

A potential alternative to the approach reflected in the proposed rule is simply to require all market centers to make available electronic files with raw data on an order-by-order basis. For each order, market centers would provide the necessary fields of information (*e.g.,* time (to the second) of order receipt, type of order, limit price, size of order, time of order execution, price of execution, cancellation, whether the order was routed to another venue and the identity of that venue) for analysts to calculate the statistical measures of execution quality that they consider appropriate. This approach may offer the advantage of avoiding the need to reassess the viability and usefulness of specific statistical measures and to update them periodically. Comment is requested on this alternative. Would it be feasible in light of the large volume of data that would be disclosed? In addition, comment is requested on whether the raw data alternative should be available only to small market centers that execute relatively few transactions in national market system securities. In particular, would small market centers find it easier and less burdensome to provide raw data rather than the statistical measures required by the proposed rule?

1. Scope of Rule

Paragraph (b)(1) of proposed Rule 11Ac1–5 provides that every market center shall make available for each calendar month a report on covered orders in national market system securities that it received for execution from any person. Thus, the rule is limited in scope to market centers, covered orders, and national market system securities.

a. Market Center. Paragraph (a)(14) of the proposed rule defines the term ''market center'' as any exchange market maker, OTC market maker,[29] alternative trading system, national securities exchange,[30] and national securities association. This definition is intended to cover entities that hold themselves out as willing to accept and execute orders in national market system securities. In addition, the language in paragraph (b)(1) that a market center must report on orders that it ''received for execution from any person'' is intended to assign the disclosure obligation to the entity that is expected to control whether and when an order will be executed.[31]

The Commission anticipates that the reporting entity for the vast majority of orders will be an exchange specialist, OTC market maker, or ATS. Although specialists and market makers frequently operate under the auspices of an SRO (and such an SRO likely would assist its members in meeting the disclosure requirements of the proposed rule), the responsibility for executing orders generally is handled by individual members. In some cases, however, orders may be executed through a facility operated by an SRO without a member significantly controlling the order executions. Examples may include the Small Order Execution System (''SOES'') operated by Nasdaq, the OptiMark systems operated by Nasdaq and the PCX, and floor brokers who receive orders on the floor of an exchange and obtain an execution of the orders with little participation by a specialist. The definition of market center includes exchanges and associations to cover these situations. Comment, however, is requested on the manner in which such order executions should be disclosed by the SRO, as well as the feasibility and cost of such generating such disclosures. In addition, comment is requested in general on the definition of market center and on the language of paragraph (b)(1) that imposes the disclosure requirement on market centers that receive an order for execution. In particular, are these workable concepts that will clearly assign the responsibility to disclose order executions?

Interpretative questions would arise when a broker-dealer receives an order from a customer in a security for which the broker-dealer also is an OTC market maker or an exchange specialist. The Commission preliminarily believes that such a market center should be considered as having received an order for execution only when the order is transmitted to the department of the firm responsible for making a market in the security. Comment is requested on whether this is a fair and appropriate application of the disclosure requirement.

Finally, comment is requested on whether the rule should exclude market centers that execute relatively few orders in national market system securities in total, or eliminate the disclosure requirement for individual

[28] For example, all market centers trading Nasdaq securities are required to submit electronic data on individual order executions to the NASD pursuant to its Order Audit Trail System requirements. NASD Rules 6950–6957. This data includes the basic order information (such as the type and size of an order, and the time of order receipt, cancellation, and execution) that would be necessary to calculate the statistical measures of execution quality required by the proposed rule.

[29] The term ''exchange market maker'' is defined in paragraph (a)(9) of the proposed rule in substantially the same language as it is defined in Exchange Act Rule 11Ac1–1, the Commission's quote dissemination rule. The definition of ''OTC market maker'' in paragraph (a)(18) has been modified, however, to clarify that proposed Rule 11Ac1–5 would apply to any dealer that holds itself out as willing to buy from and sell to customers or others in the United States, regardless of whether the dealer is located outside the United States or trades on a foreign exchange.

[30] A national securities exchange is an exchange registered under Section 6 of the Exchange Act. An exchange exempted from registration pursuant to Section 5 of the Exchange Act therefore would not be included within the proposed rule's definition of market center. Comment is requested on the appropriateness of this exclusion.

[31] Under the rule as proposed, when a market center receives an order for execution, the order must be included in its statistical disclosures of execution quality even if the order is routed to another venue for execution. *See* note 35 below and accompanying text.

securities in which a market center executed relatively few orders. In particular, would the benefits of disclosure in these situations justify the costs of compliance?

b. Covered Order. The definition of ''covered order'' in paragraph (a)(8) of the proposed rule contains several conditions or exclusions that are intended to limit the scope of the rule to those orders that provide a basis for meaningful and comparable statistical measures of execution quality. First, the rule applies only to market orders or limit orders that are received by a market center during the time that a consolidated BBO is being disseminated. This restriction is necessary because nearly all of the statistical measures included in the proposed rule depend on there being available a consolidated BBO at the time of order receipt. The term ''consolidated best bid and offer'' is defined in paragraph (a)(7) as the highest firm bid and the lowest firm offer for a security that is calculated and disseminated on a current and continuous basis pursuant to a national market system plan. The two plans that currently provide for the calculation and dissemination of a consolidated best bid and offer are the Consolidated Quotation Plan for listed equities, and the Nasdaq/National Market System Plan for Nasdaq equities.[32] Comment is requested on the advisability and practicality of this condition. In addition, comment is requested on how the rule should apply to orders that are received when the consolidated BBO is locked or crossed.

The definition of covered order excludes any orders for which the customer requested special handling for execution and that, if not excluded, would skew general statistical measures of execution quality. These include, but are not limited to, orders to be executed at a market opening or closing price, stop orders, orders such as short sales that must be executed on a particular tick or bid, orders that are submitted on a ''not held'' basis, orders for other than regular settlement, and orders that are to be executed at prices unrelated to the market price at the time of execution. Comment is requested on the appropriateness of excluding these orders, particularly on the exclusion of market opening orders. The Commission recognizes, for example, that the quality of execution of market opening orders in the Nasdaq market has been an issue of significant concern. Nearly all of the statistical measures in the proposed rule, however, require the use of a consolidated BBO at the time of order receipt, which would not be available for orders that are to be executed at the market opening. The Commission requests comment on whether statistics should be included in the rule to measure the quality of execution of market opening orders and whether such statistics could be generated without undue burden or cost for market centers. In addition, comment is requested on whether there are additional types of orders that should be excluded from the scope of the proposed rule.

c. National Market System Security. As proposed, Rule 11Ac1–5 would apply only to securities that are designated as a national market system security under Exchange Act Rule 11Aa2–1. Currently, this designation applies to exchange-listed equities and equities included in the National Market tier of Nasdaq.[33] It does not apply to Nasdaq SmallCap securities and exchange-listed options. SmallCap stocks tend to be inactively traded and, as a group, generate less than 5% of the dollar volume on Nasdaq while making up nearly 25% of Nasdaq companies.[34] Given the relatively light trading in these securities, the Commission preliminarily believes that the value of statistical measures of trading may not justify the costs to produce the information. Comment is requested on this issue.

With respect to listed options, the Commission is concerned about the need for improved disclosure of execution quality in the options markets, particularly now that there is widespread trading of options on multiple exchanges and expanding payment for options order flow. Nevertheless, listed options are not included within the proposed rule principally because a consolidated BBO is not, at this time, calculated and disseminated for options trading. A consolidated BBO is an essential element for nearly every statistical measure in the proposed rule, such as calculating price improvement and classifying types of limit orders (*e.g.,* inside-the-quote and at-the-quote limit orders). Comment is requested on the exclusion of listed options from the scope of the proposed rule and on whether there are other means to improve disclosure of execution quality by the national securities exchanges that trade listed options. In addition, comment is requested on whether the Commission should require that a consolidated BBO be calculated and disseminated for the options markets, thereby facilitating the disclosure of order execution practices.

2. Required Information

Paragraph (b)(1) of the proposed rule requires that reports be categorized by order type, order size, and security. Each of these three categories is defined in paragraphs (a)(4)–(6) of the proposed rule. With this degree of categorization, a market center would, for example, produce statistical information for the subcategory of (1) market orders (2) of 100–499 shares (3) in an individual stock. Comment is requested on the appropriateness of these categories and whether they will generate useful information. Comment specifically is requested on the elimination from the rule's statistics of limit orders with limit prices that are more than $0.10 outside the consolidated BBO at the time of order receipt. The Commission preliminarily believes that the rule's statistical measures (*e.g.,* fill rates and speed of execution) for this type of order may be less meaningful because they would be more dependent on the extent to which the orders' limit prices were outside the consolidated BBO (and movements in market prices) than on their handling by a market center.

a. Information Required for All Types of Orders. For each subcategory of security/order type/order size, paragraph (b)(1)(i) of the proposed rule specifies eleven columns of information that must be provided. In addition, paragraph (b)(1)(ii) specifies nine additional columns of information for subcategories that include market orders and marketable limit orders. As a result, each market center's report would include 20 subcategories for each security, and up to 20 columns of information for a subcategory.

The first five columns of information specified in paragraph (b)(1)(i) provide general information on the orders received by a market center in a subcategory and the disposition of those orders. The first column is ''the number of covered orders.'' The second, however, is ''the cumulative number of shares of covered orders''; and thereafter all statistics required by the rule are expressed either in number of shares or

[32] Joint Self-Regulatory Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on an Unlisted Trading Privilege Basis.

[33] Rule 11Aa2–1 incorporates the definition of ''reported security'' that is used in Exchange Act Rule 11Aa3–1—any security for which transaction reports are made available pursuant to a reporting plan approved under Rule 11Aa3–1. Only exchange-listed equities and Nasdaq National Market equities fall within this definition.

[34] *See* NASD Economic Research, *http://www.marketdata.nasdaq.com* (visited June 27, 2000).

in share-weighted amounts. The rule uses share-based statistics primarily to deal appropriately with those situations in which a single order receives less than a full execution or more than one partial execution.

The rule as proposed requests the number of shares executed at both the receiving market center and at any other venue (after being routed elsewhere by the receiving market center). Thereafter, all statistical measures of order execution for a market center will encompass *both* orders that were executed at the receiving market center and orders that were executed elsewhere. In calculating its statistics, a market center will use the time it received the order and the consolidated BBO at the time it received the order,[35] not the time and consolidated BBO when the venue to which an order was forwarded received the order. The Commission preliminarily believes that a market center should be held responsible for all orders that it receives and should not be given an opportunity to exclude difficult orders from its statistical measures of execution quality by routing them to other venues. In addition, from the perspective of the customer who submitted the order, the fact that a market center chooses to route the order elsewhere does not reduce the customer's interest in a fast execution that reflects the consolidated BBO as close to the time of order submission as possible. Consequently, in evaluating the quality of order routing and execution services, it is important for customers to know how a market center handles all orders that it receives and not just those it chooses to execute. Comment is requested on this issue. Would, for example, it be more appropriate to require market centers to provide separate statistics for orders that they executed and orders that were executed elsewhere, or would such a requirement unduly increase the volume of data required by the rule (presumably doubling the number of subcategories for each security)?

The next five columns of information required by the proposed rule ask for the percentage of shares that were executed within specified periods of time after order receipt (such as ''from 0 to 9 seconds'' and ''from 10 to 29 seconds''). Although required for all types of orders, the Commission anticipates that this information will be most useful for evaluating the execution of non-marketable limit orders. These statistics are intended to provide useful comparisons to the overall fill rates for non-marketable limit orders.[36] Particularly for inside-the-quote and at-the-quote limit orders, the submitter of the order reasonably may expect that the order should be executed relatively quickly, and information on the likelihood that such an order will be executed with 10 seconds, 30 seconds, and so on, at different market centers may be helpful in guiding the order routing decision. Comment is requested on the usefulness of these measures of execution quality for non-marketable limit orders, as well as any other measures that commenters believe the Commission should consider. For example, one conceivable alternative would be the length of time that an order remained on a market center's order book while the limit price was at the consolidated BBO or better. Another alternative would be the number of trades or share volume printed on the consolidated tape at prices that are equal to or worse than the limit order price. Comment is requested on whether these alternative statistical measures would provide useful information, as well as on the difficulty and cost for market centers to generate the information.

The final column of information required by the proposed rule for all types of orders is the average realized spread. The term ''average realized spread'' is defined in paragraph (a)(3) of the proposed rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO as it stands 30 minutes after the time of order execution.[37] By comparing execution prices with the post-trade values, the average realized spread provides an important measure of execution quality that can be interpreted differently for non-marketable limit orders and for market orders. For non-marketable limit orders, the average realized spread is a measure of adverse selection costs—the extent to which limit orders on average tend to be executed when the market is moving significantly against them. As noted above,[38] this tendency can be exacerbated by the frequency and skill with which the local trading interest at a market center (whether those on the trading floor of an exchange or an OTC market maker) step in front of displayed limit orders by offering a better price as orders arrive for execution at the market center. This ''last mover'' advantage for local trading interest could be substantial, and the average realized spread can measure the extent to which it affects the execution costs of limit orders.

For market orders (as well as marketable limit orders), the average realized spread can measure the extent to which ''informed'' and ''uninformed'' orders are routed to different market centers. Informed orders are those submitted by persons with better information than is generally available in the market. They therefore represent a substantial risk to liquidity providers that take the other side of these informed trades. In contrast, orders submitted by those without an information advantage (often small orders) present less risk to liquidity providers and in theory should receive the most favorable prices available in the market. With a practice sometimes referred to as ''cream-skimming,'' market centers can attempt to identify and secure a substantial flow of uninformed orders. If these uninformed orders are executed at prices established by markets with a substantial volume of informed order flow, they may generate increased trading profits for liquidity providers. The average realized spread for market and marketable limit orders can highlight the extent to which market centers receive uninformed orders (as indicated by higher realized spreads than other market centers), thereby potentially helping to spur more vigorous competition to provide the best prices to these orders to the benefit of many retail investors.

Comment is requested on the usefulness of the average realized

[35] The term ''time of order receipt'' is defined in paragraph (a)(20) of the proposed rule as the time (to the second) that an order was received by a market center for execution. The definition is intended to identify the time that an order reaches the control of the market center that is expected, at least initially, to execute the order. Comment is requested on whether this definition is both workable and sufficiently clear to facilitate cross-market comparisons of execution speed and quality.

[36] The overall fill rates for such orders can be calculated by comparing the number of shares executed with the total number of shares received. Such overall fill rates for non-marketable limit orders can be difficult to interpret because of the problem of cancelled orders. An aggressive user of non-marketable limit orders frequently will submit orders with limit prices at or inside the current consolidated BBO. If market prices move away from the order, the order submitter may cancel and resubmit the order at a new limit price that reflects the changing consolidated BBO. Consequently, the same person potentially may cancel and resubmit an order several times to maintain the aggressiveness of the limit price. These cancellations can make it difficult to evaluate overall fill rates and cancellation rates.

[37] The proposed rule uses the midpoint of the consolidated BBO 30 minutes after the time of execution as a proxy for the post-trade value of the security. This time period also has been used in analyses of execution quality. *See, e.g.,* Hendrik Bessembinder, *Trade Execution Costs on NASDAQ and the NYSE: A Post-Reform Comparison,* 34 J. Financial & Quantitative Analysis 387, 395 (1999). Comment is requested on whether 30 minutes is an appropriate period of time to measure the post-trade value of a security, or whether it should be shorter or longer.

[38] *See* note 17 above and accompanying text.

spread as a measure of execution quality for both non-marketable limit orders, and market and marketable limit orders. Comment also is requested on the difficulty and cost for market centers in generating statistics based on the consolidated BBO 30 minutes after the time of execution. As discussed below, the other measures of execution quality included in the proposed rule require comparisons with the consolidated BBO at the time of order receipt.

b. *Information Required for Market and Marketable Limit Orders.* Subparagraph (ii) of paragraph (b)(1) of the proposed rule specifies an additional nine columns of information for subcategories of market orders and marketable limit orders.

These columns are intended to help evaluate how well these orders are executed by comparing their execution prices with the consolidated BBO at the time of order receipt. The time of order receipt is used rather than the time of order execution primarily based on an understanding that customers, at least for purposes of evaluating execution quality, generally expect orders to be executed at prices that reflect, as closely as possible, the displayed quotes at the time they submit their orders. The earliest time at which a market center can be held responsible for executing an order is the time of receipt. The Commission also recognizes, however, that executions at prices outside the consolidated BBO at the time of order *execution* are troubling, both from the standpoint of the customer who received an inferior price and the displayed quote establishing the consolidated BBO that is passed over. Nevertheless, rather than require statistics for both the time of order receipt and order execution (and thereby increase the volume of data required by the rule), the rule as proposed adopts the time of order receipt for evaluating effective spreads, price improvement, and price disimprovement. Comment is requested on whether any statistics based on time of order execution also should be required.

The first of these columns is the average ''effective'' spread (in contrast to the average ''realized'' spread that was discussed above). Average effective spread is defined in paragraph (a)(2) of the proposed rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO at the time of order receipt. The average effective spread is a comprehensive statistic that summarizes the extent to which market and marketable limit orders are given price improvement, executed at the quotes, and executed outside the quotes. As such, it is a useful single measure of the overall liquidity premium paid by those submitting market and marketable limit orders to a market center.

The final eight columns of information required for market and marketable limit orders essentially break out the major determinants of execution quality that are summarized in the average effective spread. They also are intended to provide a substantial basis to weigh any potential trade-offs between execution speed and execution price. Orders would be classified based on whether they were ''executed with price improvement,'' ''executed at the quote,'' or ''executed outside the quote,'' as defined in paragraphs (a)(10)–12. For shares executed with price improvement and shares executed outside the quote, market centers would disclose the number of shares, the average amount per share of price improvement or price disimprovement, and the average speed of execution. For shares executed at the quote, market centers would disclose the number of shares and the average speed of execution. Not only will these statistics help broker-dealers and investors evaluate where to find the fastest executions at the best prices, they also will indicate the extent to which market centers are able to execute larger orders at prices equal to or better than the quotes and thereby provide an indication of the liquidity enhancement available at different market centers.

Comment is requested on each of the statistical measures included in the rule as proposed, particularly as to their usefulness, practicality, and cost. Commenters also are requested to suggest any additional measures that they believe the Commission should consider.

3. Procedures for Making Reports Available to the Public

In light of the large volume of data they necessarily will include, the monthly order execution reports must be made available by market centers in electronic form rather than in writing. Consequently, paragraph (b)(2) of the proposed rule directs the SROs to act jointly in establishing procedures for market centers to follow in making their monthly reports available to the public in a readily accessible, uniform, and usable electronic format.[39] In addition, paragraph (b)(3) requires market centers to make their reports available within one month after the end of the month addressed in the report.

To comply with the proposed rule, the Commission anticipates that the SROs would prepare and submit a joint plan to the Commission for approval under Exchange Act Rule 11Aa3–2. At that point, public comment would be invited on the proposed plan prior to Commission approval. Many of the more detailed issues relating both to the format of the reports and to the means of access to the reports can perhaps more appropriately be addressed in the context of approval of a joint plan. As a preliminary matter, however, the Commission anticipates that, although the volume of data in each report would be large if evaluated in written form, the volume of data would not be large when compared with many electronic databases currently available to the public. Accordingly, the Commission preliminarily believes that the public should have access to the reports in electronic form at very little cost.

Comment is requested on the cost and logistics of making the monthly reports on order execution practices available in an electronic format. In particular, does it seem likely, as the Commission now believes, that the reports can be made available to the public in a reasonably efficient manner at low cost?

C. Proposed Rule 11Ac1–6—Disclosure of Order Routing Information

Proposed Rule 11Ac1–6 would require disclosure of the order routing practices of broker-dealers that route orders as agent on behalf of their customers. Broker-dealers owe a duty of best execution to their customers in this context and must review their order routing practices periodically to assure they are meeting this responsibility. A primary purpose of proposed Rule 11Ac1–6 would be to bring this review process out into the open and afford customers a greater opportunity to monitor their broker-dealer's order routing decisions. The proposed rule would require broker-dealers to disclose, among other things, the venues to which they routed customer orders, the significant objectives that the broker-dealer considered in determining where to route orders, and the results actually achieved compared with the result available at other venues. On customer request, broker-dealers also would be required to disclose where an individual customer's orders were routed.

1. Scope of Rule

The scope of proposed Rule 11Ac1–6 is not the same as the scope of proposed

[39] Section 11A(a)(3)(B) of the Exchange Act authorizes the Commission, by rule or order, to require SROs to act jointly with respect to matters as to which they share authority in planning, developing, operating, or regulating the national market system.

Rule 11Ac1–5. First, proposed Rule 11Ac1–6 covers a wider range of securities. The definition of ''covered security'' in paragraph (a)(1) includes not only reported securities (*i.e.,* exchange-listed equities and Nasdaq National Market equities), but also Nasdaq SmallCap equities and listed options.[40] Second, the rule as proposed applies to all broker-dealers that route orders on behalf of their customers. The term ''customer order'' is defined as any order to buy or sell a covered security that is not for the account of a broker-dealer, but excludes any order for a quantity of a security having a market value of at least $50,000 for a covered security that is an option contract and a market value of at least $200,000 for any other covered security.[41] Large orders are excluded in recognition of the fact that statistics for where orders are routed and general descriptions of order routing practices are more useful for smaller orders that tend to be homogenous.

Finally, the proposed rule applies to all types of orders (*e.g.,* pre-opening orders and short sale orders), but broker-dealers must discuss and analyze their routing practices only for ''non-directed orders.'' Paragraph (a)(5) defines a non-directed order as any customer order other than a directed order. Paragraph (a)(3) defines a directed order as a customer order that the customer specifically instructs the broker-dealer to route to a particular venue for execution. Consequently, all customer orders are non-directed orders in the absence of specific customer instructions on where they are to be routed.

The Commission preliminarily believes that a broad scope is appropriate for disclosure of order routing practices in light of the fact that broker-dealers currently have an obligation to obtain best execution of all orders represented on behalf of a customer, and this obligation entails a periodic review of the quality of markets. The proposed rule primarily requires a quantitative disclosure of where orders are routed and an explanation by the broker of the steps it took to obtain best execution of customer orders. The Commission requests comment in general on the scope of proposed Rule 11Ac1–6. Is it appropriate to include Nasdaq SmallCap equities and listed options? Should the rule also encompass orders for other types of securities, such as those quoted on the OTC Bulletin Board or otherwise in the over-the-counter market? Should the rule exclude broker-dealers that route a relatively small number of orders on behalf of customers? Are there any types of non-directed orders that should be excluded from the rule, or should any types of directed orders be included within the rule?

2. Quarterly Reports

Paragraph (b)(1) of the proposed rule requires broker-dealers to make publicly available a report for each calendar quarter that discusses and analyzes its routing of non-directed orders in covered securities. The term ''make publicly available'' is defined in paragraph (a)(3) as posting on a free Internet web site, furnishing a written copy on request, and notifying customers at least annually that a written copy will be furnished on request. Unlike the monthly electronic reports on order execution practices required by proposed Rule 11Ac1–5, the quarterly reports on order routing practices are intended to be disseminated directly to investors. The purpose of using a primarily Internet method of dissemination is to assure ready access to the reports by interested parties, but also to ease the burden of compliance on broker-dealers by reducing paperwork and costs. Paragraph (b)(2) requires that a quarterly report be made publicly available within two months after the end of the quarter addressed in the report. This somewhat lengthy time lag is intended to allow broker-dealers an opportunity to evaluate the monthly electronic reports by market centers under Rule 11Ac1–5 prior to preparing their order routing disclosures. Comment is requested on the method and timing of dissemination of the quarterly reports.

Paragraphs (b)(1) (i) and (ii) of proposed Rule 11Ac1–6 would require broker-dealers to disclose a quantitative analysis of the nature of their order flow. This would include the percentage of total customer orders that were non-directed orders, and the percentages of non-directed orders that were market orders, limit orders, and other orders. The quantitative analysis also would include the identity of each venue to which non-directed orders were routed for execution, the percentage of non-directed orders routed to the venue, and the percentages of non-directed market orders, non-directed limit orders, and non-directed other orders that were routed to the venue.[42] The percentages, rather than numbers, of orders are used to facilitate customer understanding of the probability that particular types of orders will be routed to different venues without the need for calculations, as well as to protect potentially sensitive order flow information. Comment is requested on the quantitative analysis of where orders are routed in terms of percentages.

Under paragraph (b)(1)(iii), a broker-dealer also would be required to discuss the material aspects of its relationship with each venue to which non-directed orders were routed, including a description of any payment for order flow arrangement or profit-sharing relationship. The term ''payment for order flow'' is defined broadly in Exchange Act Rule 10b–10(d)(9) to include any payment or benefit that results in compensation to the broker-dealer for routing orders to a particular venue. The term ''profit-sharing relationship'' is defined in paragraph (a)(7) of the proposed rule to mean any ownership or other type of affiliation under which the broker-dealer, directly or indirectly, shares in any profits that may be derived from the execution of non-directed orders. It therefore specifically covers internalization of customer orders by a broker-dealer that executes customer orders as principal.

The purpose of requiring disclosure of any relationships between a broker-dealer and the venues to which it routes orders is to alert customers to potential conflicts of interest that may influence the broker-dealer's order-routing practices. Currently, Rule 10b–10(a)(2)(i)(C) requires a broker-dealer, when acting as agent for the customer, to disclose on the confirmation of a

[40] To include Nasdaq SmallCap equities, paragraph (a)(1)(i) of proposed Rule 11Ac1–6 incorporates the language of current Rule 11Ac1–1(a)(1)—''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 Act.'' This language covers SmallCap equities, but excludes equities quoted on the OTC Bulletin Board operated by the NASD. To include option securities, paragraph (a)(1)(ii) of the proposed rule includes ''any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to a national market system plan.'' This language includes any option securities for which market information is disseminated on a real-time basis pursuant to the national market system plan administered by the Options Price Reporting Authority (''OPRA'').

[41] Comment is requested on whether the amounts of $50,000 for option contracts and $200,000 for other securities are appropriate to exclude large orders for which general statistics are less useful.

[42] The term ''venue'' is intended to be interpreted broadly to cover market centers within the meaning of proposed Rule 11Ac1–5(a)(14), as well as any other person or entity to which a broker routes non-directed orders for execution. As with market centers, interpretative questions may arise in identifying the appropriate venue when a person or entity trades under the auspices of an exchange or association. If, however, a particular market maker or dealer receives orders pursuant to any arrangement that gives it a preference to trade with the order as principal, that market maker or dealer, rather than the exchange, would appropriately be identified as the venue to which the order was routed.

transaction whether payment for order flow was received and that the source and nature of the compensation for the transaction will be furnished on written request. In addition, Exchange Act Rule 11Ac1–3(a) requires broker-dealers to disclose in new and annual account statements its policies on the receipt of payment for order flow and its policies for routing orders that are subject to payment for order flow. The Commission preliminarily believes that disclosure of potential conflicts of interest *in conjunction with* a quantitative analysis of where all non-directed orders are routed may provide customers with a clearer understanding of a broker-dealer's order routing practices than is provided under current rules. Comment is requested on whether, if proposed Rule 11Ac1–6 were to be adopted, the disclosure requirements currently in effect should be modified to reflect the new disclosure requirements.

The Commission considered including in the proposed rule a requirement that broker-dealers provide a quantitative estimate of the aggregate dollar amount of payment for order flow received during a quarter from each order execution venue. It has not proposed such a requirement for two principal reasons.[43] First, there potentially are a multitude of varying arrangements for payment for order flow; estimating the amounts produced by such arrangements could be difficult, subjective, and costly. Second, the Commission is concerned that disclosure of the aggregate dollar amounts of payment for order flow, without requiring comparable disclosure of the dollar amount of trading profits that redound to the benefit of broker-dealers pursuant to profit-sharing relationships, potentially could paint an inaccurate picture of the relative financial incentives generated by the two types of relationships. Comment is requested on whether any disclosure of the aggregate amount of payment for order flow and shared trading profits should be required.

Finally, paragraph (b)(1)(iv) of the proposed rule requires broker-dealers to discuss and analyze their order routing practices, including the significant objectives that affected order routing decisions, the results obtained for customers, a comparison of such results with the quality of order executions available at other venues, and whether the broker-dealer has made or intends to make any material changes in its order routing practices. This part of the report would essentially require a description of the basis of the broker-dealer's order routing decisions. The Commission repeatedly has stressed the importance of considering opportunities for price improvement to a broker's best execution analysis.[44] At a minimum, the information required by paragraph (b)(1)(iv) of the proposed rule would include a description of the basis of any decision to forgo price improvement opportunities available at other venues. The Commission believes that responsible broker-dealers generally consider these issues as a matter of good business practice. It preliminarily believes that requiring public disclosure will be helpful to customers and others in evaluating the quality of a broker-dealer's order routing practices and promoting fair competition among broker-dealers. Comment is requested on the usefulness and cost of preparing the quarterly report on order routing practices.

3. Customer Requests for Information

A broker-dealer's quarterly reports should provide a useful picture of its order routing practices as a whole, but will not inform individual customers where their own orders were routed. As noted above,[45] broker-dealers currently are not required to disclose where orders are routed for execution, with the limited exception of NYSE Rule 409(f). To assure that customers have ready access to this information, paragraph (c) of the proposed rule would require broker-dealers, on request of a customer, to disclose to the customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.[46] To alert customers to the availability of individual order routing information, paragraph (c)(2) of the proposed rule would require broker-dealers to notify their customers at least annually of their option to request such information.

Under the rule as proposed, those customers interested in monitoring the quality of their order executions would be entitled to learn important information about how their orders were handled. When combined with information that such customers may already maintain, such as the time they submitted an order to their broker-dealer, the consolidated BBO at the time they submitted the order, and the price at which an order was executed, the information to be provided on request potentially could give customers a substantial ability to monitor and evaluate their broker-dealer's order routing decisions and the quality of executions obtained at different venues. Broker-dealers would not, however, be required to bear the expense of providing individualized order routing information to those who had not asked to receive it. Comment is requested on the usefulness of this information and the costs to broker-dealers of responding to requests. In particular, do broker-dealers currently maintain information sufficient to respond to customer requests without undue additional burden or cost?

IV. Further Action To Strengthen Competition in the Markets

The Commission is committed to maintaining vigorous competition between individual market centers. As the Commission discussed in the Fragmentation Release, competition in the securities markets can take two forms: competition among market centers, and competition among quotes and orders within and across market centers. Competition among market centers, in which each market center strives to attract order flow from intermediaries based on the overall quality of its market, has proven to be a primary force in improving the operation of the markets. It has encouraged innovation in trading systems, fostering the use of new technology and creative trading rules to offer an array of execution choices. Vigorous market center competition has driven markets to offer faster executions, charge lower fees, and provide greater liquidity at the best quoted price. These competition-driven market improvements have produced

[43] Although the proposed rule would not require an estimate of the *aggregate* dollar amount of payment for order flow, a broker's description of a payment for order flow arrangement must include disclosure of the material aspects of the arrangement. These would include a description of the terms of the arrangement, such as any amounts per share or per order that the broker receives. Similarly, in describing a profit-sharing relationship, a broker would be expected to disclose the extent to which it could share in profits derived from the execution of non-directed orders. An example would be the extent of the ownership relation between the broker and execution venue.

[44] *See, e.g.,* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (''Order Handling Rules Release''), text accompanying nn. 356–357.

[45] *See* text following note 24 above.

[46] Currently, Rule 10b–10(a)(1) requires a broker-dealer to include the time of transaction on the confirmation of a transaction or a statement that the time of transaction will be furnished on written request. Paragraph (a)(9) of the proposed rule adopts the definition of the term ''time of the transaction'' set forth in Rule 10b–10(d)(3)—''the time of execution, to the extent feasible, of the customer's order.''

enormous enhancements in service for both retail and institutional customers.

The key service provided by a market center, however, is its quality of trade executions. First and foremost, customers seek to obtain from market centers the best possible execution price for their orders, and they may view the market's speed, depth, and cost-efficiency as contributory factors to this key goal. For there to be meaningful competition between market centers, market participants need the ability to easily compare market centers on the basis of execution quality in addition to the other service factors that contribute to market quality. The execution quality disclosure rules proposed today are intended to empower market participants to evaluate, and hold accountable, market centers for the quality of execution they provide. These rules should encourage competition between market centers on the full range of factors important to customers.

Consistent with encouraging competition among market centers on execution quality, the Commission believes that it is important to encourage the second form of competition—competition among orders on the basis of price. This competition is central to the operation of the equities markets. Price competition among orders is the primary price discovery vehicle in the markets. The best bid and ask quotes set the prices for most smaller trades, and these quotes (validated by trade reports) are the main reference point for larger institutional trades. The best bid and ask are the measure of market quality used to evaluate trades by all market participants. The spread between the best bid and ask is set by disclosed, priced orders competing to be the best price. If this competition wanes, the quote spread may widen, raising transaction costs for most or all investors. In addition, the depth of displayed trading interest may be reduced, leading to increased price volatility.

Therefore, maintaining strong competition among published quotes is of fundamental importance to the price setting mechanism of the U.S. equity markets. Competition based on published quotes depends on the published quote's ability to interact with a flow of orders: better prices will not be quoted unless quoting is likely to produce an execution at the quote, and this likelihood depends on the availability of orders with which to trade.

For this reason, the Commission remains concerned about the potential for fragmentation, and in particular widespread internalization of customer orders, to discourage quote competition in the markets. Without an incentive for competitive quotes, the best bid and offer may widen, resulting in worse prices for many investors. This issue was the core inquiry of the Fragmentation Release.

In light of the comments of investors on the impact of internalization, the Commission remains deeply concerned about the potential for internalization to interfere with order interaction and discourage the display of aggressively-priced quotations. Nonetheless, as discussed previously, many comments criticized the price/time alternatives of the Fragmentation Release as premature in light of changing market structures, and potentially preventing vigorous competition among market centers. For these reasons, the Commission is taking action at this time only on the execution quality disclosure approach discussed in the Fragmentation Release, while deferring action on the Release's price/time priority alternatives. As described previously, the Commission is studying the market impact of fragmentation and internalization. The Commission intends to use the results of this analysis, and its experience with changing conditions in the market, to determine whether further steps are needed to increase competition among quoted prices.

In addition to discussing proposals intended to address fragmentation issues directly, such as the proposed execution quality disclosures, a number of commenters on the Fragmentation Release argued that the Commission should do more to strengthen price competition and price priority within the existing market structure. The Commission believes that it is important now to consider further ways to improve the existing national market systems to better achieve these objectives.

A. Strengthening Price Competition in the Quote

Many commenters on the Fragmentation Release argued that, in place of broader fragmentation measures, the Commission should strengthen the existing national market system structures that tie together the competing markets. One important means of strengthening these structures is to encourage sources of price competition within the consolidated quote.

Today, the public consolidated quote plays a critical role in combating the fragmentation of isolated market centers by bringing together and making widely available the quotes of the market centers trading the same security. The consolidated quote provides intermediaries with a reliable indicator of the best prices of the various market centers, which they depend on in routing and executing orders. Investors also rely on the consolidated quote in placing their orders and monitoring the quality of their executions.

Recently, questions have been raised about the fees charged for market information and the current methods of consolidating quotes from different markets.[47] The Commission agrees that these issues warrant further consideration. On December 9, 1999, the Commission published a concept release on the topic of market data fees, to discuss various approaches to the review of fees for market information and the oversight of the consolidated information systems.[48] Virtually all the commenters on the release agreed on the importance of consolidated information in the equities markets. They differed on many other issues in the release, including the proper approach to evaluating market data fees and the means of consolidating market data across markets. To further consider these issues, the Commission is establishing a formal advisory committee on market information to provide advice on the issues related to consolidated data in the equities and options markets, including alternative models for disseminating and consolidating information from multiple markets, and appropriate governance structures for joint market information plans.

The Commission and most observers view a consolidated quote as an essential element of a national market system composed of competing markets.[49] Strengthening price competition within the consolidated quote could improve prices for all participants in the competing markets. In recent years, two sources of prices have been critical in improving the consolidated quote: limit orders

[47] *See, e.g.,* Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission, dated April 10, 2000 (File No. S7–28–99); Letter from Marc E. Lackritz, President, SIA, to Jonathan G. Katz, Secretary, Commission, dated April 11, 2000 (File No. S7–28–99); Letter from David S. Pottruck, President & Co-Chief Executive Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, Commission, dated March 14, 2000 (File No. S7–28–99) (''Schwab Market Data Letter'').

[48] Market Information Concept Release, note 26 above.

[49] *See, e.g.,* Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated March 24, 2000 (File No. S7–28–99); Schwab Market Data Letter, note 47 above.

displayed by specialists and market makers, and ECN quotes.

1. Limit Orders

The Commission believes that, in order to maintain vigorous price competition in quotes, it is important to maintain incentives for the display of limit orders. The Commission's Order Handling Rules for equities required the display of limit orders in the quote, unless the investor chose not to display the limit order.[50] The display of limit orders in the quote is a dynamic stimulant of price competition in both listed and Nasdaq securities. For example, limit order display contributed to the substantial narrowing of Nasdaq spreads after the Order Handling Rules.[51] Thus, it is imperative that the competitive force of limit orders be protected as markets evolve.

The advent of decimal trading portends substantial benefits from narrower spreads in actively traded securities, resulting in lower trading costs for retail investors. Observers have raised concerns, however, that in a penny trading environment, displayed limit orders may be disadvantaged.[52] Currently, in order for specialists and other exchange participants to trade ahead of a limit order with priority, they must trade at a 1/16th better price (or 6.25 cents), because they can only trade in 1/16th increments. Under NASD rules, to step ahead of a customer limit order, OTC market makers must trade at a 1/16th better price, or half the spread if the spread is a 1/16th or less.[53] If in a penny trading environment market makers, and other market participants, can trade with market orders for only a penny better than displayed limit orders, these market participants will likely step ahead of limit orders much more frequently. Market makers holding customer limit orders will be able to use their knowledge of market conditions to trade with incoming market orders at a penny better price, with the option of liquidating their position against customer limit orders at an insignificant loss.

If these trading patterns develop, limit orders will be filled less frequently and under more disadvantageous conditions. Fewer limit orders may be entered, reducing the benefits of limit orders for price competition. For these reasons, the Commission intends to carefully consider, and discuss with the SROs, whether market makers and similarly-situated market participants should be able to step ahead of limit orders by as little as a penny without previously quoting at that price.

2. ECN Quotes

Several commenters on the Fragmentation Release argued that the Commission should strengthen the consolidated quote in listed securities by including the quotes of ECNs, believing that these quotes could add a new source of aggressive price competition in the listed markets.[54] Since the implementation of the Order Handling Rules in 1997, ECN quotes have been displayed in the Nasdaq quotation montage, and they have been a major source of price discovery in the Nasdaq market. The inside quote for many Nasdaq securities, particularly actively-traded issues, includes an ECN a substantial majority of the time.[55] ECNs currently account for approximately 30% of the trading volume in Nasdaq securities.[56]

Although the Order Handling Rules and Regulation ATS[57] apply equally to ECNs trading both listed and Nasdaq securities, to date the ECNs have not accounted for a substantial volume of trading in listed securities. Moreover, the quotes of ECNs have not yet been included in the consolidated quote system for listed securities, largely because of significant issues regarding the terms and means of access to these quotes.[58] The Commission believes that including ECN prices in the listed quote has the potential to increase quote competition in the listed markets. Consequently, the Commission is committed to resolving, with the ECNs, and the SROs that operate the consolidated quotation system for listed securities,[59] the remaining issues hindering inclusion of all ECN prices in the public quote for listed equities.

One of the most important issues to be resolved is the treatment of access fees charged by ECNs to their non-subscribers.[60] For Nasdaq securities, ECNs that display customer order prices currently charge non-subscribers separate fees of between $.0025 and $.015 per share to trade with those customer orders. To comply with the equivalent access requirements of the Order Handling Rules, these fees cannot exceed the fees charged internally to a substantial proportion of the ECN's active broker-dealer subscribers.[61]

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[50] *See* Order Handling Rules Release, note 44 above.

[51] The narrowing of spreads after implementation of the Order Handling Rules is discussed in section IV.B of the Fragmentation Release, note 1 above.

[52] *See* Letter from Daniel J. Schaub, Senior Vice President and Director of Nasdaq/OTC Trading, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, Commission, dated May 26, 2000; Letter from Henry H. Hopkins, Managing Director and Chief Legal Counsel, and Andrew M. Brooks, Vice President and Head of Equity Trading, T. Rowe Price Associates, Inc., to Jonathan G. Katz, Secretary, Commission, dated June 19, 2000, at 3.

[53] NASD, Notice to Members No. 97–57, Question 7.

[54] *See, e.g.,* Letter from Harold S. Bradley, et al., American Century Investments, dated May 21, 2000 (''American Century Letter''), at 6; Letter from Jonathan G. Breckenridge, Vice President, General Counsel, MarketXT, Inc., to Jonathan G. Katz, Secretary, Commission, dated April 25, 2000, at 2; Island Letter, note 13 above, at 7. ECNs are electronic agency markets representing the limit orders of their customers, sometimes including market makers.

[55] *See, e.g.,* Michael J. Barclay, et al., *Effects of Market Reform on the Trading Costs and Depths of Nasdaq Stocks,* 54 J. Finance 1, 29–30 (Feb. 1999) (following implementation of Order Handling Rules in 1997, the quotes of Instinet, an ECN, were on at least one side of the inside market 77% of the time, and the quotes of other ECNs were on a least one side of the inside market 70% of the time); American Century Letter, note 54 above, at 7–8.

[56] NASD Economic Research, *http://www.marketdata.nasdaq.com* (visited July 17, 2000) (in May 2000, ECNs accounted for 31.0% of Nasdaq dollar volume, 24.7% of share volume, and 30.9% of trades).

[57] 17 CFR. 242.301.

[58] Nasdaq recently announced that it would include three ECNs in the consolidated quote through participation in its system linking Nasdaq market makers to the consolidated quote and ITS. *See* ''Nasdaq InterMarket Forges Links with Major ECNs,'' Nasdaq Press Release, June 13, 2000 (available at *http://www.nasdaqnews.com/news/pr2000*) (visited July 13, 2000). Other major ECNs have refrained from participating in Nasdaq's system for listed securities because of differences over fees, and the ITS trade-through rule.

[59] In adopting Regulation ATS under the Exchange Act in 1998, the Commission comprehensively reconsidered the regulatory treatment of alternative trading systems such as ECNs. Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (''ATS Release''). Reg ATS allowed alternative trading systems to choose whether to register as national securities exchanges, and thus take on the responsibilities of self-regulatory organizations, or to register as broker-dealers and be a member of a self-regulatory organization. (Since then, the International Securities Exchange has registered as an all-electronic securities exchange, two ECNs have applied for registration as exchanges, and another ECN has announced its intention to combine with an existing securities exchange.) ATSs that become exchanges are expected to participate directly in the national market systems; ATSs that remain broker-dealers would participate in these systems through an SRO. *See* ATS Release at text accompanying n. 396 & text following n. 596.

[60] An ECN subscriber is a person that has contracted for direct access to the ECN. Non-subscribers must obtain access to an ECN indirectly through a linkage, such as Nasdaq's SelectNet System.

[61] This policy has been communicated to the ECNs through no-action letters issued by the Commission's Division of Market Regulation (''Division''). *See, e.g.,* Letter from Richard R. Lindsey, Director, Division, Commission, to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corp., dated January 17, 1997 (Instinet Real-Time Trading Service); Letter from Richard R. Lindsey, Director, Division, Commission, to Joshua Levine and Jeffrey Citron, Smith Wall Associates, and Michael McCarthy, Datek Inc., dated January 17, 1997 (Island System). Charging a non-subscriber a larger fee than

Access fees are consistent with the purely agency business model of ECNs. They charge a separate commission to one or both sides of a trade within their system, but do not trade as principal with customer order flow and therefore do not profit from the spread between the bid and offer, or from position trading. In contrast to ECNs, OTC market makers do not charge fees to other broker-dealers in addition to their quoted prices, in either the Nasdaq or listed markets.[62] They primarily derive their profits from principal trading. Finally, most exchanges charge their members a transaction fee or communication fee to trade on their market. These fees generally have been de minimus in size.[63] Under the ITS Plan, however, participant markets are allowed to access each others' quotes for free through the ITS linkage, subject to various terms and conditions.

In today's Nasdaq market, ECN fees are small in relation to the existing quotation increment of 1/16th. As a result, an ECN quote displayed at 1/16th better than the next best quote ordinarily still offers a substantially better price than the next best quote, even with a separate fee charged. With the coming of trading in penny increments, however, the significance of ECN fees in comparison to the minimum quotation increment will become much greater, for both the Nasdaq and listed markets.

The Commission believes that it is essential to preserve the integrity of the consolidated quote as a standard for execution quality among competing market centers. To meet this objective, each market's quotes must be substantially comparable to the quotes of other market centers. In particular, they should reflect in as comparable manner as possible the net price at which transactions can be effected on a market. If a market charges fees to intermediaries for access to its quote that are substantially higher than the cost of access to the quotes of other markets, the usefulness of the public quote as a guide to attainable prices could be impaired.

The advent of decimal pricing offers one potential means to address the problem of disparate access fees—significant fees could be included in a market's public quote.[64] Including the access fee in the quote would reflect the economic fact that the net price available is not in fact the quoted price alone, but also includes a fee. This approach would improve the comparability of ECN quotes without preventing ECNs from continuing to charge fees to access their markets.

The Commission recognizes, however, that ECN quotes frequently reflect the best displayed prices, particularly in the Nasdaq market, and that including fees in ECN quotes would potentially widen spreads. These concerns would be ameliorated somewhat, however, in a penny quoting environment. Including access fees in the public quote generally would widen the spread between bid and offer by only a penny or two, rather than a full 1/16th or 1/8th as would result under current quoting increments. Thus, the impact on both quoted spreads and the willingness of others to access ECN quotes would be reduced.[65]

Another approach to improve the accuracy of quotes would be to include in the quote those access fees that are large relative to the quoting increment, but to allow access fees that are small in relation to the quoting increment to continue to be charged separately, instead of being reflected in the quote. For example, access fees of over half the quoting increment—½ cent—could be included in the quote, with the quote rounded to the next penny increment, while access fees of ½ cent or less could be charged separately in addition to the quote. This approach would avoid reducing the displayed quote a full cent due to a relatively small access fee. At the same time, it would reflect in the displayed quote larger access fees, which otherwise would make the net price only marginally better, or even worse, than the next best displayed price.

If access fees are not included in the displayed quote, competitive forces may reduce, but not eliminate, the comparability problems that could arise from access fees. First, such fees are of practical importance primarily when markets with significant fees are alone at the best price. If a quote without a fee is at the same price as a quote with a fee, the fee-less quote typically would be the most attractive to brokers seeking the best execution of customer orders. In addition, if more than one market with a fee were quoting at the best price, the quote with the lowest fee attached normally would be the most attractive. These factors could create some competitive pressure for lower fees. If these fees are publicized, customers or brokers who routed limit orders for display on markets with the highest fees would know that the quotes displaying their orders would be the least attractive at the price. In practice, however, these factors have not reduced the ECN charges to non-subscribers on Nasdaq to insignificant levels.

The Commission regards achieving comparability of ECN quotes with the quotes of other markets as an important pre-condition to including ECN quotes in the consolidated public quote for listed stocks. In the coming months, the Commission intends to work with the ECNs and interested SROs to find, prior to the full-scale implementation of decimal trading, the fairest and most efficient approach to achieve this goal. In addition to the comparability of quotes, the display of ECN quotes in listed stocks raises issues concerning the methods of access by other market

subscribers pay creates a discriminatory barrier to access.

[62] For this reason, the manner that ECNs currently charge fees in the Nasdaq market has been controversial with market makers. Some market makers have not paid the fees billed by particular ECNs, and the ECNs have denied these market makers further access to the ECN's quotes. The Securities Traders Association has petitioned the Commission to prohibit ECNs from charging a fee for executing an order through an ECN when the ECN is alone at the inside quotation. Letters from Andrew N. Grass, Jr., Vice President, General Counsel, Securities Traders Association (''STA''), to Jonathan G. Katz, Secretary, Commission, dated August 28, 1998 and April 8, 1999. The Commission believes that this release responds to the STA's petition. In connection with its proposal to allow market makers to separately publish agency quotes, *see* Securities Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198, the NASD proposed to allow market makers to charge fees to access these quotes, but would have required market makers or ECNs charging a fee exceeding $.005 a share to include that fee in the quote. The Commission sought comment on ECN fee issues in the release publishing the latter proposal. *See* Securities Exchange Act Release No. 41343 (April 28, 1999), 64 FR 24430. No action has been taken on the NASD's proposals.

[63] Exchanges also charge their members fees that are less transaction-specific, such as facilities or equipment fees and membership fees. Finally, the exchanges derive a significant portion of their total revenues from market data fees. *See* Market Information Concept Release, note 26 above, Appendix Tables 9–17.

[64] The Commission sought comment on the issue of ECN fees in the Reg ATS release, and specifically focused on whether the fees should be included in the quote after moving to decimal quotation increments. See Reg ATS Release, note 59 above, text accompanying n. 236. In response to the comments, the Commission said that it would reconsider whether fees should be included in the ECNs' quotes when quotes are represented in decimals.

[65] In addition, this impact on spreads would be reduced by taking into account better prices at a smaller increment available within the ECN. Currently, ECN public quotes are rounded away to the next 1/16th price when the ECN's best internal price is at a smaller fraction than 1/16th (the current quote increment). Even if fees were included in the quote, if the ECN's better internal price, combined with its fee, were still better than the next public quotation increment, the ECN quote would not need to be rounded further because of the fee. For example, if an ECN had an internal buy order at $.2075, which would be rounded down to $.20 for public display, and the ECN charged a non-subscriber fee of $.005, the order would still be displayed at $.20 despite the fee. ECN access fees that were de minimus in size would not raise significant comparability issues.

centers to displayed ECN quotes. These issues are discussed further below in the context of intermarket linkages to strengthen price priority.

B. Strengthening Price Priority

The Fragmentation Release's alternatives involving price/time priority requirements across markets were intended to address fragmentation concerns by encouraging order interaction and price competition across markets. Many of the investor comments advocated price/time priority as the best means of encouraging price competition. Further, even many of the dealers who opposed price/time priority as interfering with existing markets advocated further action to ensure *price* priority across the markets. For example, the comment letter submitted by the SIA Market Structure Committee asserted that ''in order to promote quote competition, the Committee believes the Commission also must mandate price priority across market centers.[66]

Price priority provides assurance that other markets will not trade at inferior prices before a better-priced quote is satisfied, which is important to investor confidence. When most individual investors enter a market order, they expect to receive at a minimum the best quoted price available when the order is executed. When the markets trade at prices inferior to the best quotes published by other markets, investors may lose confidence that orders are treated fairly across markets and that they can be assured of obtaining the best possible prices for their orders. Therefore, the Commission believes that it is important to encourage price priority across markets, particularly as new sources of quotes emerge and order routing technology improves.

In response to the Fragmentation Release, a number of commenters advocated that the Commission should strengthen price priority by ensuring the development of improved electronic linkages between market centers, and mandating that market centers either match the best quoted price or route orders they receive to that better price.[67] These commenters believed that these actions to strengthen price priority within the existing market structure would improve the price discovery process and combat the adverse affects of fragmentation.

The Commission agrees that fair and effective access to market centers displaying the best quote is essential. This access enables orders to be routed from other markets to a better quote, rewarding the quote for displaying the best price, and allowing orders in other market centers to interact with that price. This access also ensures that other market centers can trade with the quote if they view that quoted price as inconsistent with the true market price in the security.

Currently, access to quotes in the OTC equities markets is provided through Nasdaq's SelectNet system, which allows order routing between Nasdaq market makers, ECNs, and order entry firms, and Nasdaq's SOES system, which allows the automatic execution of small agency orders against market maker quotes.[68] Market makers and ECNs also can be accessed by telephone and through private connections. Market makers are required to be firm for their quote for all broker-dealers;[69] major ECNs are required to provide fair access to subscribers to their systems.[70] In the listed equities markets, exchanges are required to provide broker-dealers fair access to membership (subject to the number of seats available),[71] and the exchanges compete to provide members with efficient access to their markets. In addition, the ITS system allows orders to be routed among participating markets to access a better quote available on another participant market for listed equities. The recipient market is required to execute the ITS order within a minute if its better quote is still available when the order is received from another market. As discussed previously, the NASD has announced that it will link several participating ECNs with ITS as part of including the ECNs' quotes in the consolidated system, so that other ITS participants can access these ECNs' quotes through ITS.

The Commission recognizes that fair and efficient linkages to market centers publishing quotes are important to encourage price competition and strengthening price priority. For example, fair access to ECN prices published in the consolidated quote is necessary to allow orders to interact with these prices, and to enable other market centers to access these prices to achieve price equilibrium across markets.[72] Because of the importance of interconnectivity, many markets are striving to build faster and more efficient links internally within their own market.[73] At the same time, the Commission believes that wherever possible, market-based incentives, not government imposed systems, should determine the connections between markets. Mandating a specific form of linkage across markets could interfere with the ability of independent market centers to compete by structuring their own manner of trading. For instance, while automatic execution of small orders is widely sought by order entry firms and is used internally within many markets, mandating automatic execution of orders through a linkage could be incompatible with the business model of other market centers that rely on manual interaction of orders with interest represented on their floors.

There may of course be situations where market centers create contractual or operational barriers to access from other market centers, or where internal resistance to access prevents markets from agreeing on mutually beneficial methods to provide effective access among themselves. Clearly, market centers should not be allowed to frustrate the ability of other markets to reach their quotes through unfair limitations on access,[74] and efficient

[66] SIA Market Structure Letter, note 12 above, at 12.

[67] *See* Letter from Dongwook Park and John Braniff, Executive Vice Presidents, Global Equity Division, PaineWebber Inc., to Jonathan G. Katz, Secretary, Commission, dated May 22, 2000, at 1; Letter from Thomas M. Joyce, Managing Director, Head of Equity Market Structures, Merrill Lynch, Pierce, Fenner & Smith Inc., to Jonathan G. Katz, Secretary, Commission, dated May 19, 2000, at 2; Letter from Joseph T. McLaughlin, Executive Vice President, Legal and Regulatory Affairs, Credit Suisse First Boston Corp., to Jonathan G. Katz, Secretary, Commission, dated May 12, 2000, at 2–3; SIA Market Structure Letter, note 12 above, at 10–12.

[68] The NASD has proposed to establish the Nasdaq Order Display Facility and the Order Collector Facility, collectively referred to as the SuperMontage. *See* Securities Exchange Act Release No. 42574 (March 23, 2000), 65 FR 16981 (Amendment No. 4 to the SuperMontage proposal); and Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125 (original SuperMontage proposal). The NASD has also proposed an order delivery and execution system, known as the Nasdaq National Market Execution System. *See* Securities Exchange Act Release No. 42344 (Jan. 18, 2000), 65 FR 3987.

[69] Exchange Act Rule 11Ac1–1(c)(2).

[70] 17 CFR 242.301(b)(5).

[71] 15 U.S.C. 78f(b)(2).

[72] Under Reg ATS, ATSs that display quotes through an SRO must provide broker-dealers with access to their quotes that is equivalent to those broker-dealers' access to other quotes displayed by the SRO. 17 CFR 242.301(b)(3)(iii). At a minimum, this requires ATSs to accept orders from order routing systems operated by the SRO for its members. The Order Handling Rules have a similar requirement for ECNs. Exchange Act Rule 11Ac1–1(c)(5).

[73] *See, e.g.*, Securities Exchange Act Release No. 42913 (June 8, 2000), 65 FR 37587 (NYSE proposal for NYSe Direct+, a new NYSE facility to provide automatic execution of limit orders of a specified size); Securities Exchange Act Release No. 42574 (March 23, 2000), 65 FR 16981 (Amendment No. 4 to proposal to establish the Nasdaq Order Display Facility and the Order Collector Facility, collectively referred to as the SuperMontage); Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125 (original proposal to establish the SuperMontage).

[74] Subject to certain exceptions, Exchange Act Rule 11Ac1–1(c)(2) provides that a broker-dealer is

vehicles to reach these quotes are necessary. Regulatory action may be necessary to remove barriers to access. Given fair access, however, the Commission questions whether mandating a particular form of automated electronic linkage across markets is the best means of ensuring access. Rather, the Commission is considering whether market participants should now be expected to develop their own efficient linkages to other market centers sufficient to protect price priority for displayed quotes.

Multilateral linkage agreements among markets, such as the ITS Plan,[75] are one possible method. Bilateral linkages between specific market centers are another. Another method is for a market to open its internal linkage systems to other markets, such as Nasdaq's SelectNet link to the Chicago Stock Exchange, and the linkage between Nasdaq's CAES and ITS. Moreover, markets increasingly may be able to access each other through electronic linkages provided by broker-dealers. The NYSE has stated that it could provide electronic access to its floor to other market centers through arrangements with broker-dealers that participate in those other market centers.[76]

The Commission recognizes that developing individual or multilateral linkages to all the markets participating in the consolidated quote is no small task. In light of the effort necessary to establish this access, broker-dealers and market centers may in some cases fail to develop means to reach better quotes in other markets, instead choosing to simply ignore a better price displayed in an inconvenient market. The consequences of not developing efficient access could be a failure to honor the better quotes of other market centers, and worse executions for customer orders. To strengthen price priority across markets and protect customer orders, the Commission is considering whether to provide further incentives to broker-dealers and market centers to honor better quotes through a customer disclosure approach.

For a similar purpose, the Commission today proposed a rule for the options markets designed to encourage price priority, and to protect customer orders, without mandating a specific linkage.[77] This rule would require broker-dealers effecting transactions in listed options to disclose to their customer when the customer's order traded at a worse price than the best quote published in the options quote reporting system. In light of the limited number of exchanges trading listed options and the linkage plans that they have negotiated, pursuant to Commission order,[78] the rule would provide an exception for orders routed to an options market that participated in a linkage plan that has provisions reasonably designed to limit trading through the quotes of another market center, including market centers not participating in the plan.

The options trade-through disclosure rule is intended to encourage broker-dealers, and indirectly options market centers, to provide their customers with access to an execution at the best quote available. It does not prohibit trading through the superior quote, in recognition that there may be times when trading at an inferior price is in the customer's interest. In this case, however, it would require that customers be informed when their order traded at an inferior price. The rule would not require a linkage to other markets; rather, by requiring disclosure to customers, the rule would create an incentive for market participants to develop methods of access to avoid trade-throughs. The rule also would encourage participation in a linkage plan.

The Commission is considering whether a similar trade-through disclosure approach is workable in the equities markets, to strengthen the price priority provided to the best published quotes. A trade-through disclosure requirement in the equity markets could give a strong incentive to market centers to develop effective access to all market centers participating in the quote, without the Commission mandating a particular form of linkage. It could help ensure that the best quote interacts with orders across the markets by discouraging broker-dealers from routinely executing customer orders at inferior price levels. It also could help protect customer orders from unintended executions at inferior prices.

Currently, trade-throughs of a superior quote on another equities market are discouraged by a combination of linkages between market centers, which facilitate access to the better price, and the broker-dealer duty of best execution. Broker-dealers routing small customer orders generally seek to ensure they are executed at prices no worse than the best consolidated quote at the time the order is executed,[79] reducing the incidence of trade-throughs. In addition, in the listed market, trade-throughs are discouraged by the ITS trade-through rule. The ITS trade-through rule, adopted by each ITS participant market, requires members of those markets to avoid trading-through superior quotes on another participant, and establishes procedures for obtaining redress from another market that trades through a superior quote. However, these provisions only cover participants in the ITS Plan. And their effectiveness in preventing trade-throughs depends in large part on market participants taking steps to seek redress for trade-throughs from another market, which does not always occur. For various reasons, executions of small customer orders at prices inferior to the best quote still appear to occur to a limited extent today.

The incidence of trades at a worse price than the best displayed quote may increase if ECN quotes are included in the consolidated quote for listed markets. If an ECN is not part of ITS, as discussed above, the ITS trade-through rule would not apply to its quotes. Even when ECN quotes improve the consolidated quote for listed equities (as they have in the Nasdaq market), there may be a risk that other market centers will ignore these quotes at times on the grounds that the quotes are not easily accessible through ITS. Some ECNs, however, have argued against being subject to the ITS trade-through rule, on the grounds that their customers would prefer an immediate execution at an inferior price to another market's quote rather than a delay while seeking to reach that better price through ITS.[80]

The response to these issues by a number of commenters on the Fragmentation Release was to advocate that the Commission promote quote competition by requiring each market center executing an order to either match the better price quoted by another

obligated to execute orders in listed and Nasdaq equities at a price at least as favorable as the broker-dealer's published quotations in any amount up to its published quotation size.

[75] In addition to establishing and governing a specific technical linkage between participating markets, the ITS Plan includes standards for interaction among the participating markets. These include trade-through satisfaction processes, autoquote restrictions, procedures for cross-market openings, and restrictions on quotations that lock or cross the quotation of another market. If the quoting markets in listed securities do not all participate in the ITS plan, these significant cross-market issues must be addressed in another fashion.

[76] NYSE Letter, note 10 above, at 24–25.

[77] Securities Exchange Act Release No. 43085 (July 28, 2000).

[78] *See* Securities Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (order directing the options exchanges to create an intermarket options linkage plan); Securities Exchange Act Release No. 42456 (Feb. 24, 2000), 65 FR 11402 (notice of options linkage plans submitted by the exchanges).

[79] Broker-dealers also seek to ensure that small customer orders are executed at better than the best quote at the time the order is *received.*

[80] *See* Island Letter, note 13 above, at 5.

market center, or route the order to that better quote.[81] The Commission is concerned, however, 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 Commission is also concerned that it could be unfair to investors to require a fast, electronic market to route an order to a traditional exchange with a trading floor and wait up to a minute for the exchange to respond.

These concerns are not raised, however, by a trade-through disclosure requirement like that proposed for the options markets. This requirement would link execution quality more closely to the choices of the customer. It would not impede customers that are willing to trade at inferior prices in return for faster or more certain executions; these customers would presumably be unconcerned by disclosure that they traded at a worse price than the quote. Nor would it apply to broker-dealers trading as principal. Yet this requirement could promote price priority by encouraging broker-dealers and market centers to match or route to a better quote in executing the orders of most customers, for whom obtaining the best quoted price is important.

This requirement would supplement, but not replace, the broker-dealer's duty to obtain best execution for its customer orders. Under this duty, the broker-dealer is required to seek to obtain best execution for its orders by, at a minimum, regularly reviewing the quality of executions provided by its choice of markets, including the possibility of price improvement for its orders over the best quoted price.[82] By providing customer disclosure after the trade of the instances when a better quote was available at the time the trade occurred, a trade-through disclosure requirement would provide a better means for the investor to monitor whether its order received an inferior execution. In some cases, the investor may be satisfied with that execution. In situations where the customer would not be satisfied, the broker-dealer has an incentive to route the order to the best quote, or ensure that the market center that receives the order prevents trade-throughs through a linkage or other means.

A trade-through disclosure requirement also could complement proposed rules on disclosure of order routing and execution practices. These rules would allow market observers to analyze market center execution quality on a collective basis, and to assess the quality of order routing decisions made by the order routing broker-dealers. Moreover, by requesting information about where their orders were routed, customers could analyze the execution quality of their destination market centers for their types of orders. A trade-through disclosure requirement would further inform customers if their *particular* orders received an inferior execution, allowing them to assess execution quality on both a collective and an individual basis.

The Commission recognizes that, in considering a trade-through disclosure requirement for the equities markets, a number of questions must be addressed. The first is whether a trade-through disclosure requirement is a cost-effective way to encourage price priority in the equities markets while avoiding prohibitions on trading strategies or mandatory linkages. This question may depend in part on the specific disclosure requirements for broker-dealers. For instance, a broker-dealer may need to rely on notification from the market centers receiving its orders of when a trade-through occurred, and at what price, in order for the broker-dealer to determine whether disclosure to its customer is required. In addition, the proposed options trade-through disclosure rule would except orders routed to markets participating in a joint industry linkage plan that contains provisions reasonably designed to limit trade-throughs of other markets' quotes. If a similar exception were to be given in the equities markets, the ITS Plan may need to be strengthened, or new joint industry plans may need to be developed, to take advantage of that exception.

Second, the trade-through requirement depends in part on the comparability of quotes that are used for determining trade-throughs. If significant fees are charged in addition to the displayed quote, a trade-through of this quote may in fact not be as significant as it appears.

In a decimal trading environment, where quotes may be for smaller size, and trade-throughs for smaller amounts, the Commission also must consider 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 acute 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 order. Another response would be to exempt large block orders from the disclosure requirement because of their size in relation to the quote, special handling, and general customer awareness of the quality of executions received.

For smaller customer orders, trade-through disclosure may be more useful if it includes more than just disclosure of the better quote at the time of execution. For instance, many order entry firms monitor whether orders receive at least as good a price as the best quote as of the time the market center *received* the order, in addition to the quote at the time the order was executed. Disclosure of the quote at the time of receipt would help customers monitor whether they received a worse price because the execution was delayed. To address this issue, a trade-through disclosure requirement could require disclosure if the trade received a worse price than the best quote either at time of receipt or execution.

The Commission also believes strongly that the preservation of investor confidence in the prices produced by our markets depends on a continuing commitment to the principle of price priority by both market centers and brokers routing customer orders. In some respects, current execution and order routing practices reflect a recognition of the basic expectation of the investing public that they will not trade at a price inferior to the quote. Specifically, a significant portion of the over-the-counter order flow in today's market is executed pursuant to arrangements where the market center undertakes to execute orders at the consolidated BBO at the time the order is received.

In the case of an integrated firm handling orders placed with its retail network, the firm's commitment to match the consolidated BBO is obviously a critical component of the firm's best execution analysis with respect to internalized orders. Where order routing firms send orders to market centers with which they are not affiliated, the routing firm typically receives representations from the market center about execution quality, statements on which they rely in fulfilling their best execution obligations. In either event, the Commission believes that firms responsible for the handling of customer orders, at a minimum, must assess the *ability* of a market center to perform upon a commitment to execute or

[81] *See* note 67 above.

[82] *See* Order Handling Rules Release, note 44 above, section III.C.2.

otherwise handle orders in a particular manner at the time an initial routing decision is made. In addition, as part of their regular and rigorous review, brokers must assess the *actual performance* of the market in light of those commitments.

The Commission wishes to stress the importance of the accuracy and completeness of representations made by market centers to order routing firms regarding execution quality, including, for example, promises to match the consolidated BBO, liquidity guarantees, opening guarantees, and assurance regarding the handling and display of customer limit orders. False or misleading statements made by market centers to routing firms regarding execution quality, if material and made with the requisite state of mind, may be actionable under antifraud provisions.[83] Given the significance of such commitments to fulfillment of best execution obligations, the Commission intends to carefully monitor them, and, where appropriate, take action if they were found to be false or misleading.

The Commission welcomes the views of market participants on whether a trade-through disclosure requirement, similar to that proposed for the options markets, would strengthen price priority in the equities markets. The Commission also invites comment on whether a trade-through disclosure requirement would give market centers sufficient incentives to develop access arrangements to other equity markets, including ECNs, whose quotes are displayed in the best consolidated quote; or whether there are impediments to access that should be addressed directly rather than by relying on market-based incentives.

C. Conclusion

The market structure dialogue resulting from the Commission's Fragmentation Release reflected a deep concern among many about the impact of fragmentation and internalization on the U.S. equities markets. At the same time, many others expressed a faith in competing markets' ability to use technology to create innovative solutions not yet envisioned. The dialogue also revealed a strong consensus in favor of greater standardized disclosure of the quality of executions provided by competing market centers, and disclosure of the order routing choices of broker-dealers handling customer orders. These rules could help brokers assess execution quality across markets. They could provide data to evaluate the order routing decisions of brokers. Once publicly known, this information could discipline markets and brokers that provided less than the best service for their customers. Building on this consensus, the Commission is proposing rules requiring market centers and broker-dealers to disclose publicly their order execution and order routing practices, so that customers, other market participants, analysts, and academics can evaluate their performance in this critical, but previously opaque, area of customer service. The Commission is continuing to consider the need for further market measures in response to fragmentation and internalization and is conducting an economic study of the impact of these forces on market quality.

In a world of competing market centers, quote competition and price priority are critical to maintaining the display of the best possible market prices. The Commission is committed to encouraging quote competition and protecting price priority within the existing market structure. The Commission is considering ways to preserve the incentives to publish limit orders, which contribute so significantly to the price setting process. The Commission also is committed to resolving the issues impeding including ECN prices in the consolidated quote for listed securities. The Commission is considering new approaches to encourage linkage and protection of these quotes across market centers without directly mandating the form of a linkage. In particular, the Commission is considering a disclosure rule, as that proposed for the options markets, requiring broker-dealers to inform their customers on their confirmations of the price of the best quote and their trade price when the customer did not receive the best quoted price in their trade.

V. General Request for Comment

The Commission seeks comment on the proposals described in this release and also on its discussion of further action to strengthen competition in the markets in section IV above. In addition to the specific requests for comment included throughout the release, the Commission asks commenters to address whether the proposed rules would further the national market system goals set out in Section 11A of the Exchange Act. The Commission also invites commenters to provide views and data as to the costs and benefits associated with the proposed rules. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[84] the Commission also is requesting information regarding the potential impact of the proposed rules on the economy on an annual basis. If possible, commenters should provide empirical data to support their views. Comments should be submitted on or before September 22, 2000.

VI. Paperwork Reduction Act

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[85] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collection of information are: ''Rule 11Ac1–5'' and ''Rule 11Ac1–6.'' 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 Collections of Information

Proposed Rule 11Ac1–5 would require a market center that trades national market system securities to prepare and make available to the public monthly electronic reports that include uniform statistical measures of order execution quality. For each national market system security traded by the market center, the report would include 20 subcategories (based on order type and size), and each subcategory could include up to 20 columns of statistical information.

Proposed Rule 11Ac1–6 would require broker-dealers that route customer orders in equity and options securities to prepare and make available to the public quarterly reports that describe and analyze their order routing practices. In the reports, broker-dealers would be required to quantify the nature of their order flow, identify each venue

[83] For example, Rule 15c1–2(b), 17 CFR 240.15c1–2(b), defines the manipulative, deceptive, or other fraudulent devices or contrivances proscribed in Section 15(c)(1) of the Exchange Act, 15 U.S.C. 78o(c)(1), ''to include any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading.'' *See also* Rule 10b–5(b), 17 CFR 240.10b–5(b). The obligation to refrain from such statements or omissions does not depend on the existence of any fiduciary or similar duty, since even absent such a duty there is an ''ever-present duty not to mislead'' persons who trade in securities. *Basic Inc.* v. *Levinson,* 485 U.S. 224, 240 n.18 (1988). *See, e.g., Kline* v. *Western Government Securities, Inc.,* 24 F.3d 480, 491 (3d Cir.), *cert. denied,* 513 U.S. 1032 (1994); *Ackerman* v. *Schwartz,* 947 F.2d 841, 847 (7th Cir. 1991).

[84] Pub. L. No. 104–121, 110 Stat. 857.

[85] 44 U.S.C. 3501 *et seq.*

to which they directed orders, state the percentage of orders sent to that venue, discuss the material aspects of their relationship with each venue, and discuss significant factors that affected their order routing decisions. In addition, proposed Rule 11Ac1–6 would require broker-dealers to disclose, upon the request of a customer, the venues to which that customer's orders were routed for execution in the six months prior to the request, whether the orders were directed or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

B. Need for and Proposed Use of Information

The Commission believes that the order execution information required by proposed Rule 11Ac1–5 is needed to further the national market system objectives set forth in Exchange Act Section 11A(a)(1)(C). These objectives include the economically efficient execution of orders, fair competition among broker-dealers and among markets, the availability to broker-dealers and investors of information with respect to transactions in securities, and the practicability of brokers executing investors' orders in the best market. While the currently available consolidated quote provides some information on the prices available from market centers, this information may not accurately reflect the quality of order executions that may be obtained from individual market centers. Many market centers execute orders at prices better than, and in some cases inferior to, the consolidated quote at the time of order receipt. Although some market centers currently disseminate information on execution quality, that information generally is not made available to the public and may not permit comparative analysis across markets.

The information disclosed by market centers pursuant to proposed Rule 11Ac1–5 would be made available to the public, and the Commission expects that this information would be used by broker-dealers, investors, and market centers. The Commission believes that broker-dealers would use the information to make more informed choices in deciding where to route orders for execution. The Commission also expects that broker-dealers would use the information in connection with their regular evaluations of internal order handling practices, as required by the duty of best execution. Investors may use the information to evaluate the order handling practices of their brokers. They also may use the information to instruct their broker-dealers to route orders to market centers that offer superior executions for their types of orders. Market centers may use the information to compete on the basis of execution quality.

Like the information required by proposed Rule 11Ac1–5, the Commission believes that the order routing information required by proposed Rule 11Ac1–6 is needed to further the national market system objectives set forth in Exchange Act Section 11A(a)(C). Improved order execution information from the market centers will be of little benefit to investors if they cannot determine where their orders are routed. In addition, order routing information will allow customers to monitor their broker-dealer's order routing decisions.

The Commission believes that investors may use the information submitted pursuant to proposed Rule 11Ac1–6 in selecting a broker-dealer and in determining whether the broker-dealers they have chosen are making sound order-routing decisions. Broker-dealers may use the information to compete on the basis of order routing services.

C. Respondents

The collection of information obligations of proposed Rule 11Ac1–5 would apply to all market centers that receive covered orders in national market system securities. Market centers are defined as exchange market makers, OTC market makers, alternative trading systems, national securities exchanges, and national securities associations. The Commission estimates that approximately 140 exchange market makers, 450 OTC market makers, 29 alternative trading systems, seven national securities exchanges, and one national securities association would be subject to the collection of information obligations of proposed Rule 11Ac1–5. Each of these respondents would be required to respond to the collection of information on a monthly basis.

The collection of information obligations of proposed Rule 11Ac1–6 would apply to all broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that there are currently approximately 3800 broker-dealers that would be subject to the collection of information obligations of proposed Rule 11Ac1–6.[86] Each of these respondents would be required to respond to the collection of information on a quarterly basis with respect to the rule's reporting obligations, and on an ongoing basis with respect to the rule's requirement to respond to customer requests for order routing information.

D. Total Annual Reporting and Recordkeeping Burdens

Proposed Rule 11Ac1–5 would require market centers to make available to the public monthly order execution reports in electronic form. To prepare the reports, market centers first would need to collect basic data on orders and executions (*e.g.,* type and size of order, time of order receipt and execution). Second, this data would need to be processed to calculate the statistics required by the proposed rule and present those statistics in an electronic report.

The Commission believes that many market centers retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format. Consequently, it does not appear that the proposed rule would require substantial additional data collection burdens. Based on this assumption, the Commission staff estimates that, on average, the proposed rule would cause respondents to spend 6 hours per month in additional time to collect the data necessary to generate the reports, or 72 hours per year.[87] With an estimated 627 market centers subject to the proposed rule, the total data collection cost to comply with the monthly reporting requirement is estimated to be 45,144 hours per year.

Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or an SRO) that would generate the statistics and reports. Although the largest market centers and SROs may choose to generate the reports themselves, the Commission anticipates that the great majority of market centers will rely on service providers to prepare the reports for them. It is significantly more efficient to consolidate the processing and reporting function in a limited number of entities than for each market center to prepare its own reports. Once an entity has incurred the up-front costs of programming its systems to process data and generate a report for a single

[86] This estimate is based on FYE 1999 FOCUS Reports received by the Commission. While there are currently approximately 7500 broker-dealers registered with the Commission, only approximately 3800 broker-dealers potentially route non-directed orders in covered securities.

[87] This figure could vary substantially among market centers. In addition, some SROs may provide this data collection service for their members because such centralized data collection is more efficient than data collection by individual members.

market center, there is very little additional cost to performing the same function for many additional market centers. Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report for approximately $2500 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on discussions with industry sources, we believe it is likely that a group of market centers, particularly the smaller members of a particular SRO, could obtain a much lower per-respondent rate on a collective basis. Thus, particularly for the smaller members of an SRO, the monthly cost to retain a service provider could be substantially less than $2500. Based on the $2500 estimate, however, the monthly cost to the 627 market centers to retain service providers to prepare reports would be $1,567,500, or an annual cost of approximately $18.8 million.

Proposed Rule 11Ac1–6 would require broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. To comply with the proposed rule, however, broker-dealers would incur additional burdens in preparing the reports and disseminating them on a free Internet web site (and responding to requests for written copies of the reports).

There are extreme differences in the nature of the securities business conducted by the approximately 3800 broker-dealers that would be subject to the proposed rule. They range from the very largest firms with nationwide operations, which are relatively few in number, to thousands of much smaller introducing firms. To handle their customer accounts, these small firms rely primarily on clearing brokers. There currently are approximately 330 clearing brokers. The Commission previously has noted that ''from a functional perspective, introducing and clearing brokers act as a unit in handling a customer's account. In most respects, introducing brokers are dependent on clearing firms to clear and to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing confirmations of customer trades and customer account statements.'' [88] The Commission anticipates that clearing brokers primarily will bear the burden of complying with the reporting and recordkeeping requirements of the proposed rule on behalf of very small introducing firms. In addition, however, there are approximately 610 introducing brokers that receive funds or securities from their customers.[89] Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of the proposed rule.

Based on discussions with industry sources, the Commission staff estimates that each firm significantly involved in order routing practices will incur an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 11Ac1–6, or a burden of 160 hours per year. With an estimated 940 broker-dealers significantly involved in order routing practices, the total burden per year to comply with the quarterly reporting requirement in proposed Rule 11Ac1–6 is estimated to be 150,400 hours.

Proposed Rule 11Ac1–6 also would require broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally would bear the burden of responding to these requests. The Commission staff estimates that each clearing broker will incur an average burden of 0.2 hours to prepare, deliver, and retain a response to a customer required by Rule 11Ac1–6. The annual burden could vary significantly among clearing brokers based on the number of customers and number of inquiries by each customer. The Commission staff estimates that an average clearing broker will incur an annual burden of 400 hours (2000 responses × 0.2 hours/response) to prepare, disseminate and retain responses to customers required by Rule 11Ac1–6. With an estimated 330 clearing brokers subject to the proposed rule, the total burden per year to comply with the customer response requirement in proposed Rule 11Ac1–6 is estimated to be 132,000 hours.

E. General Information About the Collections of Information

Any collections of information pursuant to the proposed rules would be mandatory. The monthly order execution reports prepared and disseminated by market centers pursuant to proposed Rule 11Ac1–5 would be available to the public and would not be kept confidential. Likewise, the quarterly order routing reports prepared and disseminated by broker-dealers pursuant to Rule 11Ac1–6 would be available to the public and would not be kept confidential. The individual responses by broker-dealers to customer requests for order routing information required by Rule 11Ac1–6 would be made available the customer and not to the general public. The Commission, SROs, and other securities regulatory authorities would gain possession of the responses only upon request. Any responses received by the Commission, SROs, and other securities regulatory authorities would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

Market centers that are national securities exchanges or national securities associations would be required to retain the collections of information required under proposed Rule 11Ac1–5 for a period of not less than five years, the first two years in an easily accessible place. All other market centers would be required to retain the collections of information required under proposed Rule 11Ac1–5 for a period of not less than three years, the first two in an easily accessible place.

Broker-dealers would be required to retain the collections of information required under proposed Rule 11Ac1–6 for a period of not less than three years, the first two in an easily accessible place.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collections of information are 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 collections 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

[88] Securities Exchange Act Release No. 40122 (June 30, 1998), 63 FR 35508, n. 65.

[89] This estimate is based on FYE 1999 FOCUS Reports received by the Commission.

Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–16–00. The Commission has submitted the proposed collections 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 collections of information between 30 and 60 days after publication in the **Federal Register**. A comment to OMB is best assured of receiving full consideration if it is received by OMB within 30 days of publication of this release. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–16–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services at the address set forth above.

VII. Cost-Benefit Analysis

The Commission is proposing two rules to improve public disclosure of broker-dealer and market center practices in the routing and execution of customer orders. The rules are intended to increase access to information about how investors' securities transactions are executed, thereby enhancing an investor's ability to make choices on the basis of execution criteria important to the particular investor. The required disclosures also should aid broker-dealers in satisfying their duty of best execution. The disclosures and enhanced investor knowledge should promote vigorous and beneficial competition among broker-dealers to seek out, and among market centers to provide, superior execution of customer orders.

A. Costs and Benefits of Proposed Rule 11Ac1–5

Under proposed Rule 11Ac1–5, each market center (defined as any national securities exchange, national securities association, exchange market maker, OTC market maker, or alternative trading system) would be required to make monthly disclosure of certain statistical measures of execution quality on a security-by-security basis.[90] The Commission anticipates that the proposed rule will generate the benefits and costs described below.

1. Benefits

The Commission anticipates that the proposed rule will help broker-dealers fulfill their duty of best execution. That duty requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's order. Routing orders to a market center that merely guarantees an execution at the best published quote does not necessarily satisfy that duty. A broker-dealer must consider several other factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution (which is particularly important for customer limit orders), the speed of execution, the trading characteristics of the security, and any guaranteed minimum size of execution. While broker-dealers currently may be able to obtain order execution information from some market centers, that information may be of limited use and may not allow broker-dealers to compare execution quality among the different market centers. The Commission expects that the monthly reporting of uniform statistical measures required by the rule will provide broker-dealers with a clearer sense of execution quality among market centers, and will facilitate a broker-dealer's ability to obtain best execution for its customers.

The Commission also believes that the reporting required by the rule will facilitate investors' ability to evaluate the quality of order executions provided by different market centers and to have meaningful input into how their broker-dealer obtains execution of their orders. Currently, investors possess few tools to compare order executions on different markets, and they typically leave routing decisions to their broker-dealer. Different investors, however, may have different concerns and priorities related to execution of their orders, such as an opportunity for price improvement and the speed of execution. The proposed rule will require disclosure of information that will enhance investors' evaluation of these matters.

The Commission believes that the proposed rule will have the additional benefit of stimulating competition between market centers to improve the quality of their executions. Market centers compete to attract order flow. An important way in which market centers seek to attract order flow is by providing—and developing a reputation for providing—superior executions. The proposed rule will give broker-dealers and investors meaningful information, which they have not previously had, bearing on execution quality. Access to that information will allow broker-dealers and investors to direct orders to market centers on the basis of their order execution performance. The Commission anticipates that this will benefit investors by putting competitive pressure on market centers to reduce inefficiencies, to increase opportunities for price improvement, to decrease instances of price ''disimprovement,'' and to improve the quality of execution in all other respects. Ultimately, the Commission anticipates that these improvements in execution also will benefit investors by leading to reduced trading costs, increased trading quality, and possibly increased trading volume.

For example, the competition that flows from the required disclosure will likely reduce differences in spreads between market centers. If this competition induces market centers whose effective spread is greater than the median effective spread to execute trades at the median effective spread, the rule could lead to substantial savings for investors. For example, the annual savings to investors who submit market orders in Nasdaq stocks under this assumption is estimated to be $160 million.[91] Moreover, if all Nasdaq market centers executed trades at the lowest effective spread, the savings to investors would be even greater.[92] There also could be a similar type of benefit for investors in the listed markets, although to a lesser extent given the smaller number of market centers.

The Commission requests comment on the benefits of the proposed rule. Will the proposed rule have the benefits that are described above? Are there benefits to the proposed rule other than those described here? Are there ways in which to quantify any of the benefits of the rule? We specifically request any supporting data and analyses quantifying the benefits.

[90] As set out more specifically in section III.B.2 above, the required disclosures will reflect statistical measures of such things as number of orders, number of shares, number of cancelled orders, size of spreads, frequency and size of price improvement, frequency of executions at the quote, frequency of executions outside the quote, and speed of execution (both with and without price improvement).

[91] These savings are based on a sample of Nasdaq securities from June 2000 and represent the benefits summed over all Nasdaq stocks for one year. The annual savings exclude changes in effective spread for marketable limit orders and for any trade greater than 4999 shares. The sample also excludes trades on ECNs because ECNs generally do not accept market orders.

[92] Under this assumption, annual savings to Nasdaq investors would be approximately $385 million. These savings are calculated in the manner described in the preceding note.

2. Costs

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the proposed rule could, on an annual basis, impose 45,144 burden hours and $18.8 million in other costs on all market centers. The staff estimates that 100% of the burden hours could be expended by market centers' internal staff. Assuming internal staff costs of $53 per hour, a market center could expend a total of approximately $2.4 million. Consequently, the estimated aggregate annual cost for compliance with the proposed rule could be approximately $21.2 million ($18.8 million + $2.4 million). We request comment on the potential costs of the rule identified above. In addition, we request comment on whether the rule would impose any other costs not described here.

B. Costs and Benefits of Proposed Rule 11Ac1–6

Under proposed Rule 11Ac1–6, broker-dealers that route orders in equity and options securities on behalf of customers would be required to prepare quarterly reports that describe their order routing practices. Proposed Rule 11Ac1–6 also would require broker-dealers to disclose to customers, on request, where that customer's individual orders were routed for execution.

1. Benefits

The Commission anticipates that improved disclosure of order routing practices will result in better-informed investors, will provide broker-dealers with more incentives to obtain superior executions for their customer orders, and will thereby increase competition between market centers to provide superior executions. Currently, the decision about where to route a customer order is frequently made by the broker-dealer, and broker-dealers may make that decision, at least in part, on the basis of factors that are unknown to their customers. The rule's disclosure requirements will provide investors with a clearer picture of how their broker-dealers are meeting their best execution obligation. [93] The Commission contemplates that this will result in greater investor involvement in order routing decisions and, ultimately, will result in improved execution practices. Because of the disclosure requirements, broker-dealers may be more inclined (or investors may direct their broker-dealers) to route orders to market centers providing superior execution. Broker-dealers who fail to do so may lose customers to other broker-dealers who will do so. This increased investor knowledge and involvement could ultimately have the effect of increasing competition between market centers to provide superior execution.

We request comment on the benefits of the proposed rule. Will the proposed rule have the benefits that we have described? Are there ways in which to quantify any of those benefits? Are there benefits to the proposed rule other than those described here?

2. Costs

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the proposed rule could, on an annual basis, impose 150,400 burden hours on broker-dealers to comply with the quarterly reporting requirement of the proposed rule. The staff estimates that 100% of those burden hours will be expended by broker-dealers' internal staff. Assuming internal staff costs that average $85 per hour,[94] the aggregate annual cost of compliance with the quarterly reporting requirement could be approximately $12.8 million. In addition, compliance with the proposed rule will require staff time to respond to requests by customers for disclosure of the market centers to which their orders have been routed. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that compliance with such requests could, on an annual basis, impose 132,000 burden hours. Assuming average internal staff costs of $53 per hour, the annual cost of compliance with the customer response requirement could be approximately $7 million.

The Commission requests comment on the potential costs of the rule identified above. In particular, comment is invited on how best to estimate the number of customer requests that broker-dealers will receive pursuant to the rule, if adopted. The Commission also requests comment whether the rule would impose any other costs not described here.

VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition.[95] In addition, Section 3(f) of the Exchange Act 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.[96]

The Commission has considered the proposed rules in light of these standards and preliminarily believes that the proposed rules will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. To the contrary, by enhancing the disclosure of order execution and order routing practices, the proposed rules may promote fair and vigorous competition. Investors currently have little information to evaluate the order routing practices of their broker-dealers. As a result, there currently may be limited opportunities for fair competition among broker-dealers based on the quality of their order routing services. By requiring broker-dealers to disclose information on their order routing practices, the proposed rules may stimulate competition among broker-dealers based on the quality of their order routing services. Similarly, by requiring market centers to disclose order execution information in a manner that permits comparative analysis, the proposed rules may stimulate competition among market centers based on the quality of their order execution services. In addition, because the proposed rules would apply equally to market centers, with respect to order execution disclosure, and broker-dealers, with respect to order routing disclosure, the proposed rules would not result in disparate treatment of these entities that could hinder competition.

The Commission also believes that the proposed rules would allow investors and broker-dealers to make better-informed choices in finding the best market for orders to be executed. Accordingly, the proposed rules may promote market efficiency. In addition, the availability of information on order execution and order routing quality may

[93] As described more fully in section III.C.2 above, the rule would require that broker-dealers provide quarterly reports describing its order routing objectives, the extent to which order executions achieved those objectives, a comparison of the quality of executions actually obtained with those produced by other venues, and material facts concerning the broker-dealer's relationship with market centers to which it routes orders.

[94] A higher average rate of internal staff costs is used for the preparation of quarterly reports based on the assumption that they would be prepared, at least in part, by higher level staff than that involved with responding to customer requests.

[95] 15 U.S.C. 78w(a).

[96] 15 U.S.C. 78c(f).

bolster investor confidence, thereby promoting capital formation. The Commission requests comment on the effects of the proposed rules on competition, efficiency, and capital formation.

IX. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[97] It relates to proposed new Rules 11Ac1–5 and 11Ac1–6 under the Exchange Act. The proposed rules would require market centers to make disclosures of order execution information and broker-dealers to make disclosures of order routing information.

A. Reasons for the Proposed Action

The Commission believes that there is a need for improved disclosure of order execution information by market centers. Investors today can obtain consolidated quote information that represents the best bid and offer from among the different market centers. However, this information may not accurately reflect the quality of order executions that may be obtained from the different market centers. Many market centers offer significant opportunities for execution of orders at prices better that the consolidated quote. Conversely, some market centers execute orders at prices less favorable than the consolidated quote at the time of order receipt. The amount of price improvement or disimprovement may result in significant savings or costs to investors. Although some market centers make order execution information available to private companies or their members, this information generally has not been publicly disseminated. Moreover, the lack of uniformity in the way this information is prepared has made it difficult for users of the information to compare execution quality across market centers.

The Commission also believes that there is a corresponding need for disclosure of order routing information by broker-dealers. If investors do not know where their broker-dealers route their orders for execution, then the order execution information provided by market centers will be of little benefit to investors. The unavailability of easily accessible order routing information also may make it difficult for investors to monitor their broker-dealer's order-routing decisions.

B. Objectives and Legal Basis

Proposed Rule 11Ac1–5 is designed to address the need for improved disclosure of order execution information by market centers. In particular, the rule is intended to provide investors and broker-dealers with uniform information on execution quality from the different market centers that can be used to compare execution quality across market centers. This information should assist investors and broker-dealers in finding the best market for orders to be executed, thereby promoting competition among market centers and broker-dealers on the basis execution quality and leading to more efficient transactions in securities.

Proposed Rule 11Ac1–6 is designed to address the complementary need for broker-dealers to disclose to customers where their orders are routed for execution. The primary objective of the rule is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. Supplied with information on where their orders are routed, as well as information about the quality of execution from the market centers to which their orders are routed, investors will be able to make better informed decisions with respect to their orders. The information also may assist investors in selecting a broker-dealer.

Rules 11Ac1–5 and 11Ac1–6 are proposed under the Commission's authority set forth in Sections 3(b), 5, 6, 11A, 15, 17, 19 and 23(a) of the Exchange Act.

C. Small Entities Subject to the Rules

Both proposed Rule 11Ac1–5 and proposed Rule 11Ac1–6 would affect entities that are considered small entities for purposes of the Regulatory Flexibility Act.

1. Small Entities Affected by Proposed Rule 11Ac1–5

Proposed Rule 11Ac1–5 would impose disclosure requirements on every market center that receives covered orders in national market system securities. Market centers are defined as exchange market makers, OTC market makers, alternative trading systems, national securities exchanges, and national securities associations.

Exchange market makers, OTC market makers, and alternative trading systems that are not registered as exchanges are required to register as broker-dealers. Accordingly, these entities would be considered small entities if they fall within the standard for small entities that applies to broker-dealers. Under Exchange Act Rule 0–10(b), a broker-dealer is considered a small entity for purposes of Regulatory Flexibility Act if (1) it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, of, if not required to prepare such statements, it had total capital of less than $500,000 on the last business day of the preceding fiscal year, and (2) it is not affiliated with any person (other than a natural person) that is not a small entity.[98] Based on this standard, the Commission estimates that two exchange market makers, one OTC market maker, and no alternative trading systems that would be subject to proposed Rule 11Ac1–5 are small entities.[99]

None of the national securities exchanges or the national securities association subject to the proposed rule is a small entity. Paragraph (e) of the Exchange Act Rule 0–10 [100] provides that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1. Under this standard, none of the national securities exchanges affected by the proposed rule is a small entity. Similarly, the national securities association subject to the proposed rule is not a small entity as defined by 13 CFR 121.201.

2. Small Entities Affected by Proposed Rule 11Ac1–6

Proposed Rule 11Ac1–6 would impose disclosure requirements on every broker-dealer that routes non-directed customer orders in covered securities. Under the standard for determining whether a broker-dealer is a small entity in Exchange Act Rule 0–10(b), the Commission estimates that approximately 41 broker-dealers subject to proposed Rule 11Ac1–6 are small entities.[101]

D. Reporting, Recordkeeping and Other Compliance Requirements

1. Reporting Requirements Under Proposed Rule 11Ac1–5

Proposed Rule 11Ac1–5 would impose new reporting requirements on market centers, including those

[97] 5 U.S.C. 601 *et seq.* 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.''

[98] Exchange Act Rule 0–10(b), 17 CFR 240.0–10(c).

[99] These estimates are based on the FYE 1999 FOCUS Reports received by the Commission from exchange market makers, OTC market makers, and ATSs that would be subject to proposed Rule 11Ac1–5. [100]: 17 CFR 240.0–10(e).

[100] 17 CFR 240.0–10(e).

[101] This estimate is based on the FYE 1999 FOCUS Reports received by the Commission from broker-dealers subject to proposed Rule 11Ac1–6.

considered small entities. Under the proposed rule, market centers would be required to prepare and make available to the public monthly reports that categorize and summarize their order executions. For purposes of the Paperwork Reduction Act, the Commission staff estimates that individual market centers would, on an annual basis, expend 72 burden hours and incur $30,000 ($2500 per month) in monetary costs to comply with the monthly reporting requirement. Assuming internal compliance staff costs of $53 per hour, the total cost per small entity would be $3816. The Commission estimates the total cost per year required to prepare and disseminate the monthly reports by the estimated three small entities subject to the proposed rule would be $108,360 (3 × ($30,000+$3816)). As discussed further above, small entities likely could obtain a much reduced rate through the auspices of an SRO or other organization.

2. Reporting Requirements Under Proposed Rule 11Ac1–6

Proposed Rule 11Ac1–6 would impose new reporting requirements on broker-dealers, including those considered small entities. Under the proposed rule, broker-dealers would be required to prepare and make available to the public quarterly reports that discuss and analyze their routing of non-directed orders in covered securities. In addition, broker-dealers, on request of a customer, would be required to disclose the identity of the venues to which the customer's orders were routed in the six months prior to the request, whether the orders were directed or non-directed orders, and the time of the transactions resulting from such orders.

As discussed in section VI.D above, it is unlikely that small entities in general will have significant involvement in order routing practices, primarily because they are affiliated with a clearing broker. With respect to the 41 small entities that are subject to the proposed rule and are not affiliated with a clearing broker, the Commission does not anticipate that they engage in significant order routing on behalf of customers. In section III.C.1 above, the Commission requested comment on whether the proposed rule should exclude broker-dealers that route a relatively small number of orders on behalf of customers. If any of the 41 small entities were required to comply with the proposed rule, the Commission staff estimates that they would expend, on average, 32 hours to prepare quarterly reports and 2 hours to respond to eight customer requests.[102] Assuming internal compliance costs that average $85 per hour, the aggregate cost for each small entity to comply with the proposed rule is estimated to be $2890.

E. Duplicative, Overlapping or Conflicting Federal Rules

Proposed Rule 11Ac1–6 would require a broker-dealer to disclose the material aspects of its relationship with each venue to which it routes orders, including a description of any payment for order flow arrangements. Currently, Exchange Act Rule 10b–10(a)(2)(i)(C) requires a broker-dealer to disclose on each customer transaction confirmation (1) whether the broker-dealer received payment for order flow in connection with the transaction, and (2) that the broker-dealer will furnish to the customer the source and nature of the compensation upon written request. In addition, Exchange Act Rule 11Ac1–3(a) requires a broker-dealer to disclose in new and annual account statements its policies on the receipt of payment for order flow.

The payment for order flow disclosure required under proposed Rule 11Ac1–6 would complement the conflict of interest disclosures required in Rules 10b–10(a)(2)(i)(C) and 11Ac1–3. However, the Commission is requesting comment on whether the existing disclosure requirements should be modified to reflect the proposed new disclosure requirement.

Proposed Rule 11Ac1–6 also would require broker-dealers, on request of a customer, to disclose (in addition to other information) the time of the transactions resulting from orders sent by the customer to the broker-dealer in the six months prior to the request. Currently, Rule 10b–10(a)(1) requires a broker-dealer to include on a transaction confirmation either the time of the transaction or a statement that the time of the transaction will be furnished on written request.

The Commission does not believe that any federal rules duplicate, overlap with, or conflict with proposed Rule 11Ac1–5.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed rules, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities.

1. Alternatives to Proposed Rule 11Ac1–5

Proposed Rule 11Ac1–5 is designed to provide uniform order execution information from the different market centers to allow investors and broker-dealers to compare execution quality across markets. Accordingly, the Commission believes that establishing differing reporting requirements for small entities may be inconsistent with the objectives of the proposed rule. Similarly, the Commission believes that the clarification, consolidation, or simplification of reporting requirements for small entities may be inconsistent with the objective of providing uniform order execution information from the different market centers. However, the Commission is considering whether it would be feasible to allow small market centers to provide raw data rather than the statistical measures required by the proposed rule.

Regarding the use of performance standards rather than design standards, the proposed rule specifies the statistical measures that must appear in the monthly order execution reports. The Commission is considering, however, whether the proposed rule could require market centers only to make available electronic files with raw data on an order-by-order basis. Under this alternative, market centers would provide the necessary fields of information, and analysts could calculate the statistical measures of execution quality that they consider appropriate. The proposed rule does not establish a particular technology for disseminating the required reports to the public, other than requiring the use of an electronic format. The proposed rule would direct the SROs to act jointly in establishing procedures for market centers to follow in making their reports available to the public in a readily accessible, uniform, and usable electronic format.

As to whether the rule should exempt small entities from the rule's coverage,

[102] These estimates are smaller than those used generally to estimate the burden costs for purposes of the Paperwork Reduction Act. Assuming any of the 41 small entities actually route non-directed orders on behalf of customers, it is likely that the number of orders would be very small. The burden of preparing quarterly reports and responding to customer requests would therefore be substantially less than the overall industry average.

the Commission is considering several alternatives that could minimize the impact of the rule on small entities. Specifically, the Commission is considering an exemption for market centers that execute relatively few orders in total. Also, the Commission is considering an exemption to eliminate the disclosure requirement for individual securities in which a market center executes relatively few orders. Finally, as discussed above, the Commission is considering whether it would be feasible to allow small market centers to provide raw data rather than the statistical measures required by the proposed rule. The Commission requests comment on these alternatives in this release.

2. Alternatives to Proposed Rule 11Ac1–6

Proposed Rule 11Ac1–6 is designed to provide investors with information on the order routing practices of their broker-dealers. The proposed rule requires broker-dealers to prepare quarterly order routing reports and respond to requests from individual investors for information on how their orders were routed. The Commission is requesting comment, however, on whether to exclude from the proposed rule broker-dealers that route a relatively small number of customer orders. As to the clarification, consolidation, or simplification of reporting requirement for small entities, the Commission does not believe that the proposal could be formulated differently for small entities and still achieve the stated objectives.

Regarding the use of performance standards rather than design standards, the proposed rule requires that the quarterly reports be disseminated through the Internet (or by written copy on request). The purpose of using the Internet is to assure ready access to the reports and to ease the burden of compliance on broker-dealers. However, the Commission is requesting comment on alternative methods of disseminating the reports.

An exemption from the rule for small entities might be inconsistent with the objectives of the rule. The primary objective of the rule is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. All broker-dealers currently have an obligation to periodically review their order routing practices to meet their duty of best execution to their customers. As noted above, however, the Commission is requesting comment on whether to exclude from the proposed rule broker-dealers that route a relatively small number of customer orders.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission requests comment 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. Commentators 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 rules themselves.

X. Statutory Authority

Pursuant to the Exchange Act and particularly Sections 3(b), 5, 6, 11A, 15, 17, 19 and 23(a) thereof, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78o, 78q, 78s and 78w(a), the Commission proposes to adopt Sections 240.11Ac1–5 and 240.11Ac1–6 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set forth in the preamble, the Commission proposes to amend Chapter II of Title 17 of the *Code of Federal Regulations* 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, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

2. Sections 240.11Ac1–5 and 240.11Ac1–6 are added before the undesignated center heading ''Securities Exempted from Registration'' to read as follows:

§ 240.11Ac1–5 Disclosure of order execution information.

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

(1) The term *alternative trading system* shall have the meaning provided in § 242.300(c) of this chapter.

(2) The term *average effective spread* shall mean the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the consolidated best bid and offer at the time of order receipt and the execution price.

(3) The term *average realized spread* shall mean the share-weighted average of realized spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer thirty minutes after the time of order execution and, for sell orders, as double the amount of difference between the midpoint of the consolidated best bid and offer thirty minutes after the time of order execution and the execution price; provided, however, that the midpoint of the final consolidated best bid and offer disseminated for a day shall be used to calculate a realized spread if it is disseminated less than thirty minutes after the time of order execution.

(4) The term *categorized by order size* shall mean dividing orders into separate categories for sizes from 100 to 499 shares, from 500 to 1999 shares, from 2000 to 4999 shares, and 5000 or greater shares.

(5) The term *categorized by order type* shall mean dividing orders into separate categories for market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders.

(6) The term *categorized by security* shall mean dividing orders into separate categories for each national market system security that is included in a report.

(7) The term *consolidated best bid and offer* shall mean the highest firm bid and the lowest firm offer for a security that is calculated and disseminated on a current and continuous basis pursuant to a national market system plan.

(8) The term *covered order* shall mean any market order or any limit order received by a market center during the time that a consolidated best bid and offer is being disseminated, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price,

orders submitted with stop prices, orders that are to be executed on a particular type of tick or bid, orders that are submitted on a ''not held'' basis, orders for other than regular settlement, and orders that are to be executed at prices unrelated to the market price of the security at the time of execution.

(9) The term *exchange market maker* shall mean any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange.

(10) The term *executed at the quote* shall mean, for buy orders, execution at a price equal to the consolidated best offer at the time of order receipt and, for sell orders, execution at a price equal to the consolidated best bid at the time of order receipt.

(11) The term *executed outside the quote* shall mean, for buy orders, execution at a price higher than the consolidated best offer at the time of order receipt and, for sell orders, execution at a price lower than the consolidated best bid at the time of order receipt.

(12) The term *executed with price improvement* shall mean, for buy orders, execution at a price lower than the consolidated best offer at the time of order receipt and, for sell orders, execution at a price higher than the consolidated best bid at the time of order receipt.

(13) The terms *inside-the-quote limit order, at-the-quote limit order,* and *near-the-quote limit order* shall mean buy orders with limit prices that are, respectively, higher than, equal to, and lower by $0.10 or less than the consolidated best bid at the time of order receipt, and sell orders with limit prices that are, respectively, lower than, equal to, and higher by $0.10 or more than the consolidated best offer at the time of order receipt.

(14) The term *market center* shall mean any exchange market maker, OTC market maker, alternative trading system, national securities exchange, and national securities association.

(15) The term *marketable limit order* shall mean any buy order with a limit price equal to or greater than the consolidated best offer at the time of order receipt, and any sell order with a limit price equal to or less than the consolidated best bid at the time of order receipt.

(16) The term *national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(1).

(17) The term *national market system security* shall have the meaning provided in § 240.11Aa2–1.

(18) The term *OTC market maker* shall mean any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, a national market system security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(19) The term *time of order execution* shall mean the time (to the second) that an order was executed at any venue.

(20) The term *time of order receipt* shall mean the time (to the second) that an order was received by a market center for execution.

(b) *Monthly electronic reports by market centers.*

(1) Every market center shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (b)(2) of this section, a report on the covered orders in national market system securities that it received for execution from any person. Such report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;

(D) The cumulative number of shares of covered orders executed at the receiving market center;

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt;

(G) The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt;

(H) The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt;

(I) The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt;

(J) The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt; and

(K) The average realized spread for executions of covered orders; and

(ii) For market orders and marketable limit orders:

(A) The average effective spread for executions of covered orders;

(B) The cumulative number of shares of covered orders executed with price improvement;

(C) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(D) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(E) The cumulative number of shares of covered orders executed at the quote;

(F) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(G) The cumulative number of shares of covered orders executed outside the quote;

(H) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(I) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

(2) Every national securities exchange and national securities association shall act jointly in establishing procedures for market centers to follow in making available to the public the reports required by paragraph (b)(1) of this section in a uniform, readily accessible, and usable electronic form.

(3) A market center shall make available the report required by paragraph (b)(1) of this section within one month after the end of the month addressed in the report.

§ 240.11Ac1–6 Disclosure of order routing information.

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

(1) The term *covered security* shall mean:

(i) 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 defined in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)); and

(ii) Any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to a national market system plan.

(2) The term *customer order* shall mean an order to buy or sell a covered security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least $50,000 for a covered security that is an option contract and a market value of at least $200,000 for any other covered security.

(3) The term *directed order* shall mean a customer order that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(4) The term *make publicly available* shall mean posting on an Internet web site that is free to the public, furnishing a written copy to customers on request, and notifying customers at least annually in writing that a written copy will be furnished on request.

(5) The term *non-directed order* shall mean any customer order other than a directed order.

(6) The term *national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(1).

(7) The term *payment for order flow* shall have the meaning provided in § 240.10b–10(d)(9).

(8) The term *profit-sharing relationship* shall mean any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(9) The term *time of the transaction* shall have the meaning provided in § 240.10b–10(d)(3).

(b) *Quarterly report on order routing.*

(1) Every broker or dealer shall make publicly available for each calendar quarter a report that discusses and analyzes its routing of non-directed orders in covered securities in that quarter. Such report shall include the following information:

(i) The percentage of total customer orders that were non-directed orders, and the percentages of non-directed orders that were market orders, limit orders, and other orders;

(ii) The identity of each venue to which non-directed orders were routed for execution, the percentage of non-directed orders routed to the venue, and the percentages of non-directed market orders, non-directed limit orders, and non-directed other orders that were routed to the venue;

(iii) A discussion of the material aspects of the broker's or dealer's relationship with each venue to which non-directed orders were routed for execution, including a description of any arrangement for payment for order flow and any profit-sharing relationship; and

(iv) A discussion and analysis of the order routing practices of the broker or dealer, including the significant objectives that the broker or dealer considered in determining where to route non-directed orders, the extent to which order executions achieved those objectives, a comparison of the quality of executions actually obtained with those produced by other venues for comparable orders during the relevant time period, and whether the broker or dealer has made or intends to make any material changes in its order routing practices in the succeeding quarter.

(2) A broker or dealer shall make the report required by paragraph (b)(1) of this section publicly available within two months after the end of the quarter addressed in the report.

(c) *Customer requests for information on order routing.*

(1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (c)(1) of this section.

Dated: July 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19729 Filed 8–7–00; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6847–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or ''delist'') a certain hazardous waste from the list of hazardous wastes in 40 CFR 261.31. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006 in § 261.31. Tyco petitioned EPA to grant a generator-specific delisting, because Tyco believes that its F006 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Tyco, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. Today's proposed rule proposes to grant Tyco's petition to delist its F006 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, Tyco's petitioned waste will no longer be classified as F006, and will not be subject to regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until September 22, 2000. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by August 23, 2000. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Bob Snyder, Central District Office, Florida Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803–3767. Identify your comments at the top with this regulatory docket number: R4–99–01–TycoP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket contains

the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8190; and Central District Branch Office, Florida Department of Environmental Protection, 13 East Melbourne Avenue, Melbourne, Florida 32901, (321) 984–4800. The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Central District Branch Office in Melbourne is located in the southeast corner of Melbourne Avenue and Babcock Street.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing

criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See § 260.22 (a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, EPA used such information to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the proposed delisting levels for Tyco's waste. See 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment, by contaminating groundwater, surface water, and air. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations. If EPA makes a final decision to delist Tyco's F006 waste, Tyco must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model. With the EPACML approach, EPA caclulated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model. See Table 2 of section II.B. below, which is adapted from 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste that Tyco estimated it would dispose of each year. The delisting level for each constituent is equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels results in conservative levels that are protective of groundwater, because the model does not assume that the landfill has the controls required of many Subtitle D landfills.

EPA is requesting comment on the use of the EPACML model to determine the proposed delisting levels for Tyco's petitioned waste, as well as other methods that will be described below.

Tyco submitted to the EPA analytical data on nine samples of its F006 waste collected during a six-month period.

After reviewing the analytical data and information on processes and raw materials that Tyco submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels for them, using MCLs and EPACML DAFs, as described above.

EPA requests comment on whether the following method of setting delisting levels for the constituents of concern would be more appropriate than the EPACML method:

Delisting levels would be either the Universal Treatment Standards (UTS) levels of the Land Disposal Restrictions (LDR) regulations in 40 CFR part 268 or the generic exclusion levels for residues from treatment of F006 by High Temperature Metal Recovery (HTMR), in 40 CFR 261.3(c)(2)(ii)(C)(1). For each constituent of concern, the delisting level would be the lower of those two sets of values. If the HTMR level is lower than the UTS level, the delisting level would be the HTMR level; if the UTS level is lower than the HTMR level, the UTS level would be chosen as the delisting level.

EPA also requests comment on three additional methods of evaluating Tyco's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[1] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste, based on calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; and (3) setting delisting levels for waste that will be sent to a smelter for metal recovery, where the levels would be calculated in accordance with EPA's Human Health Risk Assessment Procedure (HHRAP) for combustion risk assessment or the delisting levels would be the same as for land disposal, with the additional requirement that the smelting facility be in compliance with a permit issued under the authority of the Clean Air Act .

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed. Late comments will be considered to the extent possible.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, FL Circuits, LP (Tyco), Melbourne, Florida

Tyco manufactures printed circuit boards, and is seeking a delisting for the sludge generated by treating liquid wastes from its electroplating operations. This waste meets the listing definition of F006 in § 261.31.[2]

Tyco petitioned the Administrator, on August 26, 1998, to exclude this F006 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. In accordance with the delegation of delisting authority, the Administrator transmitted the petition to EPA, Region 4, and on September 11, 1998, Tyco submitted the petition to EPA, Region 4.

The hazardous constituents of concern for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tyco petitioned the EPA to exclude its F006 waste because Tyco does not believe that the waste meets the criteria of the listing.

Tyco claims that its F006 waste is not hazardous because the constituents of concern are either present at low

[1] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

[2] ''Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.''

concentrations, or do not leach out of the waste at significant concentrations. Tyco also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Tyco's petition.

In support of its petition, Tyco submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste and the manufacturing steps that contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for process materials; (3) Quantities of petitioned waste generated each year from 1983 through 1997; (4) results of analysis for water, metals, cyanide, sulfide, and oil and grease in the waste; (5) results of the analysis of waste leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311) for metals; (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity; and (7) results of the MEP analysis of the waste.

Tyco operates two electroplating operations on John Rodes Boulevard in Melbourne, Florida, that electroplate copper, tin/lead, nickel, and gold in the process of manufacturing printed circuit boards. One of the operations manufactures printed circuit boards mainly for commercial and military customers; the other is set up for high-tech, quick-turnaround manufacturing of printed circuit boards. Wastewater and off-specification plating solutions from both operations are piped to an on-site wastewater treatment facility, where they are treated by pH adjustment and flocculation to precipitate dissolved metals as metal hydroxides. The precipitated metal hydroxides are filtered, pressed, and concentrated, at which point, F006 sludge is generated.

Tyco's average annual generation rate of F006 from 1983 through 1997 was 192 tons, with a minimum of 134 tons in 1989 and a maximum of 334.53 tons in 1990. Tyco estimated a future maximum generation rate of 300 tons per year, and stated that actual generation rates depend on sales.

Table 1 below summarizes the hazardous constituents and their concentrations in Tyco's petitioned waste.

TABLE 1.—TYCO PRINTED CIRCUIT GROUP, MELBOURNE DIVISION: F006 SLUDGE PROFILE

Name of constituent [1]	Sample number								
	1	2	3	4	5	6	7	8	9
1. Arsenic	0.02U [2]	0.20U	0.20U	0.10U	0.10U	0.10U	0.05U	0.05U	0.05U
2. Barium	10U	10U	10U	0.50	0.60	0.80	2.0U	2.0U	20U
3. Cadmium	0.50U	0.50U	0.50U	0.024	0.036	0.020	0.10U	0.10U	0.10U
4. Chromium	1U	1U	1U	0.10U	0.10U	0.10U	0.10U	0.50	0.50U
5. Lead	1U	1U	1U	0.20	0.19	0.16	0.50U	0.50U	0.50U
6. Mercury	.005U	.005U	.005U	.005U	.005U	.005U	.005U	.005U	.005U
7. Selenium	0.50U	0.05U	0.05U	0.010U	0.020U	0.010U	0.050U	0.050U	0.050U
8. Silver	1U	1U	1U	0.40U	0.040U	0.040U	0.20U	0.20U	0.20U
9. Cyanide	NA	NA	0.10U	0.10U	0.10U	0.20U	0.10	1.5	NA
10. Oil and Grease	NA	NA	100	130	13000	22000	2700	580	16000
11. Sulfide	NA	NA	10U	10U	10U	10U	17U	10U	10U
12. Nickel	NA	NA	NA	NA	NA	NA	NA	2100	960
13. Nickel	NA	NA	NA	NA	NA	NA	NA	NA	0.50U

[1] For all metals, except nickel, the concentrations in Table 1 are in milligrams per liter (mg/l) in the TCLP leachate. Concentrations in the unextracted waste (total concentrations), in milligrams per kilogram (mg/kg), are given for cyanide, oil and grease, and sulfide. The total concentration (mg/kg) of nickel in the sludge samples is given in row 12, and the TCLP concentration of nickel (mg/l) is given in row 13.

[2] U=Not detected to level shown; NA = Not analyzed.

EPA concluded after reviewing Tyco's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Tyco's petitioned waste. In addition, on the basis of test results and other information provided by Tyco, pursuant to § 260.22, EPA concluded that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During its evaluation of Tyco's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Tyco's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Tyco's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water, because of storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the extraction procedure test results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would

minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With the EPACML Model?

In order to account for possible variability in the generation rate, EPA calculated delisting levels using a generation rate of 500 tons per year, rather than Tyco's estimate of an annual maximum of 300 tons. EPA converted the 500 tons to a waste volume of 590 cubic yards, by using the density of water for the density of the sludge. While the sludge is certainly more dense than water, using the lower density results in a higher value for the waste volume, and a lower, more conservative, Dilution Attenuation Factor (DAF). Table 2 below is a table of waste volumes in cubic yards and the corresponding DAFs from the EPACML model. EPA obtained a DAF of 100 from Table 2, for Tyco's petitioned waste.

TABLE 2.—DILUTION/ATTENUATION FACTORS (DAFS) FOR LANDFILLS CALCULATED BY THE EPACML MODEL, MODIFIED FOR DELISTING

Waste volume in cubic yards per year [1]	DAF (95th percentile) [2]
1,000	[3] 100
1,250	96
1,500	90
1,750	84
2,000	79
2,500	74
3,000	68
4,000	57
5,000	54
6,000	48
7,000	45
8,000	43
9,000	40
10,000	36

TABLE 2.—DILUTION/ATTENUATION FACTORS (DAFS) FOR LANDFILLS CALCULATED BY THE EPACML MODEL, MODIFIED FOR DELISTING—Continued

Waste volume in cubic yards per year [1]	DAF (95th percentile) [2]
12,500	33
15,000	29
20,000	27
25,000	24
30,000	23
40,000	20
50,000	19
60,000	17
80,000	17
90,000	16
100,000	15
150,000	14
200,000	13
250,000	12
300,000	12

[1] The waste volume includes a scaling factor of 20 (56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991), where the annual volume of waste in the table is assumed to be sent to a landfill every year for 20 years.

[2] The DAFs calculated by the EPACML are a probability distribution based on a range of values for each model input parameter; the input parameters include such variables as landfill size, climatic data, and hydrogeologic data. The 95th percentile DAF represents a value in which one can have 95% confidence that a contaminant's concentration will be reduced by a factor equal to the DAF, as the contaminant moves from the bottom of the landfill through the subsurface environment to a receptor well. For example, if the 95th percentile DAF is 10, and the leachate concentration of cadmium at the bottom of the landfill is 0.05 mg/l, one can be 95% confident that the receptor well concentration of cadmium will not exceed 0.005 mg/l. See 55 FR 11826, March 29, 1990; 56 FR 32993, July 18, 1991; and 56 FR 67197, December 30, 1991.

[3] DAF cutoff is 100, corresponding to the Toxicity Characteristic Rule (55 FR 11826, March 29, 1990).

Table 3 below is a table of EPACML delisting levels for each constituent of concern in Tyco's petitioned waste. The constituents of concern are barium, cadmium, chromium, cyanide, lead, and nickel, and the DAF is 100 for the maximum estimated volume.

TABLE 3.—DELISTING LEVELS CALCULATED FROM EPACML MODEL FOR TYCO PETITIONED WASTE

Constituent	MCL [1] (mg/l)	Delisting level (mg/l TCLP)
Barium	2	200
Cadmium	0.005	0.5
Chromium	0.10	[2] 5
Cyanide	0.20	[3] 20
Lead	[4] 0.015	1.5
Nickel	[5] 0.73	73

[1] See the ''Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22,'' December 1994, located in the RCRA public docket, for the Agency's methods of calculating health-based levels for evaluating delisting petitions from MCLs, and when MCLs are not available.

[2] The Toxicity Characteristic (TC) regulatory level for chromium in 40 CFR 261.24 is 5 mg/l. Therefore, although a DAF of 100 times 0.10 equals 10, the delisting level cannot be greater than 5 mg/l, because a delisted waste must not exhibit a hazardous characteristic.

[3] The TCLP is to be followed for cyanide, except that deionized water must be used as the leaching medium, instead of the acetic acid or acetate buffer specified in the TCLP. SW–846 Method 9010 or 9012 must be used to measure cyanide concentration in the deionized water leachate.

[4] This value is an action level for a Publicly Owned Treatment Works, rather than a MCL.

[5] This value is a value that is protective of tap water, obtained from EPA Region 9's Preliminary Remediation Goals Tables. Internet address is: http://www.epa.gov/region09/waste/sfund/prg/s1__05.htm.

C. What Delisting Levels Did EPA Obtain by Using UTS Levels or HTMR Exclusion Levels?

Please see Table 4 below.

TABLE 4.—DELISTING LEVELS FROM UTS LEVELS OR HTMR EXCLUSION LEVELS

Constituent	UTS (mg/l TCLP) [40 CFR 268.48]	HTMR (mg/l TCLP, except for cyanide) [1] [40 CFR 261.3(c)(2)(ii)(C)(1)]	Delisting level (mg/l TCLP, except for cyanide) [1]
Barium	21	7.6	7.6.
Cadmium	0.11	0.050	0.050.
Chromium	0.60	0.33	0.33.
Cyanide	590 (total); 30 (amenable)[1]	1.8 (total)	1.8 (total).
Lead	0.75	0.15	0.15.
Nickel	11	1.0	1.0.

[1] Cyanide concentrations must be measured by the method specified in 40 CFR 268.40, Note 7. In order to meet the UTS levels, the cyanide (total, not amenable) concentration must not exceed 590 mg/kg, and the concentration of cyanide amenable to chlorination must not exceed 30 mg/kg. Cyanide amenable to chlorination is a measure of free, uncomplexed cyanide. These concentrations are by total analysis of the waste, not analysis of waste leachate. In order to meet the generic exclusion level for HTMR residues, the cyanide (total, not amenable) concentration must not exceed 1.8 mg/kg, by total analysis, not analysis of leachate.

D. How Did EPA Use the Multiple Extraction Procedure (MEP) To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0±0.2). The sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these extractions simulate approximately 1,000 years of rainfall. (See 47 FR 52687, Nov. 22, 1982.) MEP results are presented in Table 5 below. In response to a request by EPA for additional information, Tyco reported the following practical quantitation limits in the MEP test: 2.0 mg/l for barium; and 0.5 mg/l for cadmium, chromium, lead, and nickel. Table 5 presents the results of analysis of MEP extracts.

TABLE 5.—MULTIPLE EXTRACTION PROCEDURE (SW–846 METHOD 1320) RESULTS FOR TYCO'S PETITIONED WASTE [1]

Extract No.	Barium (Ba)	Cadmium (Cd)	Chromium (Cr)	Lead (Pb)	Nickel (Ni)	pH [2] (before/after)
1 (TCLP)	2.0 U [1]	0.10 U	0.50 U	0.50 U	1.8 I [4]	
2 (first extraction of the MEP)	0.50 U	0.020 U	0.10 U	0.10 U	0.20 I	6.827/7.616
3	0.50 U	0.020 U	0.10 U	0.10	0.10 U	7.406/NA [3]
4	0.50 I	0.020 U	0.10	0.10 U	0.10 U	7.743/7.361
5	0.50 U	0.020 U	0.10	0.10 U	0.10 U	7.821/8.345
6	0.50 U	0.020 U	0.10	0.10 U	0.10 U	8.038/8.409
7	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	7.980/8.605
8	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	8.042/8.121
9	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	8.112/8.121
10	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	7.738/8.576

[1] U = Not detected to level shown.
[2] pH is a measure of the negative logarithm of the hydrogen ion activity in an aqueous solution, and is a measure of how acidic or basic (alkaline) a solution is. At 25 °C, solutions with pH values less than 7 are acidic; greater than 7 are basic (alkaline); and a pH value of 7 indicates a neutral solution. In general, metals and their compounds are less soluble in basic (alkaline) solutions. ''Start'' means pH at start of the extraction and ''Finish'' means pH at the end of the extraction.
[3] NA = Not analyzed.
[4] I = Analyte detected at level between the Method Detection Level and the Practical Quantitation Level.

The MEP data in Table 5 indicate that the petitioned waste would be expected to be resistant to leaching for a period of at least 100 years, because concentrations in each extract are either not detected, or very close to the detection limit. The average life of a landfill is approximately 20 years. (See 56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991.)

The MEP pH data in Table 5 indicate that the pH of the petitioned waste would be expected to remain alkaline for a period of more than 100 years. Most heavy metal hydroxides, like those in the petitioned waste, tend to remain insoluble in water at alkaline pHs (pH greater than 7).

E. Should EPA Set Limits on Total Concentrations, as well as on TCLP Leachate Concentrations, that the Petitioned Waste must Meet in order to be Delisted?

EPA requests public comment on the appropriateness of setting a maximum of 20,000 mg/kg for the total concentration of nickel, and 500 mg/kg for the total concentration of each of the metals, barium, cadmium, chromium, and lead, in the petitioned waste. These maximum concentration limits would be in addition to the limits on the TCLP concentrations proposed in preamble section II, paragraphs B and C.

F. Should EPA Evaluate This Petitioned Waste for Recovery of Metals, as Well as for Disposal in a Landfill?

Metal recovery from Tyco's petitioned waste is economically feasible. Tyco reported to EPA that the metal value of its petitioned waste if sent directly to a metal smelter would be more than $200,000 per year.

EPA requests comment on the following proposed methods of delisting the petitioned waste before shipping it to a metal smelter:

Method I requires that two conditions be met: (1) The waste must meet the same delisting levels proposed for landfill disposal, and (2) The metal recovery facility must have, and be in compliance with, a permit issued in accordance with the Clean Air Act.[3]

Method II requires that the risk of smelting the waste must be determined to be acceptable in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment.

[3] Note that Federal, State, and local solid waste regulations have always applied, and continue to apply, to the residues from the metal recovery process.

G. Conclusion

EPA believes that Tyco's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the proposed delisting levels are met. EPA requests comment on four proposals: (1) Delisting levels for land disposal based on (a) the EPACML model, or (b) the LDR Universal Treatment Standards or the generic delisting levels of 40 CFR 261.3(c)(2)(ii)(C)(1), whichever are lower; (2) delisting levels for land disposal that set limits for total concentrations; (3) delisting levels for metal recovery that are the same as for land disposal, with the additional requirement that the metal recovery facility must operate in compliance with a permit issued in accordance with the Clean Air Act; and (4) delisting levels for metal recovery that are based on the determination of acceptable risk in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment.

EPA proposes to exclude Tyco's petitioned waste from being listed as F006, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Tyco's petitioned waste must meet

proposed delisting levels before disposal. Thus, EPA's proposed decision is based on verification testing conditions. If the proposed rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Tyco must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make

available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal of policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under Section (6) of Executive Order 12866.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must 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 meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking 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 proposed rule.

XIII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). This rule will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 28, 2000.

Jewell Grubbs,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	Wastewater treatment sludge (EPA Hazardous Waste No. F006) that Tyco Printed Circuit Group, Melbourne Division (Tyco) generates by treating wastewater from its circuit board manufacturing plant located on John Rodes Blvd. in Melbourne, Florida. This is a conditional exclusion for up to 500 cubic yards of waste (hereinafter referred to as ''Tyco Sludge'') that will be generated each year and disposed in a Subtitle D landfill after [insert date of final rule.] Tyco must demonstrate that the following conditions are met for the exclusion to be valid. (Please see Conditon (8) for proposed requirements for the exclusion to be valid for waste that is sent to a smelter for metal recovery.) (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3). (A) *Initial Verification Testing:* Tyco must collect and analyze a representative sample of every batch, for eight sequential batches of Tyco sludge generated in its wastewater treatment system after [insert date of final rule.]. A batch is the Tyco Sludge generated during one day of wastewater treatment. Tyco must analyze for the constituents listed in Condition (3). A minimum of four composite samples must be collected as representative of each batch. Tyco must report analytical test data, including quality control information, no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (1)(A) is successful, i.e., delisting levels of condition (3) are met for all of the eight initial batches, Tyco must test a minimum of 5% of the Tyco Sludge generated each year. Tyco must collect and analyze at least one composite sample representative of that 5%. The composite must be made up of representative samples collected from each batch included in the 5%. Tyco may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous. (2) *Waste Holding and Handling:* Tyco must store as hazardous all Tyco Sludge generated until verification testing as specified in Condition (1)(A) or (1)(B), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of Tyco Sludge do not exceed the levels set forth in Condition (3), then the Tyco Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set forth in Condition (3), the batch of Tyco Sludge generated during the time period corresponding to this sample must be retreated until it meets the delisting levels set forth in Condition (3), or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All leachable concentrations for these metals must not exceed the following levels (ppm): Barium—7.6; Cadmium—0.050; Chromium—0.33; Lead—0.15; and Nickel—1.0. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The cyanide (total, not amenable) concentration must not exceed 1.8 mg/kg, by total analysis, not analysis of leachate. Cyanide concentrations must be measured by the method specified in 40 CFR 268.40, Note 7. (4) *Changes in Operating Conditions:* Tyco must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are necessary (e.g., use of new chemicals not specified in the petition). EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Tyco in writing that the Tyco sludge must be managed as hazardous waste F006, pending receipt and evaluation of a new delisting petition. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Tyco, in writing, that Tyco must repeat Condition (1)(A) to verify that the Tyco Sludge continues to meet Condition (3) delisting levels.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (1)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD-RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia. 30303. This notification is due no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (1) must be compiled, summarized, and maintained by Tyco for a minimum of three years, and must be furnished upon request by EPA or the State of Florida, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's void exclusion.'' (6) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, Tyco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (1)(B), does not meet the delisting requirements of Condition (3), Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Tyco with an opportunity to present information as to why the proposed action is not necessary. Tyco shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Tyco, as described in paragraph (6)(D) or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Tyco must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(8) *Delisting Conditions to be Met Prior to Shipping Waste to Smelter for Metal Recovery:* Tyco must provide a written notification to EPA and the Florida Department of Environmental Protection (FDEP), that includes the name, address, and telephone number of each smelting facility to which Tyco's petitioned waste will be shipped. The notification must be provided at least 60 days prior to the first shipment of petitioned waste to be smelted. At the same time, Tyco must notify EPA and FDEP of the total concentrations (mg/kg) of barium, cadmium, chromium, cyanide, lead, and nickel in the waste to be smelted, and the concentrations of barium, cadmium, chromium, lead, and nickel in the TCLP leachate (mg/l) of the waste to be smelted. If the risk determined in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment is unacceptable, the waste to be smelted must be managed as F006.
*	*	* * * * *

[FR Doc. 00–20020 Filed 8–7–00; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. OST–2000–7703]

RIN 2105–AC86

Americans With Disabilities Act Accessibility Standards

AGENCY: Office of the Secretary.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation is proposing to amend its rules implementing the Americans with Disabilities Act (ADA) by adopting as its standards revised accessibility guidelines proposed by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board published a notice of proposed rulemaking (NPRM) to revise and update the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) in the November 16, 1999 issue of the **Federal Register**. This proposed rule would adopt the Access Board's revised and updated ADA guidelines and make a conforming change to the Department's rule implementing the ADA.

DATES: Comments are requested by September 7, 2000.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Docket No. OST–2000–7703, Room PL–401, 400 7th Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit/*. The Dockets Management Facility, Room PL–401, is open for public inspection and copying of comments from 9 a.m. to 5 p.m. ET Monday through Friday, except Federal Holidays. Any person wishing acknowledgement of comment receipt should include a self-addressed stamped postcard, or print the acknowledgement page after submitting comments electronically. The public may also review docketed comments electronically.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Attorney, Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–4723 (voice); (202) 755–7687 (TDD); blane.workie@ost.dot.gov (email). Copies will be made available in alternative formats on request.

SUPPLEMENTARY INFORMATION: All timely comments received by the Access Board on its notice of proposed rulemaking (NPRM) published November 16, 1999 (64 FR 62248), will be deemed by the Department to have been submitted in response to this proposed rule and will be considered fully as the Department works towards a final rule based on this proposal. Therefore, it is not necessary for any comments submitted to the Board on its proposed rule to be resubmitted to the Department.

This proposed rule would adopt the amended Access Board's Appendix A which contains scoping provisions for the ADA and Appendix C which contains common technical provisions for the ADA as a new Appendix A to Part 37, replacing the Department's current Appendix A. The Access Board issued an NPRM on November 16, 1999 and requested public comments on its revised appendices. Then, on March 9, 2000, the Access Board extended the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule. See 65 FR 12493. As a member of the Access Board, the Department will be actively involved in the review and analysis of comments the Access Board receives and in making any revisions on the appendices in response to those comments. Therefore, the Department has proposed to adopt the Access Board's amended appendices A and C as its accessibility standards. We request comments on whether the Department's accessibility standards should differ from the Access Board's guidelines proposed on November 16, 1999.

Regulatory Analyses and Notices

Executive Order 12866

This NPRM which proposes to adopt the Access Board's accessibility guidelines is significant under Executive Order 12866 and significant under DOT policies and procedures. The Access Board's NPRM which underlies this rule and which was published in the November 16, 1999 **Federal Register** is also significant under Executive Order 12866 . Both the Access Board's NPRM and this NPRM have been reviewed by the Office of Management and Budget. The Access Board prepared a Regulatory Assessment, which examines the cost impact of sections of the proposed rule that establish new requirements. In order to avoid duplicative or unnecessary analyses, DOT is utilizing the regulatory assessment prepared by the Access Board. Comments submitted to the Access Board on its Regulatory Assessment will be considered by the Department as comments on this NPRM.

Executive Order 13132: Federalism

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among various levels of government.

Unfunded Mandates Reform Act

This NPRM does not need to be assessed to determine its effects on State, local, and tribal governments since it is issued under the authority of the Americans with Disabilities Act (ADA). The Unfunded Mandates Reform Act of 1995 does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, or disability.

Regulatory Flexibility Act

The Access Board has determined that its guidelines will not have a significant economic impact on a substantial number of small entities and, therefore, has not prepared a Regulatory Flexibility Analysis. This determination also applies to the Department's proposed adoption of the revised ADAAG.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR part 37 as set forth below:

PART 37—[AMENDED]

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

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

2. Appendix A to Part 37, ''Standards for Accessible Transportation Facilities,'' is revised to read as follows:

Appendix A to Part 37—Standards for Accessible Transportation Facilities

[**Note:** The text of the proposed revision is identical to the text of appendices A and C of the Access Board's November 16, 1999 notice of proposed rulemaking. See 64 FR 62248, 62284 and 62371.]

Issued this 25th day of July, 2000, in Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 00–19482 Filed 8–7–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 153
Tuesday, August 8, 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

Submission for OMB Review; Comment Request

August 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology should be addressed to:

Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503; and to

Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Service

Title: Intermediary Relending Program.

OMB Control Number: 0570–0021.

Summary of Collection: The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The regulations contain various requirements for information from the intermediaries and some requirements may cause the intermediary to seek information from ultimate recipients. RBS will collect information using several forms.

Need and Use of the Information: The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, and security, and other material necessary for prudent credit decisions and reasonable program monitoring.

Description of Respondents: Not-for-profit institutions; individuals of households; business or other for-profit.

Number of Respondents: 16.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,930.

Forest Service

Title: Youth Conservation Corps Application & Medical History Forms.

OMB Control Number: 0596–0084.

Summary of Collection: Under P.L. 93–408, the Youth Conservation Corps Act (YCC), the Forest Service provides seasonal employment for eligible youth 15 to 18 years old. As part of this effort, the Forest Service collects information from applicants to evaluate their eligibility for employment with the agency through the program. Each eligible youth, who wishes to apply and be considered for employment in the YCC program, must submit an application form (SF 1800–18).

This is a seasonal program requiring a new submission by applicants each year. Selected participants must complete the medical history form (FS 1800–3), and their parent or guardian must sign. This is necessary to certify the youth's physical fitness to serve in the YCC program.

Need and Use of the Information: All candidates interested in participating in the YCC program must complete an application. Those applicants, selected at random, complete the form FS 1800–3, Youth Conservation Corps Medical History, which provides information needed to certify suitability, any special medical or medication needs, and a file record to protect both the Federal Government and individuals. If not used, the governments liability risk is high, special needs of one individual may not be known, or the screening of an applicant's physical suitability would be greatly inhibited.

Description of Respondents: Individuals or households.

Number of Respondents: 18,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,000.

Cooperative State Research, Education, and Extension Service

Title: Assurance of Compliance With the Department of Agriculture Regulations Assuring Civil Rights Compliance Organization Information.

OMB Control Number: 0524–0026.

Summary of Collection: The Cooperative State Research, Education, and Extension Service (CSREES) has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and higher education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and the intent of Congress by administering formula and grant appropriated for agricultural research, extension, and higher education.

Before awards can be made, certain information is required from applicant to assure compliance with the civil

rights laws and to effectively assess the potential recipient's capacity to manage Federal funds. CSREES will collect information using forms 665 and 666.

Need and Use of the Information: CSREES will collect information to determine that applicants recommended for awards are responsible recipients of Federal funds. Also, CSREES will collect information to determine that applicant agrees that they will offer programs to all eligible persons without regard to race, color, national origin, sex, disability, age, political belief, religion, marital status, or familial status. If the information were not collected, it would not be possible to determine that the prospective grantees are responsible and are complying with the Civil Rights Act.

Description of Respondents: Not-for-profit institutions; business or other for-profit; individuals or households; State, local, or Tribal Government.

Number of Respondents: 150.

Frequency or Responses: Reporting: On occasion.

Total Burden Hours: 600.

Farm Service Agency

Title: Farmer Program Account Servicing Policies—7 CFR Part 1951–S.

OMB Control Number: 0560–0161.

Summary of Collection: The Farm Service Agency's (FSA) Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The regulations covering this information collection package describe the policies and procedures the agency will use to service most FLP loans when they become delinquent. These loans include Operating, Farm Ownership, Soil and Water, Softwood Timber Production, Emergency; Economic Emergency, Economic Opportunity, Recreation, and Rural Housing loans for farm service buildings.

Servicing of accounts is administered in accordance with the provisions of the Consolidated Farm and Rural Development Act (CONACT) as amended by the Food Security Act of 1985, the Agriculture Credit Act of 1987, the Food Agriculture Conservation and Trade Act of 1990, the Agricultural Credit Improvement Act of 1992, and the Federal Agriculture Improvement and Reform Act of 1996. The Agricultural Credit Act of 1987 was intended to ensure that private individuals who have obtained a loan from the U.S. Treasury through the Department of Agriculture are all treated equally when they default on that loan. FSA is modifying the information collection to require borrowers to document the value of added improvements to real estate used in securing a shared appreciation agreement.

Need and Use of the Information: FSA will use the tax returns provided by borrowers to document the validity of the amount of capital improvements being claimed by the borrower. If information is not collected, borrowers may not have the remaining contributory value of capital improvements made during the term of the Shared Appreciation Agreement deducted when the recapture amount under the agreement is calculated.

Description of Respondents: Farms; individuals or households; business or other for-profit.

Number of Respondents: 16,116.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,243.

Agency is requesting an emergency approval by 8/11/00.

National Agricultural Statistics Service

Title: List Sampling Frame Survey.

OMB Control Number: 0535–0140.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies heavily on the use of sample surveys statistically drawn from the ''List Sampling Frame.'' The List Sampling Frame is a database of names and addresses, with control data, that contains the components from which these samples can be drawn.

Need and Use of the Information: The List Sampling Frame is used to maintain as complete a list as possible of farm operations. The goal is to produce for each state a relatively complete, current, and unduplicated list of names to sample for agricultural operations surveys. Government agencies and educational institutions use information from these surveys in planning, conducting farm policy analyses, and for program administration.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 350,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22,500.

Agricultural Research Service

Title: Peer Review Related Forms for the Office of Scientific Quality Review.

OMB Control Number: 0518–NEW.

Summary of Collection: The Office of Scientific Quality Review (OSQR) is an organizational unit of the Agricultural Research Service (ARS) reporting to the Associate Administrator. The office has primary responsibility for planning and facilitating high quality scientific and technical peer review of all agency prospective research project plans. The Research Title of the 1998 Farm Bill, P.L. 105–185 Section 103(d), set forth new requirements for peer reviews of ARS research projects. ARS must obtain panel peer reviews of each research project at least once every five years. ARS will collect information using several forms.

Need and Use of the Information: ARS will collect the following information while conducting peer reviews of each research project: confidentiality agreement, panelist's profile information, panelist's peer review of an ARS Research project, panelist's expense report, and panelist's invoice. The information will be used to manage the travel and stipend payments to panel reviewers and provide well organized feedback to ARS' researchers about their projects. If information were not collected there would be no record of expert opinion about ARS' project plans.

Description of Respondents: Not-for-profit institutions; business or other for-profit; individuals or households; farms; Federal Government; State, local or Tribal Government.

Number of Respondents: 350.

Frequency of Responses: Reporting: Quarterly; weekly; annually.

Total Burden Hours: 4,601.

Foreign Agricultural Service

Title: CCC's Export Enhancement Program (DDP) and CCC's Daily Export Incentive Program (DEIP).

OMB Control Number: 0551–0028.

Summary of Collection: The Foreign Agricultural Service (FAS) collects information from U.S. exporters in order to determine the exporters' eligibility for the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). Program applicants can fax information in or applicants may register over the Internet.

Need and Use of the Information: Information collected from U.S. Exporters enables FAS to determine whether an exporter has the experience necessary to perform under the proposed agreements. Other information is collected to determine compliance during the period of the agreement and to ensure that compensation in the appropriate amount is made. Without the application and related information, FAS would be unable to properly qualify U.S. Exporters for EEP and DEIP.

Description of Responsents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 1803.

Rural Business-Cooperative Service

Title: Cooperative Services Questionnaire: Market Potential for New Cooperatives Buyer Survey for New Cooperative Activity.

OMB Control Number: 0570–0009.

Summary of Collection: The Cooperative Services (CS) Program of USDA's Rural Business-Cooperative Service (RBS), provides technical advisory assistance in response to written requests from producer groups or associations, or from boards of directors of cooperatives. CS will survey potential buyers of proposed cooperative's products, at the request of producer groups, to assist in determining the feasibility of possible new cooperative marketing ventures.

Need and Use of the Information: These surveys are necessary to determine the potential for new cooperatives to sell the products produced by their members in relevant markets and to determine specifications the producers must meet regarding quantity, quality, size, packing, etc., to successfully market these products. The date collected are necessary elements in determining the feasibility of a new cooperative venture. Date are used to develop a total business plan for new cooperative activities and to evaluate the potential for their success. There is a continuing need for these surveys by RBS staff who prepare site specific feasibility studies for client groups.

Description of Respondents: Business or other for-profit.

Number of Respondents: 90.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 45.

Rural Housing Service

Title: 7 CFR 1965–B Security Servicing for Multiple Family Housing Loans.

OMB Control Number: 0575–0100.

Summary of Collection: The Rural Housing Service Loan and Grant Programs under sections 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, provide loans and grants to eligible recipients for the development and operation or rural rental housing projects. These programs are intended to meet the housing needs of very low-, low- and moderate-income rural persons or families including senior citizens, the handicapped or disabled, and domestic farm laborers.

The information will be prepared and submitted to the Agency by the borrower or the borrower's representative. Agency forms and guides will be provided by the Agency to assist the borrower or the borrower's designee in the preparation of information and to streamline the collection and review process.

Need and Use of the Information: In order to assist its borrowers to operate and maintain these properties to meet program objectives, improve the Agency's ability to ensure the continued viability of the program, information needs to be collected to process borrower initiated requests. Borrower or grantee organizations are required to prepare periodic financial reports to enable the Agency to fulfill its statutory mandate for supervision or borrower operations. Information is also required for eligibility determinations to allow continued participation in the program, as necessary, to achieve the objectives of the loan and to protect the interest of the Government, the tenants, and the community. Information will be collected using several agency forms and non-forms.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; farms; State, local or Tribal Government.

Number of Respondents: 945.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1587.

Animal and Plant Health Inspection Service

Title: Permit for Movement of Restricted Animals.

OMB Control Number: 0579–0051.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of the 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic animal diseases, as well as to take actions to prevent and to manage exotic animal diseases.

Disease prevention is the most effective method of maintaining a healthy animal population and for enhancing the United States' ability to compete in the world market of animals and animal product trade. When farm animals become sick or have been exposed to a disease, it is important that they be removed promptly from their farm. If an animal must be transported across state lines, the owner will complete a ''Permit for Movement of Restricted Animals,'' VA Form 1–27.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect the owner's name, address, the animals' point of origin and destination, the number of animals being moved, the purpose of the movement, and various pieces of animal identification data so that each animal subject to movement can be identified. Meat inspector to report the slaughter of the animals to veterinary services also uses VS Form 1–27. Without the information, APHIS would be unable to effectively monitor and control the movement of sick animals, a situation that could seriously compromise the health of the U.S. livestock population.

Description of Respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 3,847.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 740.

Animal and Plant Health Inspection Service

Title: Specimen Submission.

OMB Control Number: 0579–0090.

Summary of Collection: Under the authority of Title 21, U.S.C., the Secretary of Agriculture is permitted to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. The National Veterinary Services Laboratories cannot accomplish diseases prevention without the existence of an effective disease surveillance program, which includes disease testing. Information is collected on each animal specimen being submitted for analysis by the Animal and Plan Health Inspection Service (APHIS) using Form VS 10–4.

Need and Use of the Information: Using APHIS Form VS 10–4, State or Federal veterinarians, accredited veterinarians, or other State and Federal representatives will document the collection and submission of specimens for laboratory analysis. The form identifies the individual animal from which the specimen is taken as well as the animal's herd or flock, the type of specimen submitted, and the purpose of submitting the specimen. Without the information contained on this form, personnel at the National Veterinary Services Laboratories would have no way of identifying or processing the specimens being sent to them for analysis.

Description of Respondents: State, local or Tribal Government; Federal Government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,149.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–19960 Filed 8–7–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Interim Direction on Target Range Permit Actions

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of agency directives.

SUMMARY: The Forest Service is issuing interim directives to provide updated internal administrative direction to guide its employees in the processing of proposals and applications for target ranges and in the authorization, administration, and monitoring of target ranges on National Forest System lands. Target ranges include pistol, rifle, shotgun, trap, skeet, and archery ranges. The interim directives also provide guidance on the preparation of environmental stewardship plans and safety plans for target range proposals. The interim directives are issued to Forest Service Manual (FSM) Chapters 2330, Publicly Managed Recreation Opportunities, 2340, Privately Managed Recreation Opportunities, and 2720, Special Uses Administration, and to Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, Chapter 40, Special Uses Administration, as ID numbers 2330–2000–3, 2340–2000–4. 2720–2000–2, and 2709.11–2000–1.

DATES: The interim directives are effective August 8, 2000.

ADDRESSES: The interim directives are available electronically from the Forest Service via the World Wide Web/ Internet at http://www.fs.fed.us/im/ directives. Single paper copies of the interim directives are available by contacting the Forest Service, USDA, Recreation, Heritage, and Wilderness Resources Management Staff (Mail Stop 1125), P. O. Box 96090, Washington, DC 20090–6090 (telephone 202–205–1706).

FOR FURTHER INFORMATION CONTACT: Jim Miller, Recreation, Heritage, and Wilderness Resources Management Staff (202–205–1313).

Dated: August 2, 2000.

Hilda Diaz-Soltero,

Associate Chief, Forest Service.

[FR Doc. 00–19998 Filed 8–7–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Solicitation of nominations for Advisory Committee on Agriculture Statistics membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

The Advisory Committee was established by the Secretary of Agriculture on November 25, 1998. The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, etc. of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agriculture reports and presents the views an needs for data of major suppliers and users of agriculture statistics.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging issues in the agriculture community that can affect agriculture statistics activities.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Members serve staggered 2-year terms, with terms for half of the committee members expiring in any given year. Members can serve up to 3 terms for a total of 6 consecutive years. The Chairperson of the Committee shall be elected my members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Persons nominated for the Advisory Committee on Agriculture Statistics will be required to complete and submit an Advisory Committee Membership Background Information questionnaire.

The duties of the Committees are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members will be reimbursed for official travel expenses only.

DATES: Nominations must be received by September 7, 2000 to be assured of consideration.

Nominations, Additional Information, or Comments

Nominations should include the following information: name, title, address, telephone number, and organization, and should be e-mailed to hq__aa@nass.usda.gov, faxed to (202) 720–9013, OR telephone to Rich Allen, Associate Administrator, NASS, at (202) 720–4333. Each person nominated is required to complete an Advisory Committee Membership Information questionnaire. This form may be requested by telephone, fax, or e-mail using the information above. Forms will also be available on the Internet through the ''Agency Information,'' ''Advisory Committee on Agriculture Statistics'' options of the NASS Home Page at http://www.usda.gov/nass. Completed questionnaires may be faxed to the number above, mailed, or completed and e-mailed directly from the Internet site.

All mailed correspondence should be sent to Rich Allen, Associate Administrator, National Agricultural Statistics Services, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4117 South Building, Washington, D.C. 20250–2000.

Send questions, comments, and requests for additional information to the e-mail address, fax number, or address listed above.

Signed at Washington, D.C., August 2, 2000.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 00–19961 Filed 8–7–00; 8:45 am]

BILLING CODE 3410–20–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (committee).

DATES: The next meeting of the committee is scheduled for September 19 through 22, 2000, beginning at 9 a.m. and ending at 6 p.m. each day.

ADDRESSES: The meeting will be held in the 3rd floor training room at 1331 F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 119 (Voice); (202) 272–5449 (TTY). E-mail address: pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/news/pvaacmtg.htm.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The meeting is open to the public and interested persons can attend and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period generally scheduled during the afternoon of each meeting day. Members of groups, or individuals who are not members of the committee, may also have the opportunity to participate with the subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for passenger vessels are issued in the **Federal Register** by the Access Board.

The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by September 11, 2000.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–19962 Filed 8–7–00; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:30 p.m. on Tuesday, August 29, 2000, at the Gifford Medical Center, East Conference Room, 1st Floor, 44 S. Main Street, Randolph, Vermont 05060. The Advisory Committee will hold a planning meeting with invited guests to discuss the status of legislative and community organization initiatives to combat harassment, plan future coordination with educational leaders, and develop its next project activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino, Civil Rights Analyst of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–19997 Filed 8–7–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to requests by producers/exporters of subject merchandise and by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 1, 1998, through June 30, 1999.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP), as applicable, and the NV.

Furthermore, if these preliminary results are adopted in our final results of this administrative review, we do not intend to revoke the antidumping duty order with respect to Malee Sampran Public Co., Ltd., based on the fact that the company has not made sales at not less than normal value during each of the last three review periods. *See Preliminary Determination Not To Revoke* section of this notice.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. 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 a diskette.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Charles Riggle, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

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 Department regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

Background

On July 18, 1995, we published in the **Federal Register** the antidumping duty order on CPF from Thailand (60 FR 36775). On July 15, 1999, we published in the **Federal Register** the notice of ''Opportunity to Request an Administrative Review'' of this order, covering the period July 1, 1998, through June 30, 1999 (64 FR 38181).

The following producers/exporters of CPF requested a review in accordance with 19 CFR 351.213(b)(2): Vita Food Factory (1989) Co., Ltd. (Vita); Siam Fruit Canning (1988) Co., Ltd. (SIFCO); Siam Food Products Public Co. Ltd. (SFP); The Thai Pineapple Public Co., Ltd. (TIPCO); Malee Sampran Public Co., Ltd. (Malee); The Prachuab Fruit Canning Company Ltd. (PRAFT); Thai Pineapple Canning Industry (TPC); and Tropical Food Industries Co., Ltd. (TROFCO).

In addition, on July 30, 1999, the petitioner, Maui Pineapple Company, in accordance with 19 CFR 351.213(b)(1), requested a review of Kuiburi Fruit Canning Co. Ltd. (KFC), Malee, PRAFT, SIFCO, SFP, TIPCO, TPC and Vita.

On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1998, through June 30, 1999 (64 FR 47167).

Scope of the Review

The product covered by this review is canned pineapple fruit (CPF). For purposes of the review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by Malee, PRAFT, SFP and TIPCO. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports, which will be placed in the case file in Room B–099 of the Main Department of Commerce Building.

Fair Value Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For all respondents except SIFCO, we based the date of sale on the date of the invoice. For SIFCO, we based the date of sale on the contract date. According to SIFCO, any changes to the material terms of sale occur before the original contract is signed, and these terms do not change once the contract is issued. Therefore, because the material terms of sale were firmly set on this date, we relied on contract date as the date of sale.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and U.S. import duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP.

We determined the EP or CEP for each company as follows:

TIPCO

We calculated an EP for all of TIPCO's sales because the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Although TMC is a company legally incorporated in the United States, the company has neither business premises nor personnel in the United States. All activities transacted on behalf of TMC, including invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage, are conducted in Thailand where all TMC employees are located. Accordingly, as the merchandise was sold before importation by TMC outside the United States, we have determined these sales to be EP transactions. *See* Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2000) and accompanying Decision Memo at Comment 3.

We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. SFP has one employee in the United States; however, this employee does not: (1) Take title to the subject merchandise; (2) issue invoices or receive payments; or (3) arrange for other aspects of the transaction. The merchandise was shipped directly by SFP in Bangkok to the unaffiliated customer in the United States. The information on the record indicates that SFP's Bangkok office is responsible for confirming orders and for issuing the invoice directly to the customer. Payment also is sent directly from the unaffiliated U.S. customer to SFP in Bangkok. Therefore, the Department has determined that these sales were made in Bangkok prior to importation and, thus, are properly classified as EP transactions.

We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions for foreign movement expenses and international freight in accordance with section 772(c)(2)(A) of the Act.

Vita

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight.

KFC

We calculated an EP for all of KFC's sales because the merchandise was sold directly by KFC outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight.

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made a deduction from the starting price for foreign inland freight.

TPC

During the POR, TPC had both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by TPC outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by TPC's affiliated U.S. reseller, Mitsubishi International Corporation (MIC), after importation of the subject merchandise into the United States. EP and CEP were based on the packed FOB, ex-warehouse, or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, for CEP sales we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit costs, warranty expenses), and indirect selling expenses incurred by MIC in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Malee

For this POR, the Department found that all of Malee's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Malee's affiliated trading company Icon Foods.

CEP was based on packed ex-dock U.S. port price to unaffiliated purchasers in the United States. We made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. Because all of Malee's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct selling expenses and indirect selling expenses incurred by Icon Foods in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

PRAFT

We calculated an EP for all of Praft's sales because the merchandise was sold directly by Praft outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses.

TROFCO

We calculated an EP for all of TROFCO's sales because the merchandise was sold directly by TROFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee, the quantity of foreign like product each respondent sold in Thailand did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than 5 percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for all respondents except Malee, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest viable third-country market, i.e., Germany for Vita, TPC and PRAFT, France for SIFCO, the United Kingdom for SFP, Finland for TIPCO, Japan for TROFCO, and Canada for KFC. With respect to Malee, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

B. Cost of Production Analysis

Pursuant to section 773(b)(1) of the Act, we initiated a cost of production (COP) investigation of comparison-market sales for each respondent. Based on timely allegations filed by the petitioners, we initiated COP investigations of KFC, TROFCO and SIFCO, to determine whether sales were made at prices below the COP. *See* Memoranda from Case Analysts to Holly Kuga, dated January 12, 2000. In addition, because we disregarded sales that failed the cost test in the last completed review of TIPCO, SFP, TPC, Malee, PRAFT and Vita, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.

We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, for each respondent, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative expenses (SG&A), and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (i.e., pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See* Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29561 (June 5, 1995), and Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 7392, 7398 (February 13, 1998).[1] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed from their historical net realizable value (NRV) methodology to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on NRV methodology. Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for KFC, Praft and Malee. Because KFC, Praft and Malee already allocate fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in their normal accounting records, we have not required KFC, Praft or Malee to recalculate their reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

SIFCO

In allocating fruit costs between solid products and juice, SIFCO used a ratio different from the historical NRV ratio relied upon in the second review. Because we rely upon historical values for the allocation of fruit costs, and in order to be consistent with past reviews, we recalculated SIFCO's fruit costs, allocating them based on the verified figures from the second review. Further, we recalculated G&A to exclude foreign exchange losses incurred on accounts receivable and applied the recalculated G&A to a COM inclusive of packing. For a further discussion of these adjustments to SIFCO's calculations, *see* SIFCO Calculation Memorandum, dated July 31, 2000.

SFP

SFP's reported fruit costs are based on NRV data for the 1990–1994 period used in previous reviews. Based on verification findings, we made changes to SFP's reported can costs, overhead, and SG&A. *See* Verification Report, dated July 14, 2000, for a more detailed discussion of these changes.

1. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

Consistent with the third review, we have not deducted from the COP the value of certain tax certificate revenues. In the third review, we determined that

[1] This determination was upheld by the Court of Appeals for the Federal Circuit. *The Thai Pineapple Public Co.* v. *United States,* 187 F. 3d 1362 (Fed. Cir. 1999).

the certificate is not tied to any duty drawback scheme, but rather, represents revenue paid to companies upon the export of domestically-produced merchandise. *See* Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 64 FR 69481, 69485 (December 13, 1999). Therefore, no adjustment was made to our dumping calculation for this payment.

2. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where (1) 20 percent or more of a respondent's sales of a given product were 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 weighted-average 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 section 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that for certain CPF products, KFC, TIPCO, SFP, SIFCO, Malee and Vita 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.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology. Company-specific adjustments are described below.

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Finland. We adjusted for the following movement expenses: brokerage and handling, port charges, stuffing expenses, liner expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (commissions, credit expenses and bank charges) and adding U.S. direct selling expenses (commissions, credit expenses and bank charges).

PRAFT

We based third-country market prices on the packed FOB price to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales including credit expenses and commissions and adding U.S. direct selling expenses including credit expenses and commissions.

SFP

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in the United Kingdom. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, warranties and commissions) and adding U.S. direct selling expenses (credit expenses and bank charges). We applied the commission offset in the manner described above.

Vita

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

SIFCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in France. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

TPC

We based third-country market prices on the packed, FOB or CNF prices to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses and international freight. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranties). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.,* we added expenses for letters of credit and bank charges incurred by TPC in Thailand). Where we compared U.S. sales that had no commission to comparison market sales with commissions, we applied the commission offset in the manner described above.

KFC

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

Malee

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, advertising expenses and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

TROFCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Japan. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, document fees, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, document fees, bank charges and commissions).

Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP or CEP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the ''Calculation of COP'' section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Level of Trade

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 level of trade as the EP or CEP transaction. The NV level of trade 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 SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

The U.S. Court of International Trade (CIT) has held that the Department's practice of determining level of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 722(d) of the Act. *See Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221, 1241–42 (CIT March 26, 1998) (*Borden II*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden II* on the level-of-trade issue. *See Borden, Inc.* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a level-of-trade analysis, as articulated in the Department's regulations at section 351.412.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, 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 level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, all respondents except Malee claimed that all of their sales involved identical selling functions, irrespective of channel of distribution or market. We examined these selling functions for Vita, SIFCO, SFP, TIPCO, PRAFT, TPC, TROFCO, and KFC, and found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment. There was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for all respondents except Malee, we have preliminarily found that there is an identical level of trade in the U.S. and relevant comparison market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Malee reported that all of its sales made to the United States were to importer/distributors and involved minimal selling functions on the part of Malee. Malee claimed two different levels of trade for its sales in the home market: (1) Factory-direct sales involving minimal selling functions, and which are at a level of trade identical to the EP level of trade; and (2) sales through Malee Supply (1994) Co. Ltd. (Malee Supply), an affiliated reseller.

Malee made direct sales to hotels, restaurants and industrial users. Malee claimed that its only selling function on direct sales was delivery of the product to the customer. Malee reported numerous selling functions undertaken by Malee Supply for its resales to small wholesalers, retailers and end-users. In addition to maintaining inventory, Malee Supply also handled all advertising during the POR. The advertising was directed at the ultimate consumer. Malee also reported that Malee Supply replaces damaged or

defective merchandise and, as necessary, breaks down packed cases into smaller lot sizes for many sales.

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Accordingly, we matched Malee's U.S. sales to direct sales made in the home market. Because we were able to match all U.S. sales in this manner to sales made at the same level of trade, without resorting to home market sales made through the other level of trade, we did not reach the issue of whether a level-of-trade adjustment was appropriate under the facts of this case.

Preliminary Determination Not To Revoke Order

The Department may revoke an antidumping order in part if the Department concludes that: (1) One or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years, (2) it is unlikely that those persons will sell the subject merchandise at less than NV in the future; and (3) for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than NV, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

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 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; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. Id. at 351.222(e)(i) *See, e.g., 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 742, 743 (January 6, 2000). On August 6, 1999, Malee provided the required certifications.

We have preliminarily determined a weighted-average margin of 1.72 percent for Malee in the current review period. Consequently, we preliminarily find that Malee does not qualify for revocation of the order under section 351.222(b) of the Department's regulations. Therefore, we have not addressed the issues of whether Malee shipped in commercial quantities or whether the continued application of the antidumping duty order is necessary to offset dumping with regard to Malee. However, should Malee's final weighted-average margin for this review be less than 0.50 percent, we will address those issues at that time. We note that information on the record indicates that Malee's aggregate sales to the United States were not made in commercial quantities during each of the three review periods that formed the basis of Malee's revocation request. *See* the July 31, 2000 memorandum to Holly Kuga: Determination Not to Revoke in Part the Antidumping Duty Order on Canned Pineapple Fruit from Thailand. Interested parties are invited to comment in their case briefs on all of the requirements that must be met by Malee under section 351.222 of the Department's regulations in order to qualify for revocation from the antidumping duty order.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Siam Food Products Company Ltd.	0.38
The Thai Pineapple Public Company, Ltd.	1.95
Kuiburi Fruit Canning Co. Ltd.	1.63
Thai Pineapple Canning Industry	4.69
Siam Fruit Canning (1988) Co. Ltd.	3.01
Vita Food Factory (1989) Co. Ltd.	5.19
The Prachuab Fruit Canning Company Ltd.	2.16
Tropical Food Industries Co., Ltd.	4.02
Malee Sampran Public Co., Ltd.	2.52

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. 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 a diskette. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or hearing, within 120 days from publication of this notice.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries. We have calculated each importers' duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. The importer-specific rate will be assessed uniformly on all entries made during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act; (1) The cash

deposit rate for companies listed above will be the rate 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 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 less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the ''All Others'' rate established in the LTFV investigation.

These cash deposit 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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20031 Filed 8–7–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–337–803)

Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by eight producers/exporters of subject merchandise and the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 28, 1998, through June 30, 1999.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate parties submitting comments to provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, at (202) 482–3003 or (202) 482–3813, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 19 CFR Part 351 (1999).

Case History

On July 30, 1998, the Department issued an antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile,* 63 FR 40699 (July 30, 1998). On July 9, 1999, the Department issued a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 64 FR 38181 (July 15, 1999). On July 30, 1999, in accordance with 19 CFR 351.213(b)(1), the Coalition for Fair Atlantic Salmon Trade (the petitioners) requested a review of 61 producers/exporters of fresh Atlantic salmon.

On October 5, 1999, the petitioners withdrew their request for all companies except: (1) Cultivos Marinos Chiloe Ltda. (Cultivos Marinos); (2) Chisal S.A (Chisal); (3) Cultivadora de Salmones Linao Ltda. (Linao); (4) Fiordo Blanco, S.A. (Fiordo Blanco); (5) I.P. (Invertec Pesquera) Mar de Chiloe, S.A. (Invertec); (6) Pesquera Mares Australes (Mares Australes); (7) Salmones Pacific Star (Pacific Star); (8) Salmones Mainstream, S.A. (Mainstream); (9) Salmones Pacifico Sur, S.A. (Pacifico Sur); and (10) Salmones Tecmar, S.A. (Tecmar). Petitioners subsequently withdrew their request for a review of Invertec and Chisal. *See Partial Rescission of Antidumping Duty Administrative Review,* below.

Also on July 30, 1999, the following companies requested that the Department conduct an administrative review for the period from July 28, 1998, through June 30, 1999: (1) Cultivos Marinos; (2) Pesquera Eicosal Ltda. (Eicosal); (3) Fiordo Blanco; (4) Linao; (5) Mainstream; (6) Mares Australes; (7) Pacifico Sur; and (8) Tecmar.

On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review, covering the period July 28, 1998, through June 30, 1999. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 64 FR 47167 (August 30, 1999).

Partial Rescission of Antidumping Duty Administrative Review

On October 5, 1999, the petitioners withdrew their requests for review of the following companies:

Aquacultura de Aguas Australes
Agromar Ltda.
Aquachile S.A.
Aguas Claras S.A.
Aquasur Fisheries Ltda.
Asesoria Acuicola S.A.
Best Salmon
C.M. Chiloe Ltda.
Cenculmavique
Centro de Cultivo de Moluscos
Cerro Farellon Ltda.
Chile S.A.
Complejo Piscicola Coyhaique
Cultivos San Juan
Cultivos Yardan S.A.
Fisher Farms
Fitz Roy
G.M. Tornagaleones S.A.

Huitosal
Huitosal Mares Australes Salmo Pac.
I.P. Mar de Chiloe S.A.
Invertec Seafood S.A.
Manao Bay Fisheries
Mardim Ltda.
Ocean Horizons
P. Antares S.A.
P. Chiloe S.A.
P. Friosur S.A.
P. Los Fiordas
Pacific Mariculture
Patagonia Fish Farming S.A.
Patagonia Salmon Farming, S.A.
Pes Quellon Ltda.
Pesca Chile S.A.
Piscicultura Iculpe
Piscicultura La Cascada
Piscicultura Santa Margarita
Prosmolt S.A.
Salmon Andes S.A.
Salmones Americanos S.A.
Salmones Antarctica S.A.
Salmones Caicaen S.A.
Salmones Llanquihue
Salmones Multiexport Ltda.
Salmones Quellon
Salmones Ranco Sur Ltda.
Salmones Unimarc S.A.
Salmosan
Seafine
Trusal S.A.
Ventisqueros S.A.

In addition, on October 21, 1999, and November 12, 1999, the petitioners withdrew their request that the Department conduct an administrative review of the entries of Invertec and of Chisal, respectively. Pursuant to 19 CFR 315.213(d)(1), we are rescinding the review with respect to these companies.

From April 2000 through July 2000, we conducted verifications of sales and cost data submitted by respondents Cultivos Marinos, Eicosal, Fiordo Blanco, Salmones Mainstream, Mares Australes, and Pacifico Sur. The verification of most elements of the sales data submitted by Fiordo Blanco is scheduled to take place at the offices of the respondent's affiliated Canadian reseller in early August 2000. Shortly before the issuance of these preliminary results of review, Fiordo Blanco submitted a letter purporting to contain minor corrections to its sales data. Given the lateness of that filing, we have not considered it for these preliminary results of review. Further, the Department has not yet determined whether this submission properly contains only minor corrections to the record pursuant to verification. The Department will make this determination after the sales verification scheduled to take place in Canada in August 2000.

Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species *Salmo salar,* in the genus *Salmo* of the family *salmoninae.* ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.,* wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Use of Facts Available

We have preliminarily determined, as a result of a partial verification conducted by the Department, to base Fiordo Blanco's antidumping rate on the facts available in accordance with section 776(a) of the Act. The Department conducted verification of cost and some sales data in Chile before the issuance of the preliminary results of this review, and is scheduled to conduct additional verification procedures at the Canadian offices of Fiordo Blanco's North American distributor after the issuance of the preliminary results. As described below, during the verification in Chile, the Department determined that there were errors in the reporting of date of sale for U.S. and Canadian sales, which call into question the overall reliability of the data submitted by Fiordo Blanco for purposes of these preliminary results. Therefore, we have preliminarily assigned to Fiordo Blanco a margin based on adverse facts available, which, in this case, is the highest margin calculated for any respondent in the original investigation.

The specific findings at verification which led to this decision are as follows. From June 26 through June 30, 2000, the Department conducted a verification in Puerto Montt, Chile, of the cost data submitted by Fiordo Blanco. The major portion of the sales verification was scheduled to take place after the issuance of the preliminary results of this review, at the Canadian offices of Heritage, Fiordo Blanco's affiliated North American consignment reseller, where all of the sales to the first unaffiliated customers in the U.S. and Canadian markets were generated. However, since certain expenses associated with those sales were incurred in Chile, and recorded in the books of Fiordo Blanco's Chilean operations, the Department conducted verification of those elements in Chile, concurrent with the cost verification.

In its questionnaire responses, Fiordo Blanco had stated that the appropriate date of sale for both markets was the date of shipment. Fiordo Blanco noted that material terms of sale were established earlier, on the date that sales personnel recorded a customer's order, but claimed that the date of order could not be easily reported:

> We are reporting the date of sale, both for U.S. and Canadian sales, as the date of shipment from { the North American warehouse }. While the order may be negotiated one or two days prior to shipment, we do not track the order date electronically in our system. It would be extremely burdensome to search paper records concerning thousands of sales to determine the actual order date for all sales * * *

See Fiordo Blanco Section A response at 20.

In conducting verification of reported expenses based on the books of Fiordo Blanco in Chile, the verifiers noted an irregularity in the reporting of date of sale, which appeared to derive from the records maintained by Heritage in Canada. Late on the evening prior to the last day of verification, the respondent notified the verifiers that it had inadvertently reported the date of order, rather than the date of shipment, as the date of sale. (According to Fiordo Blanco, the date of shipment had not been reported at all, and the date of order, which was in fact recorded electronically, had been erroneously reported instead.) The company could not explain why the date of order, which it had suggested was not recorded electronically, had been inadvertently reported to the Department *in lieu* of the shipment date. Heritage officials, contacted by

telephone, were also unable to reconcile these inconsistencies.

In preparing these preliminary results, two weeks after the verification of Fiordo Blanco's data in Chile, the Department requested that Fiordo Blanco provide order dates and shipment dates for a randomly selected sample of thirty U.S. and Canadian sales, and also provide documentation supporting these dates. The Department compared these dates to those originally reported in the Section B and C responses, and found that for some sales the respondent had actually reported the date of shipment as the date of sale, and for others it had reported the date of order. There appeared to be no systematic pattern to the choice of date of sale, and the respondent was unable to explain this discrepancy. *See Memorandum from the Team to the File,* dated July 11, 2000.

These discrepancies and contradictions in the reporting of date of sale are of concern in that the date of sale is an important element in identifying appropriate sales comparisons, particularly in an administrative review. While additional verification at Fiordo Blanco's North American affiliate, scheduled to take place after the issuance of these results, might give the Department greater confidence in the reliability of Fiordo Blanco's submitted data, at present the Department cannot rely on these data to calculate a dumping margin for the preliminary results of review. As such, consistent with section 776(a) of the Act, the Department has based the preliminary results of review for Fiordo Blanco on the facts available.

Consistent with section 782(d) of the Act, Fiordo Blanco was given opportunities to correct its defective submissions. On January 18, 2000, the Department issued a supplemental questionnaire to Fiordo Blanco, requesting confirmation that the date of shipment from Heritage's warehouses was the earliest date upon which all material terms of sale are set. In its response, Fiordo Blanco confirmed that the date of shipment was the only date tracked and that it had been reported as the date of sale. On April 17, 2000, Fiordo Blanco submitted the overall reconciliation of the company's sales database to its financial statements, as called for in section A of the antidumping questionnaire. This exercise required the respondent to confirm that the appropriate sales had been reported for the POR, and was an opportunity for Fiordo Blanco to examine the correctness of its reported dates of sale. Fiordo Blanco did not mention any problem with the date of sale in its submitted reconciliation. Despite these opportunities, Fiordo Blanco did not act to the best of its ability to confirm the accuracy of its reported data and to provide any necessary corrections. Therefore, we preliminarily determine that the use of adverse facts available is appropriate, in accordance with section 776(b) of the Act.

Where we must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. We have preliminarily assigned to Fiordo Blanco, as adverse facts available, a rate of 10.69 percent, the highest rate determined for any respondent during any segment of this proceeding. This rate was calculated for a respondent in the less-than-fair-value (LTFV) investigation.

Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) says that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* H.R. Doc. 316, vol. 1, at 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render inappropriate the preliminary use of the margin selected for Fiordo Blanco.

We note that, as scheduled, the Department intends to conduct a sales verification at the offices of Heritage after the issuance of these preliminary results. Depending on the findings of that verification, the Department may find it appropriate, for the final results of review, to calculate a dumping margin for Fiordo Blanco using some or all of the data submitted by the respondent.

Fair Value Comparisons

We compared the EP or CEP to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales of products sold in the United States and comparison markets that are identical with respect to the matching characteristics. Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the review and were sold in the comparison markets during the POR fall within the definition of the foreign like product. We have relied on four criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: form, grade, weight band, and trim.[1] As in the original LTFV investigation, we have determined that it is generally not possible to match similar products, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile,* 63 FR 2664 (January 16, 1998). Therefore, we have compared

[1] The ''trim'' characteristic was not a matching criterion in the original investigation. However, the Department has preliminarily incorporated it into the model matching hierarchy based on evidence of pricing and cost differences for salmon of different trims.

U.S. sales to comparison market sales of identical merchandise, and have not compared U.S. sales to comparison market sales of similar merchandise. Where there were no appropriate sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV).

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. Where sales were made through an unaffiliated consignment seller, we did not consider the consignment seller to be the customer; rather, we considered the customer to be the consignment seller's customer.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP. In this case, all CEP sales were made through unaffiliated resellers for the account of the producer/exporter. Consistent with past practice, for these sales we deducted from the CEP commissions charged to, and other direct expenses incurred for the account of, the producer/exporter. We did not deduct an amount for CEP profit, because the commission already contains an element for profit realized by the unaffiliated reseller.

We determined the EP or CEP for each company as follows:

Cultivos Marinos

We calculated an EP for all of Cultivos Marinos' sales because the merchandise was sold directly by Cultivos Marinos to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Eicosal

We calculated an EP for all of Eicosal's sales because the merchandise was sold directly by Eicosal to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Linao

During the POR, Linao made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Linao to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made for the account of the producer/exporter by an unaffiliated consignment broker in the United States after the date of importation. EP and CEP sales were based on the packed, delivered and duty-paid (DDP) U.S. port and C&F U.S. port price for exportation to the United States. We made deductions from the starting price for discounts and rebates, as well as movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage, and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit expenses and industry association fees), and indirect selling expenses incurred in the United States by the unaffiliated consignment agent on behalf of the exporter which were charged to the respondent separately from the commission.

Mainstream

We calculated an EP for all of Mainstream's sales because the merchandise was sold directly by Mainstream to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, brokerage and handling, and U.S. customs duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Mares Australes

We calculated an EP for all of Mares Australes' sales because the merchandise was sold directly by Mares Australes to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), customs brokerage fees, international freight, U.S. customs duties and U.S. handling charges. We also added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Pacific Star

We calculated an EP for all of Pacific Star's sales because the merchandise was sold directly by Pacific Star to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), customs brokerage fees, international freight, U.S. customs duties and U.S. handling charges. We also added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Pacifico Sur

During the POR, Pacifico Sur made both EP and CEP transactions. We calculated an EP for sales where the

merchandise was sold directly by Pacifico Sur to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made for the account of the producer/exporter by an unaffiliated consignment broker in the United States after the date of importation. EP and CEP sales were based on the packed DDP U.S. port and C&F U.S. port price for exportation to the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage, and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions and other direct selling expenses (credit, industry association fees, product claims and repacking).

Tecmar

We calculated an EP for all of Tecmar's sales because the merchandise was sold directly by Tecmar to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and handling, and U.S. duties. We also added the amount for duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales by Cultivos Marinos and Eicosal, we determined that the quantity of foreign like product sold in Chile permitted a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1)(B) of the Act, because the quantity of sales in the home market was more than five percent of the quantity of sales to the U.S. market. Accordingly, for those two respondents we based NV on home market sales.[2]

Respondents Linao, Mares Australes, Pacific Star, Mainstream, Pacifico Sur, and Tecmar did not have viable home markets, as defined above. Therefore, for these respondents, in accordance with section 773(a)(1)(C) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market. For Linao, Mainstream,[3] and Pacific Star, the largest third-country market is Brazil; for Tecmar, the largest third-country market is Argentina. Respondents Mares Australes and Pacifico Sur did not have any viable comparison market. Therefore, in accordance with section 773(e) of the Act, we based NV for these respondents on CV.

B. Cost of Production Analysis

Based on timely allegations filed by the petitioners, we initiated cost of production (COP) investigations of Cultivos Marinos, Fiordo Blanco, Pacific Star, and Tecmar, to determine whether sales were made at prices below the COP. *See Memorandum From Case Analysts to Gary Taverman*, dated January 12, 2000. In addition, because we disregarded below-cost sales in the final determination of the LTFV investigation of Eicosal, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by this company have been made at prices below the COP during the period of the first review. Therefore, pursuant to section 773(b)(1) of the Act, we also initiated a COP investigation of sales by Eicosal.

[2] In the original LTFV investigation, the Department rejected the use of home market sales for purposes of establishing NV for two respondents, finding that a particular market situation existed with respect to those sales. In reaching that determination, the Department noted that those respondents' home market sales were almost exclusively of industrial grade salmon, which were incidental to their export-oriented businesses, and were sold essentially for salvage value. In this review, we have accepted the use of home market sales by Cultivos Marinos and Eicosal, since these sales included export-grade salmon sold to customers with a specific demand for those products.

[3] We note that the petitioners have called into question the use of sales to the Brazilian market as the basis for NV for Mainstream. According to the petitioners, the respondent's U.S. sales are primarily of fillets, and fillets were introduced to the Brazilian market by Mainstream in small quantities only after the issuance of the antidumping order in this case. We have preliminarily accepted the use of sales to the Brazilian market as the basis for NV for Mainstream. However, we will give further consideration to this issue for the final results of review, and invite parties to submit comments in their case briefs in this regard.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of materials, fabrication, and general expenses. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

We made the following company-specific adjustments to the cost data submitted in this review:

Cultivos Marinos: We adjusted Cultivos Marinos' general and administrative (G&A) expense ratio to include certain depreciation expenses which had been omitted from its submitted calculation and we adjusted the company's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

Eicosal: We calculated Eicosal's financial expenses from its parent company's consolidated financial statements. We also adjusted Eicosal's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

Pacific Star: We adjusted Pacific Star's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

Tecmar: We adjusted Tecmar's financial expense ratio to exclude offsets for estimated monetary gains associated with debt.

2. Test of Comparison Market Sales Prices

As required by section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent subject to a cost investigation to the comparison-market sales prices of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison-market prices, less any applicable movement charges, taxes, rebates, commissions, and other direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where (1) 20 percent or

more of a respondent's sales of a given product were 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 weighted-average 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 section 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that for certain fresh Atlantic salmon products, Cultivos Marinos, Eicosal, Pacific Star, and Tecmar 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.

C. Calculation of Normal Value Based on Comparison-Market Prices

We determined price-based NVs for respondent companies as follows. For all respondents, we made adjustments for any differences in packing, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

Company-specific adjustments are described below.

Cultivos Marinos: We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight, interest revenue and billing adjustments. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense). No other adjustments to NV were claimed or allowed.

Eicosal: We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense, inspection fees, and bank charges). No other adjustments to NV were claimed or allowed.

Linao: We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, airport handling fees, and customs brokerage. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control and inspection, certification expenses, and bank charges) and adding U.S. direct selling expenses (credit and association fees). We also added the amount for third country duty drawback to the starting price.

Mainstream: We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, international freight, customs fees and airport handling charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, sanitary certification, association fees, bank charges and loan guarantees) and adding U.S. direct selling expenses (credit, association fees, and bank charges). We also added the amount for third country duty drawback to the starting price.

Pacific Star: We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, airport handling fees, and Customs brokerage. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control and inspection, certification expenses, and bank charges) and adding U.S. direct selling expenses (credit and association fees). We also added the amount for third country duty drawback to the starting price.

Tecmar: We based third-country market prices on the packed, FOB plant or C&F port-city prices to unaffiliated purchasers in Argentina. We adjusted for the following movement expenses: foreign inland freight, international freight and brokerage and handling. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control, health certificate and bank charges) and adding U.S. direct selling expenses (credit, quality control, inspection and bank charges). We also added the amount for third country duty drawback to the starting price.

D. Calculation of Normal Value Based on Constructed Value

For those sales for which we could not determine NV based on comparison-market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared EP, or CEP, to CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing. For Cultivos Marinos, Eicosal, Pacific Star, and Tecmar, we calculated CV based on the methodology described in the COP section, above. For Linao, Mares Australes, and Pacifico Sur, we calculated CV as discussed below. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market to calculate SG&A expenses and profit. For Mares Australes and Pacifico Sur, which had no comparison market sales, we relied on the weighted-average SG&A and profit ratios of the two respondents with home market sales, consistent with section 773(e)(2)(B)(ii) of the Act.

For price-to-CV comparisons, we made adjustments to CV for COS differences, pursuant to section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses. We also adjusted, where applicable, for the commission offset described in *Calculation of Normal Value Based on Comparison-Market Prices*, above.

Company-specific adjustments are described below.

Cultivos Marinos: We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense).

Eicosal: We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense, inspection fees, and bank charges).

Linao: We adjusted Linao's financial expense ratio to exclude offsets for estimated monetary gains associated with debt. In addition, we made COS adjustments by deducting average direct selling expenses incurred by Linao for third-country market sales and adding U.S. direct selling expenses (credit and association fees).

Mares Australes: We adjusted Mares Australes' general and administrative expense ratio to include charges to a provision for catastrophic stock losses and certain other miscellaneous expenses. In addition, we made COS adjustments by adding U.S. direct selling expenses (credit and association fees) and deducting the weighted-average direct selling expenses incurred by the two respondents that had a viable home market during the period.

Pacific Star: We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control and inspection, certification expenses, and bank charges) and adding U.S. direct selling expenses (credit, products claims, and repacking expenses and association fees).

Pacifico Sur: We adjusted Pacifico Sur's financial expense ratio to exclude offsets for estimated monetary gains associated with debt. In addition, we made COS adjustments by adding U.S. direct selling expenses (credit and association fees) and deducting the weighted-average direct selling expenses incurred by the two respondents that had a viable home market during the period. Because Pacifico Sur had commissions in the U.S. market, we also adjusted the CV by a commission offset, based on the weighted-average indirect selling expenses incurred by the two respondents that had a viable home market during the period.

Tecmar: We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control, health certificate and bank charges) and adding U.S. direct selling expenses (credit, quality control, inspection and bank charges).

Level of Trade/CEP Offset

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 level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sale in the comparison market or, when the NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

The U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772 (d) of the Act. *See Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221, 1241–42 (CIT March 26, 1998) (*Borden II*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in Borden II on the LOT issue. *See Borden, Inc.* v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a LOT analysis, as articulated in the Department's regulations at section 351.412.

To determine whether NV sales are at a different level of trade than EP or CEP, 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 level of trade, and the difference affects price comparability with U.S. sales, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment pursuant to section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV pursuant to section 773(a)(7)(B) of the Act (the CEP offset provision).

To apply these guidelines in this review, we obtained information from each respondent about the marketing stage involved in its reported U.S. and comparison-market sales, including a description of the selling activities performed by the respondent for each of its channels of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit pursuant to section 772(d) of the Act. Generally, if the claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In conducting our level-of-trade analysis for each respondent, we took into account the specific customer types, channels of distribution, and selling practices of each respondent. We found that, for all respondents, the fact pattern was virtually identical. Sales to both the U.S. and comparison markets were made to distributors, retailers, and, less commonly, to further-processors. In all cases, the selling functions performed by the respondents for the different customer types and channels of distribution were very limited, and identical in both markets. Therefore, for all respondents, we found that there was a single level of trade in the United States, and a single, identical level of trade in the comparison market. As such, it was not necessary to make any level of trade adjustments.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 28, 1998, through June 30, 1999:

Exporter/manufacturer	Weighted -average Margin percentage
Cultivos Marinos	[1]0.01.
Eicosal	[1]0.40.
Fiordo Blanco	10.69.
Linao	0.00.
Mainstream	0.00.
Mares Australes	0.00.
Pacific Star	4.52.
Pacifico Sur	0.00.
Tecmar	[1]0.01.

[1] De minimis.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with

the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. 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. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate on all appropriate entries. Eicosal, Linao, Mainstream, Mares Australes, Pacific Star, and Tecmar reported the entered value of each of their sales. Cultivos Marinos and Pacifico reported the entered value of some, but not all, of their sales. For those sales for which the entered value was not reported, we calculated entered value by subtracting international freight from the gross unit price of the U.S. sale. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. These rates will be assessed uniformly on all of the entries made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of the final results of this administrative review.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for companies listed above will be the rate 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 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 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.57 percent, the All Others rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.[4]

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20029 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioners, the Fresh Garlic Producers Association and its individual members, the Department of Commerce is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 1998, through October 31, 1999. The petitioners requested a review of four exporters. One company reported that it had no shipments of subject merchandise to the United States during the period of review, and we have confirmed that claim with the U.S. Customs Service. Accordingly, we are rescinding the review with respect to this firm. Because the remaining three exporters have not responded to our questionnaire, we have preliminarily determined to use facts otherwise available for cash-deposit and assessment purposes for all producers/exporters of the subject merchandise.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3931 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to at 19 CFR Part 351 (1999).

Background

On November 30, 1999, the petitioners requested an administrative review of Wo Hing (H.K.) Trading Co. (Wo Hing), Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd. (Rizhao), Fook Huat Tong Kee PTE. Ltd. (Fook Huat), and Zhejiang Materials Industry (Zhejiang). In response to the petitioners' request, the Department published a notice of initiation of an administrative review on December 28, 1999 (64 FR 72644), in accordance with 19 CFR 351.213(b). On December 27, 1999, we issued questionnaires to the Embassy of the People's Republic of China (PRC), the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), Wo Hing, Rizhao, and Fook Huat. We sent a questionnaire to Zhejiang in care of MOFTEC, since we were unable to obtain an address or phone number for that company. We

[4] We note that shortly after the end of the period of the first review, the parent company of Mares Australes purchased Marine Harvest, another producer of fresh Atlantic salmon from Chile, and subsequently merged the operations of the two companies. More recently, the two companies merged formally under the name of Marine Harvest. This issue may require consideration in a future segment of this proceeding.

did not receive a response to the questionnaire from either the PRC embassy or MOFTEC.

Scope of Review

The products subject to this antidumping duty administrative review are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following:

(a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or

(b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Partial Rescission of Administrative Review

One respondent-company replied to our questionnaire. Wo Hing reported that it made no shipments of subject merchandise to the United States during the period of review (POR). We have confirmed with the U.S. Customs Service that Wo Hing made no shipments during the POR. Accordingly, we are rescinding the administrative review with respect to Wo Hing pursuant to 19 CFR 351.213(d)(3).

Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department and thereby precludes the Department from conducting an analysis of its sales made during the instant POR, the Department may, subject to section 782(d) of the Act, make its determination on the basis of the facts available. Since we received no responses other than from Wo Hing, it was not necessary to provide the respondents with an opportunity to remedy deficiencies in their responses pursuant to section 782(d) of the Act. Hence, we preliminarily determine to use the facts available in determining the dumping margin for Rizhao, Fook Huat, and Zhejiang.

We preliminarily determine that Rizhao, Fook Huat, and Zhejiang do not merit separate rates because these respondents did not provide any response to the Department's request for information regarding separate rates. See, *e.g., Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 57390 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, because these companies do not qualify for separate rates, they, along with all other exporters of subject merchandise, are deemed to be covered by the PRC-entity rate discussed below.

Section 776(b) of the Act permits us to draw an adverse inference where a party has not cooperated to the best of its ability in a proceeding. This section of the Act deems a respondent uncooperative where the party ''* * * has not acted to the best of its ability to comply with requests for necessary information.'' See the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870. We find that, in not responding to our requests for information, the three respondents failed to cooperate to the best of their ability and, consequently, we have used an inference that is adverse to the interests of the respondents in selecting from among the facts otherwise available.

The statute provides that an adverse inference may include reliance on information derived from 1) the petition, 2) the final determination in the investigation segment of the proceeding, 3) a previous review under section 751 of the Act or a determination under section 753 of the Act, or 4) any other information placed on the record. See section 776(b) of the Act. In addition, the SAA establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. In employing adverse inferences, the Department is instructed to consider ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value,* 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review,* 62 FR 60472, 60477 (November 10, 1997). In this case, we have used a rate of 376.67 percent, which is the rate currently applicable to all exporters of garlic from the PRC and the rate determined in the investigation and every administrative review of the order conducted to date.

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA 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 SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value. See *id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. A respondent's own current rate has probative value. In this case, the respondents are currently subject to a PRC-wide cash-deposit rate of 376.67 percent. It is reasonable to assume that, if they could have demonstrated that their actual dumping margins are lower, they would have participated in this review and attempted to do so. See *Sparklers from*

the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 65 FR 18059, 18061 (April 6, 2000). In addition, the rate selected was corroborated, to the extent practicable, in an earlier review (see Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review, 61 FR 68229 (December 27, 1996)). We have no new information that would lead us to reconsider the reliability of that rate. Further, with respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. See, *e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

In the less-than-fair-value investigation, we received no responses to requests for information on behalf of the respondent-companies. We therefore assigned a best-information-available margin of 376.67 percent for all manufacturers and producers of the subject merchandise. See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994). We selected the rate of 376.67 from the petition because it was the highest rate provided in that document. We assigned this margin in all subsequent reviews, where the respondents likewise did not respond to our requests for information. See *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review,* 62 FR 23758 (May 1, 1997); *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review,* 62 FR 51082 (September 30, 1997); *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 65 FR 33295 (May 23, 2000). There is no other information reasonably at our disposal that would render the rate not relevant.

In the current review, we are assigning the PRC-wide rate of 376.67 percent since the respondents did not respond to our requests for information. We find that this rate is of probative value. Therefore, we find that the rate is an appropriate basis for adverse facts otherwise available.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise as the PRC-entity for the period November 1, 1998, through October 31, 1999.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: for all PRC exporters and for all non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the PRC-wide rate established in the final results of this review.

This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 1, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20027 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–570–848]

International Trade Administration

Freshwater Crawfish Tail Meat From the People's Republic of China: Postponement of Time Limits for Preliminary Results of New Shipper Antidumping Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Time Limits for Preliminary Results of New Shipper Antidumping Duty Reviews.

EFFECTIVE DATE: August 8, 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, NW., 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 September 19, 1999 and September 30, 1999 the Department of Commerce (the Department) received timely requests from Yixing Ban Chang Foods Co., Ltd. (Yixing), Fujian Pelagic Fishery Group Company (Fujian Pelagic), Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest), Suqian Foreign Trade Co., Ltd. (Suqian), Qingdao Zhengri Seafood Co., Ltd. (Qingdao Zhengri), and Shantou SEZ

Yangfeng Marine Products Company (Shantou Yangfeng) to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). On November 15, 1999 (64 FR 61833), the Department initiated these new-shipper antidumping reviews covering the period September 1, 1998 through August 31, 1999. On February 25, 2000, Yixing withdrew its request for a new shipper review.

Postponement of New Shipper Review

On May 22, 2000 and May 24, 2000, Fujian Pelagic, Qingdao Zhengri, Shantou Yangfeng, Suqian, and Yangzhou Lakebest, in accordance with 19 CFR 351.214(j)(3), agreed to waive the applicable new shipper time limits to their new shipper reviews so that the Department might conduct their new shipper reviews concurrently with the 1998/99 administrative review of crawfish tail meat from the PRC. Therefore, pursuant to respondents' request and in accordance with the Departments's regulations, we are conducting these reviews concurrently with the 1998/99 administrative review of freshwater crawfish tail meat from the PRC. As a result, the date of preliminary antidumping duty results in these new shipper reviews is September 29, 2000.

This notice is published in accordance with Section 751(a)(2)(B) of the Act and 19 CFR 351.214(j)(3).

Dated: August 2, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 00–20032 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent to Revoke the Antidumping Duty Order in Part.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy in response to requests by the following companies: Commercio-Rappresentanze-Export S.r.l. (''Corex''); F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''); La Molisana Industrie Alimentari S.p.A. (''La Molisana''); Pastificio Fratelli Pagani S.p.A. (''Pagani''); Pastificio Antonio Pallante (''Pallante''); P.A.M. S.r.l. (''PAM''); Pastificio Maltagliati S.p.A. (''Maltagliati''); N. Puglisi & F. Industria Paste Alimentare S.p.A. (''Puglisi''); and Rummo S.p.A. Molino e Pastificio (''Rummo''). The review covers exports of pasta to the United States for the period of review (''POR'') July 1, 1998 through June 30, 1999.

We preliminarily determine that during the POR, La Molisana and PAM sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price (''EP'') or constructed export price (''CEP'') and NV.

We preliminarily determine that during the POR, Corex, De Cecco, Pallante, Pagani and Puglisi did not make sales of the subject merchandise at less than NV (*i.e.,* ''zero'' or *de minimis* dumping margins). If these preliminary results are adopted in the final results of administrative review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties. Also, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping order with respect to De Cecco, based on three years of sales at not less than NV. See ''*Intent to Revoke*'' section of this notice.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with them: (1) A statement of the issues; (2) a brief summary of the comments; and (3) a table of authorities. 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.

DATES: *Effective Date:* August 8, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Jarrod Goldfeder, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to Department regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy (61 FR 38547). On July 15, 1999, we published in the **Federal Register** the notice of ''Opportunity to Request an Administrative Review'' of this order, for the period July 1, 1998 through June 30, 1999 (64 FR 38181).

In accordance with 19 CFR 351.213(b)(2) the following producers and/or exporters of pasta from Italy requested an administrative review of their sales: Corex; De Cecco; La Molisana; Maltagliati; Pagani; Pallante; PAM; Puglisi; and Rummo. On July 28, 2000, De Cecco also requested revocation of the order with respect to its sales of subject merchandise. On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1998 through June 30, 1999 for all nine companies. *Notice of Initiation,* 64 FR 47167 (August 30, 1999).[1]

For De Cecco, La Molisana, Pagani, PAM, Puglisi and Rummo, the Department disregarded sales that failed the cost test during the most recently completed segment of the proceeding in which each company participated. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated cost investigations on these six companies at the time we initiated the antidumping review. During the course of this review, we completed the administrative review for the period July 1, 1997 through June 30, 1998. *See*

[1] Puglisi was inadvertently omitted from the August 30, 1999 initiation notice. The *Notice of Initiation* was amended on September 8, 1999 to include Puglisi (64 FR 48897).

Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 7349 (February 14, 2000). Because the Department had disregarded sales for Corex, Maltagliati, and Pallante that failed the cost test during this recently completed review, on February 9, 2000, for the same reasons noted above, we initiated cost investigations on Corex, Maltagliati and Pallante.

On August 30, 1999, we issued an antidumping questionnaire [2] to all of the companies subject to review. After several extensions, the respondents submitted their responses to sections A through C of the questionnaire by October 29, 1999, and Section D responses by January 3, 2000 (except Corex, which submitted its Section D response on February 22, 2000). Pallante voluntarily submitted its section D response on December 12, 1999, prior to the February 9, 2000 initiation of the cost investigation for Pallante.

The Department issued supplemental section A through C questionnaires to the responding companies by January 7, 2000, and second supplemental questionnaires to De Cecco on January 3, 2000, and to Pallante on March 2, 2000. Supplemental section D questionnaires were issued to all companies, except Corex, by February 18, 2000. Second supplemental section D questionnaires were issued to Pallante on March 2, 2000, and to PAM on April 4, 2000. Responses to all supplemental questionnaires were received by April 18, 2000.

We verified the sales information submitted by De Cecco from February 17–19 and March 13–17, 2000; Pagani from March 20–24, 2000; PAM from May 15–19, 2000; and La Molisana from May 22–26, 2000, and June 8–9, 2000. We verified the cost information submitted by De Cecco from May 8–16, 2000, and La Molisana from May 15–19, 2000.

On February 4, 2000, the Department published a notice postponing the preliminary results of this review until June 30, 2000 (65 FR 5591). On June 28, 2000, the Department published a notice further postponing the preliminary results of this review until July 31, 2000 (65 FR 39868).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value (''CV'') of the merchandise under review.

Partial Rescission of Antidumping Duty Administrative Review

On August 26, 1999, Rummo withdrew its request for a review. On November 26, 1999, Maltagliati withdrew its request for a review. Because there were no other requests for review for Rummo and Maltagliati, and because the letters withdrawing the requests were timely filed, we are rescinding the review with respect to Rummo and Maltagliati in accordance with 19 CFR 351.213(d)(1).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Institute Metatherian Di Certification, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the Central Records Unit, main Commerce building, room B–099 (''the CRU'').

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU. The following scope ruling is pending:

(1) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry*

of the Antidumping and Countervailing Duty Orders, 65 FR 26179 (May 5, 2000).

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by De Cecco and La Molisana, and the sales information provided by Pagani and PAM. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are outlined in the company-specific verification reports placed in the case file in the CRU.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than fair value, we compared the EP or CEP to the NV, as described in the *''Export Price and Constructed Export Price*'' and ''*Normal Value*'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP where the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record. We calculated CEP where sales to the first unaffiliated purchaser took place in the United States. We based EP and CEP on the packed CIF, ex-factory, FOB, or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. Where appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer). In addition, where appropriate, we increased the EP and CEP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

For CEP, in accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred in the exporting country and the indirect selling expenses of affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Certain respondents reported the resale of subject merchandise purchased in Italy from unaffiliated producers. Where an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the export price would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order,* 63 FR 50867, 50876 (September 23, 1998). In this review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. Accordingly, consistent with our methodology in prior reviews (*see Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 63 FR 42368, 42370 (August 7, 1998)), when respondents purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database, we included the sales of commingled purchased pasta in our margin calculations.

Normal Value

A. Selection of Comparison Markets

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, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because, with the exception of Corex, 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 of the subject merchandise, we determined that the home market was viable for all producers, except Corex.

Corex reported that it made no home market sales during the POR. Therefore, in accordance with section 773(a)(1)(B)(ii) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the respondent's largest third-country market, Australia, which had an aggregate sales quantity greater than five percent of the aggregate quantity sold in the United States.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net

of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* (''*Antidumping Duties*''), 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties,* 62 FR at 27355–56.

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in the specific instances discussed below.

Corex: We recalculated the indirect selling expense ratio based on information submitted by Corex on October 6, 1999. *See* Memorandum from Cindy Robinson to John Brinkmann dated July 31, 2000 (''Corex Analysis Memo'').

For certain products, or control numbers (''CONNUMs''), Corex did not provide complete cost information in its COP database. For these CONNUMS, we calculated COP using the cost of manufacturing (''COM'') reported in Corex's sales database. We calculated interest expense and G&A using information submitted in Corex's October 6 and December 27, 1999 responses. *See,* Corex Analysis Memo.

De Cecco: We adjusted the G&A ratio by excluding packing from the cost of sales denominator in the G&A calculation because the G&A ratio should be applied to a COM amount that does not include the cost of packing. We also adjusted the interest expense factor by deducting packing from the COM used in the denominator of the calculation. We changed the numerator of the interest expense factor by including the interest expense of other affiliated companies owned by the De Cecco family. *See* Office of Accounting Memorandum from Michael P. Harrison to Neal Halper, ''De Cecco Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated July 31, 2000.

La Molisana: We adjusted La Molisana's reported G&A ratio to exclude direct income taxes and to include certain expenses which were non-deductable for income tax purposes. We also adjusted La Molisana's reported interest expense ratio to exclude foreign exchange rate gains and losses on accounts receivable. *See* Office of Accounting Memorandum from Ernest Gziryan and Heidi Norris to Neal Halper, ''La Molisana Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated July 31, 2000.

Pagani: We adjusted the numerator of the G&A expense ratio calculation by excluding expenses related to Molino Rovato and including Pagani's other operating expenses. For the denominator we used Pagani's unconsolidated cost of goods sold (''COGS'') instead of the reported consolidated figure. In addition, we adjusted Pagani's COGS by adding Pagani's inventory adjustments, and deducting other operating expenses, the write-down of receivables, packing expenses, and G&A expenses.

We recalculated Pagani's financial expense ratio to include only those interest expenses related to Alimco, the consolidated parent company. For the numerator, we used the interest expenses for Alimco as reported in the consolidated audited financial statements instead of the reported summation of interest expenses for Pagani, Molino Rovato, Foods Control, and Alimco. For the denominator, we deducted G&A expenses, the write-down of receivables, and other operating charges from Alimco's consolidated COGS figure. As a result, we recalculated the company's interest expense ratio. *See* Office of Accounting Memorandum from Gina Lee to Neal Halper, ''Pagani Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated July 31, 2000.

PAM: Based on the lack of differentiation between the types and mixes of wheat used by PAM in pasta production, we have weight-averaged the costs of four of the five wheat types reported by PAM, leaving only two wheat types with separate costs. *See* PAM Sales Verification Report and the Office of Accounting Memorandum from Heidi Norris to Neal Halper, ''PAM Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated July 31, 2000 (''PAM Accounting Memorandum'').

In addition, we have revised the fixed overhead expenses to exclude packaging and packing costs that should be reported as a sales price adjustment. We also revised PAM's financial expense ratio to exclude offsets for income earned on fixed bonds, treasury bonds, common funds, and sales of bonds. Finally, we revised the denominator in PAM's G&A and financial expense ratio calculations to exclude G&A, selling, and packing expenses. *Id.*

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the 12 month period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with

section 773(b)(1) of the Act. Specifically, we have disregarded below-cost sales made by Corex, De Cecco, La Molisana, PAM, Pallante, Pagani, and Puglisi in this administrative review.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale (''COS'') adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, billing adjustments, and interest revenue, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 19 CFR 351.411 of the Department's regulations. We based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions are incurred in one market, but not in the other, we make an allowance for the indirect selling expenses in the other market up to the amount of the commissions.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the *''Export Price and Constructed Export Price''* section of this notice.

E. Normal Value Based on CV

For Corex, where we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Corex in connection with the production and sale of the foreign like product in the comparison market. We calculated Corex's CV based on the methodology described in the *Cost of Production Analysis* section of this notice, above.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Level of Trade (''LOT'')

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same LOT as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT was more remote from the factory than the CEP LOT and there was no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we granted a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the July 31, 2000, ''98/99 Administrative Review of Pasta from Italy and Turkey: Preliminary Determination Level of Trade Findings'' memoranda on file in the CRU. The company-specific LOT analysis is included in the business proprietary analysis memorandum for each company.

The U.S. Court of International Trade (''CIT'') has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.,* v. *United States,* 4 F. Supp.2d 1221, 1241–42 (CIT March 26, 1998) *(Borden II).* The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in *Borden II* on the LOT issue. *See Borden, Inc.,* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a LOT analysis, as articulated in the Department's regulations at section 351.412.

G. Company-Specific Issues

De Cecco: Pursuant to sections 772(a) and 772(b) of the Act, we reclassified De Cecco's reported EP sales as CEP sales since the agreement for sale occurred in the United States between PMI, De Cecco's U.S. affiliate, and the unaffiliated customer. *See* Memorandum from John Brinkmann to Melissa Skinner, ''Reclassification of De Cecco EP Sales as CEP Sales,'' dated July 31, 2000.

La Molisana: Based on verification findings, we revised the calculation of the ENASARCO (commission benefit) expense and other discounts in the home market database, and recalculated marine insurance, billing adjustments, other U.S. transportation expenses, and commissions in the U.S. database. *See* Memorandum from Jarrod Goldfeder and Russell Morris to John Brinkmann, ''Analysis Memorandum for La Molisana Industrie Alimentari S.p.A.,'' dated July 31, 2000. In addition, we reclassified as indirect selling expenses incurred in the United States, certain indirect advertising expenses incurred in the United States that La Molisana had included as part of U.S. indirect selling expenses incurred in Italy. Id.

Pallante: We recalculated home market imputed credit expenses and billing adjustments to correct errors discovered during our analysis of the home market database. *See* Memorandum from Dennis McClure to John Brinkmann, ''Analysis

Memorandum for Pastificio Antonio Pallante s.r.l. (PAP) and its affiliate, Industrie Alimentari Molisane s.r.l. (IAM),'' dated July 31, 2000.

Pagani: Based on verification findings, we revised quantity discounts in the home market database and recalculated credit expenses in the U.S. database. *See* Memorandum from Geoff Craig and Russell Morris to John Brinkmann, ''Analysis Memorandum for Pastificio Fratelli Pagani S.p.A.,'' dated July 31, 2000.

PAM: Based on verification findings, we recalculated indirect selling expenses and commission benefits in the home market database, and foreign brokerage and handling, packing costs and discounts in the U.S. sales database. We also revised certain prices that were incorrectly reported in the U.S. Sales databbase. *See* Memorandum from Jarrod Goldfeder to John Brinkmann, ''Analysis Memorandum for PAM S.r.l.,'' dated July 31, 2000. In addition, we excluded from the home market database, certain reported sales that we determined were not Italian market sales. We also included in the U.S. database certain sales made to a customer in Italy that were exported to the United States, and excluded from the U.S. database duplicate sales that were erroneously reported. Furthermore, based on our findings at the sales verification, we found that there were insignificant differences between four of PAM's five reported wheat types. *See* Memorandum from Jarrod Goldfeder to John Brinkmann, ''Verification of the Sales Response of P.A.M. S.r.l. in the 98/99 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy,'' dated June 6, 2000. Accordingly, where appropriate, we have combined these four wheat types and revised PAM's control numbers used for product matching. *See ''Product Comparisons''* section above.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve.

Intent To Revoke

On July 28, 1999, De Cecco submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(b), revocation of the antidumping duty order with respect to its sales of the subject merchandise.

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 one or more exporters and producers covered by the order 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; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether it is not likely in the future to sell the subject merchandise at less than NV; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR. 351.222(b)(2).

In its July 28, 1999 request for revocation in part, De Cecco submitted the required certifications and agreement. On October 26, 1999, the Department established a time frame for parties to submit factual information relating to the Department's consideration of De Cecco's request for the revocation of the antidumping duty order with respect to its sales of subject merchandise. We did not receive any comments in response to this request.

Based on the preliminary results in this review and the final results of the two preceding reviews, De Cecco has had *de minimis* dumping margins for three consecutive reviews. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). This practice has been codified in section 351.222(d)(1) of the Department's regulations, which states that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.'' 19 CFR 351.222(d)(1) (emphasis added); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether De Cecco made sales of subject merchandise to the United States in commercial quantities, we find that De Cecco's aggregate sales to the United States were made in commercial quantities during all segments of this proceeding. Although both the quantity and number of De Cecco's shipments to the United States of subject merchandise have decreased since the imposition of the antidumping duty order, they have remained at sufficiently high levels to be considered commercial quantities. Therefore, we can reasonably conclude that the ''zero'' or *de minimis* margins calculated for De Cecco in each of the last three administrative reviews are reflective of the company's normal commercial experience. *See* Memorandum from Jarrod Goldfeder to File, ''Shipments of Pasta to the United States by De Cecco,'' dated July 31, 2000.

With respect to 19 CFR 351.222(b)(2)(ii), the likelihood issue, ''when additional evidence is on the record concerning the likelihood of future dumping, the Department is, of course obligated to consider the

evidence by the parties which relates to the likelihood of future dumping.'' *Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986, 17988 (April 13, 1998) (citing *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727, 49730 (September 23, 1996)). In doing so, the Department may consider such ''factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without [sales at less than normal value].'' *Id.*; *see also Proposed Regulation Concerning the Revocation of Antidumping Duty Orders*, 64 FR 29818, 29820 (June 3, 1999) (explaining that when additional evidence as to whether the continued application of an antidumping duty order is necessary to offset dumping is placed on the record, ''the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case''). Thus, based upon three consecutive reviews resulting in zero or *de minimis* margins, the Department presumes that the company requesting revocation is not likely to resume selling subject merchandise at less than the NV in the near future unless the Department has been presented with evidence to demonstrate that dumping is likely to resume if the order were revoked. In this proceeding, we have not received any evidence that would demonstrate that De Cecco is likely to resume dumping in the future if the order were revoked. Therefore, we also preliminarily determine that the order is no longer necessary to offset dumping.

Because all requirements under the regulation have been satisfied, if these preliminary findings are affirmed in our final results, we intend to revoke the antidumping duty order with respect to merchandise produced and exported by De Cecco. In accordance with 19 CFR 351.222(f)(3), if these findings are affirmed in our final results, we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct the U.S. Customs Service to refund any cash deposit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Corex	Zero.
De Cecco	0.23 (*de minimis*).
La Molisana	5.41.
Pagani	0.49 (*de minimis*).
Pallante	0.08 (*de minimis*).
PAM	11.18.
Puglisi	0.07 (*de minimis*).

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. 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. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy 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) The cash deposit rates for the companies listed above will be the rates 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 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 final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the

reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19946 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Turkey in response to a request by Filiz Gida Sanayi ve Ticaret A.S (''Filiz''). The review covers exports of pasta to the United States for the period of review (''POR'') July 1, 1998 through June 30, 1999.

We preliminarily determine that during the POR, Filiz did not make sales of the subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service to liquidate entries of subject merchandise by this company without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with them: (1) A statement of the issues; (2) a brief summary of their comments; and (3) a table of authorities. 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 8, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Cindy Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to Department regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Turkey (61 FR 38545). On July 15, 1999, we published in the **Federal Register** the notice of ''Opportunity to Request an Administrative Review'' of this order, for the period July 1, 1998, through June 30, 1999 (64 FR 38181).

In accordance with 19 CFR 351.213(b)(2), the following producers and/or exporters of pasta from Turkey requested an administrative review of their sales: Filiz and Pastavilla Makarnacilik Sanayi ve Ticaret A.S. (''Pastavilla''). On August 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1998 through June 30, 1999, for Filiz and Pastavilla. *Notice of Initiation,* 64 FR 47167, (August 30, 1999).

Because the Department disregarded sales that failed the cost test during the most recently completed segment of the preceding in which Filiz and Pastavilla participated, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated a cost investigation on Filiz and Pastavilla at the time we initiated the antidumping review. In its August 25, 1999, request for an administrative review, Filiz stated that it had no U.S. entries or sales during the POR prior to January 1, 1999, and therefore requested that, for purposes of reporting home market sales and cost data, the POR be shortened to the six-month period from January 1 through June 30, 1999. Accordingly, on September 1, 1999, we informed Filiz that it could limit its reporting of home market data to the period January 1 through June 30, 1999. In that letter we also advised Filiz that if it elected to limit its reporting of home market data to the six-month period, in the sales-below-cost investigation, it would forego the application of the ''recovery of cost'' test pursuant to section 773(b)(2)(D) of the Act.

On August 30, 1999, we issued an antidumping questionnaire [1] to Filiz and Pastavilla. On September 16, 1999, Pastavilla withdrew its request for a review. Filiz submitted its section A questionnaire response on September 23, 1999, and sections B, C, D on October 20, 1999.

The Department issued a supplemental section A through D questionnaire to Filiz on December 16, 1999. Filiz submitted its response to our supplemental questionnaire on January 13, 2000.

On February 4, 2000, the Department published a notice postponing the preliminary results of this review until June 30, 2000 (65 FR 5591). On June 28, 2000, the Department published a notice further postponing the preliminary results of this review until July 31, 2000 (65 FR 39868).

We verified the sales and cost information submitted by Filiz from April 10–19, 2000.

Partial Rescission of Antidumping Duty Administrative Review

On September 16, 1999, Pastavilla withdrew its request for a review. Because there were no other requests for review for Pastavilla, and because Pastavilla's letter withdrawing its request was timely filed, we are rescinding the review with respect to Pastavilla in accordance with 19 CFR 351.213(d)(1).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the COP of the foreign like product and constructed value (''CV'') of the merchandise under review.

enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* ''Memorandum from John Brinkmann to Richard Moreland,'' dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 (''the CRU'').

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by Filiz. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report placed in the case file in the CRU.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Turkey were made in the United States at less than fair value, we compared the export price (''EP'') to the NV, as described in the *''Export Price''* and *''Normal Value''* sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 60 percent), as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our ''90/60 contemporaneity rule (*see, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68430 (December 11, 1998) and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42503 (August 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') was not otherwise warranted based on the facts on the record. We based EP on the packed C&F prices to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, insurance, foreign brokerage handling and loading charges, and international freight. In addition, we increased the EP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

Based on our findings at verification, we revised Filiz' short-term interest rate used in its imputed credit calculation by excluding two long-term loans. *See* Memorandum from Cindy Robinson to John Brinkmann dated July 31, 2000 (''Filiz Analysis Memo'').

Normal Value

A. Selection of Comparison Markets

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, we compared Filiz' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Filiz' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Filiz.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See, e.g., Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties),* 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See,* 19 CFR 351.403; *Antidumping Duties,* 62 FR at 27355–56.

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis,

pursuant to section 773(b) of the Act, to determine whether Filiz' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. With the exception of the interest expense ratio, we relied on Filiz' information as submitted. We revised Filiz' reported interest expense ratio, by excluding packing cost from the cost of goods sold. *See* Filiz Analysis Memo.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Filiz submit the product-specific cost of manufacturing (''COM'') incurred during each month of the six-month period for which it reported home market sales. We then calculated a six-month average COM for each product after indexing the reported monthly costs during the six-month period to an equivalent currency level using the Turkish wholesale price index from the *International Financial Statistics* published by the International Monetary Fund (IMF). We then restated the six-month average COM in the currency value of each respective month.

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities. Since Filiz limited its reporting of home market sales to a six-month period, we did not conduct an analysis to determine whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the six-month period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because of the limited six-month reporting period used by Filiz, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price for inland freight, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing costs, respectively. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit, advertising, promotions, and warranties, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 351.411 of the Department's regulations, we based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using six-month average costs, as adjusted for inflation for each month of the six-month period, as described in the *Cost of Production Analysis* section above.

E. Level of Trade (''LOT'')

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same LOT as the U.S. EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the July 31, 2000, ''98/99 Administrative Review of Pasta from Italy and Turkey: Level of Trade Findings Memoranda'' on file in the CRU. The company-specific LOT analysis is included in the business proprietary *Filiz Analysis Memo.*

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. (*See, Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429 (December 11, 1998).)

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the *Wall Street Journal.*

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margin exists for the period July 1, 1998 through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Filiz	0.0

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit

case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. 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. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent) the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.,* international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey 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) The cash deposit rate for Filiz will be zero; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 38546 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19947 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Extension of Time Limit for Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–2849, respectively.

Time Limits

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 180 days after the date on which the review is initiated and a final determination within 90 days after the date the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated such that it cannot complete the review within these time periods, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 300 days and 150 days for the final determination from the date of publication of the preliminary determination.

Background

On February 23, 2000, the Department published a notice of initiation of new shipper review of the antidumping duty order on certain pasta from Turkey, covering the period July 1, 1999, through December 31, 1999 (65 FR 8949). The preliminary results are currently due no later than August 9, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that this case is extraordinarily complicated. Consequently, we are not able to complete the preliminary results of this review within the time limit. Therefore the Department is extending the time limit for completion of the preliminary results for the full 120 days, until no later than December 7, 2000. *See* Decision Memorandum from Melissa Skinner to Holly Kuga, dated July 24, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 90 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: July 28, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–20030 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1990/1991, 1991/1992, and 1992/1993 Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of amended final results of administrative reviews.

SUMMARY: The United States Court of International Trade and the United States Court of Appeals for the Federal Circuit have affirmed the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. The periods of review are June 1, 1990 through May 31, 1991, June 1, 1991 through May 31, 1992, and June 1, 1992 through May 31, 1993. As there is now a final and conclusive court decision in these cases, we are amending the final results of reviews and we will instruct the Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: George Callen or Robin Gray, AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0180 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 353 (1995).

Background

On December 13, 1996, the Department published final results of administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China covering the periods June 1, 1990 through May 31, 1991, June 1, 1991 through May 31, 1992, and June 1, 1992 through May 31, 1993. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527 (December 13, 1996) (*Final Results*).

The Peer Bearing Company and the Timken Company contested the Department's decision in the *Final Results*. In issuing its decision in this case, the United States Court of International Trade (CIT) instructed the Department to make the following changes to its margin calculations for the *Final Results:* (1) change the best-information-available (BIA) rate for Chin Jun Industrial, Ltd. (Chin Jun), (2) correct a clerical error in the calculation of inland freight, (3) recalculate marine insurance expense on a value, rather than weight, basis, and (4) recalculate the exporter's-sales-price (ESP) offset of foreign market value (FMV). *See Peer Bearing Company* v. *United States*, Consol. Court No. 97–01–00023, Slip Op. 98–70 (CIT May 27, 1998). The Department issued final results of redetermination on remand on August 26, 1998, and the CIT affirmed the Department's final remand results. *See Peer Bearing Company* v. *United States*, Slip Op. 98–161 (CIT December 7, 1998) *aff'd mem., sub nom. The Timken Co.* v. *United States*, No. 99–1204 (Fed. Cir. October 6, 1999). As there is now a final and conclusive court decision in this action, we are amending our final results of reviews, and we will instruct the Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty order on TRBs from the People's Republic of China for the periods of review 6/90 through 5/91, 6/91 through 5/92, and 6/92 through 5/93. The revised weighted-average margins are as follows:

Company	6/90 through 5/91	6/91 through 5/92	6/92 through 5/93
Premier Bearing and Equipment, Ltd.	[1] 4.24	[1] 5.251	[1] 5.25
Guizhou Machinery Import and Export Corporation	2.59	[1] 3.70	0.00
Henan Machinery and Equipment Import and Export Corporation	0.00	0.14	0.00
Luoyang Bearing Factory	1.14	0.00	0.00
Shanghai General Bearing Company, Ltd.	0.00	0.00	0.25
Jilin Machinary Import and Export Corporation	4.21	5.04	0.00
Chin Jun Industrial, Ltd.	[2] 7.07	0.48	1.23
Wafangdian Bearing Factory	[2] 7.07	6.15	No Sales
Lianoning Co., Ltd.	[2] 7.07	3.47	0.73
PRC rate	7.07	7.07	7.07

[1] As cooperative BIA, we assigned in each review the higher of (1) the highest rate ever applicable to that company in the investigation or any previous review; or (2) the highest calculated margin for any respondent in the same review.

[2] This party did not respond to the questionnaire or did not respond to the supplemental questionnaire; therefore, as uncooperative BIA, we assigned the highest rate calculated in the investigation or in this or any other review of sales of subject merchandise from the PRC. This does not constitute a separate-rate finding for this firm.

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise exported by firms covered by these reviews. We will instruct the Customs Service to apply 7.07 percent in its liquidation of entries from companies to which we assigned a BIA rate or which did not receive a separate rate.

We are issuing and publishing this determination in accordance with section 751(a) of the Act.

Dated: August 1, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20028 Filed 8–7–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1998, through December 31, 1998. We have preliminarily determined that certain producers/exporters have received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Preliminary Results of Review section of this notice.

Because its request for review was withdrawn, we are rescinding this review for La Molisana Industrie Alimentari S.p.A. (''La Molisana'').

Interested parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Sally Hastings, Annika O'Hara, or Andrew Covington, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1778, 482–3464, 482–3798, or 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). Unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Case History

On July 24, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy. On July 15, 1999, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order (64 FR 38181). We received requests for review and initiated the review, covering calendar year 1998, on August 30, 1999 (64 FR 47167). Corrections to the initiation notice were published in the **Federal Register** on September 8, 1999 (64 FR 48897) and November 4, 1999 (64 FR 60161). In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Delverde S.p.A. (''Delverde''), Tamma Industrie Alimentari S.r.L. (''Tamma''), Rummo S.p.A. Molino e Pastaficio (''Rummo''), and Pastificio Riscossa F.lli Mastromauro S.r.L. (''Riscossa''). La Molisana, which had requested to be included in this review, withdrew its request on October 14, 1999 (*see* Partial Rescission of Review section, below). This review covers 29 programs.

On October 4, 1999, we issued countervailing duty questionnaires to the Government of Italy (''GOI''), the Commission of the European Union (''EC''), and the above-named companies under review. We received responses to our questionnaires and issued supplemental questionnaires throughout the period November 1999 through January 2000. Responses to the supplemental questionnaires were received in January and February 2000.

On April 6, 2000, the Department published a notice in the **Federal Register** extending the time limit for issuing these preliminary results until no later than July 31, 2000 (65 FR 18069). We issued a second set of supplementary questionnaires to Delverde and Tamma on June 6, 2000, and to the GOI on June 9, 2000. We received responses to these supplemental questionnaires on June 23, 2000.

Partial Rescission

On October 14, 1999, La Molisana submitted a timely request for withdrawal from this administrative review. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to La Molisana. *See* 19 CFR 351.213(d)(1).

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (''IMC''), by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, or by the Conzorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (*See* August 25, 1997 memorandum from Edward Easton to Richard Moreland, which is on file in the Central Records Unit (''CRU'') in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari

Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999 memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 1998, through December 31, 1998.

Reorganization of Delverde

Delverde began a company reorganization during the POR that continued through 1999. Although Delverde did not operate under its new organization during the POR, the company made the reorganization legally effective for accounting and tax purposes as of January 1, 1998.

Prior to the reorganization, Delverde was a wholly-owned subsidiary of a non-producing holding company, Sangralimenti S.r.L. (''Sangralimenti''). This holding company also held an ownership interest in Pietro Rotunno, S.r.L. (''Rotunno'') which ceased producing pasta in 1994. The principal result of the reorganization was the merger of Delverde S.r.L. and Sangralimenti. The new, merged entity is known as Delverde S.p.A. As part of the reorganization, Sangralimenti's ownership interest in Rotunno was sold to an unrelated company. Except for the merger with Sangralimenti, the ownership structure of Delverde changed little as a result of the reorganization.

Cross-Ownership

In previous segments of this proceeding, the Department found that Delverde and Tamma warranted treatment as a single company because of Tamma's [1] ownership in Delverde's holding company, Sangralimenti, and common corporate officers. Therefore, in the investigation and previous reviews of this case, we calculated a single countervailing duty rate for these two companies. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy*, 61 FR 30287 (June 14, 1996) (''*Pasta Investigation*''); *Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review*, 63 FR 43905 (August 17, 1998) (''*Pasta First Review*''); and *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999) (''*Pasta Second Review*'').

However, in this administrative review, we are applying the 1998 countervailing duty regulations which are effective for the first time in this proceeding. *See* 19 CFR 702(a)(2). These regulations require ''cross-ownership'' before the Department will assign subsidies received by one company to another company (*see* preamble to *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998)). According to section 351.525(b)(6)(vi) of the Department's regulations, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The preamble to the Department's regulations identifies situations where cross ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' (*See* 63 FR 65401.)

Based on our new regulations and for purposes of these preliminary results, we do not believe that Tamma's ownership interest in Delverde is sufficient to establish cross-ownership between Tamma and Delverde. Although Tamma's ownership in Delverde is significant, it does not have a majority ownership interest; nor does it have a ''golden share'' in Delverde. Additionally, there is a small number of other shareholders which, together, effectively control more shares in Delverde than Tamma.

Our treatment of Delverde and Tamma is consistent with our finding in *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277 (December 29, 1999). At issue in that case was the relationship between two respondents, Usinor and GTS, a company in which Usinor indirectly owned 48 percent. We treated Usinor and GTS as two separate companies because Usinor was not the majority shareholder in GTS and because, despite its large ownership position, Usinor did not control GTS directly or indirectly. Due to the high level of Usinor's ownership interest in GTS, we also examined a number of factors in making our determination that cross-ownership did not exist. Among them was whether Usinor controlled GTS via control over its Board of Directors and its management decision making process.

Despite our preliminary decision to calculate separate rates for Delverde and Tamma, we intend to examine this issue further. Although Tamma's ownership interest in Delverde is less than fifty percent, it is substantial. Moreover, other aspects of the corporate relationship, such as common corporate officers, in combination with Tamma's ownership interest, raises a concern as to whether cross-ownership exists. Therefore, for the final results, we will further consider the issue and seek additional information, if necessary, to fully address whether or not cross-ownership exists between these two companies. We invite comments from all interested parties.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which the government grants or loans under review were received. Therefore, for years prior to 1995, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. For subsidies received in 1995 and later, we used the Italian Bankers' Association (''ABI'') interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

Allocation Period: In the investigation of this case, the Department used, as the allocation period for non-recurring subsidies, the average useful life (''AUL'') of renewable physical assets in the food-processing industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS tables''), *i.e.*, 12 years. However, the U.S. Court of International Trade (''CIT'') subsequently ruled against this allocation methodology for non-recurring subsidies (*see British Steel plc* v. *United States*, 879 F.Supp. 1254,

[1] ''Tamma's ownership'' refers to the shares in Delverde owned by individual Tamma family members as well as shares owned by the Tamma company.

1289 (CIT 1995) (''*British Steel I*'')). In accordance with the CIT's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies was a company-specific AUL of renewable physical assets. This remand determination was affirmed by the CIT on June 4, 1996 (*see British Steel plc* v. *United States*, 929 F.Supp. 426, 439 (CIT 1996) (''*British Steel II*'')).

Therefore, in past administrative reviews of this case, we used a company-specific AUL to allocate non-recurring subsidies that were not countervailed in the investigation. However, for non-recurring subsidies which had already been countervailed in the investigation, the Department used the original allocation period, *i.e.*, 12 years, because it was deemed neither reasonable nor practicable to reallocate those subsidies over a different time period. This methodology was consistent with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

As mentioned above, the Department is operating under new countervailing duty regulations in this review. Pursuant to section 351.524(d)(2) of these regulations, the Department will use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Riscossa and Rummo do not contest the 12-year allocation period in the IRS tables. Delverde and Tamma, however, have urged the Department to apply the methodology used in previous administrative reviews. To this end, Delverde and Tamma have resubmitted their calculation of the company-specific AUL from *Pasta Second Review* based on the depreciation and value of productive assets as reported in their financial statements. Delverde and Tamma have not stated which allocation period they believe is appropriate for subsidies received during the current POR.

Pursuant to our new regulations, information submitted in the questionnaire responses, and our practice to not reallocate subsidies, we have preliminarily decided to allocate non-recurring subsidies as follows:

(a) Subsidies countervailed in the investigation (*i.e.*, subsidies received in 1994 and earlier) will continue to be allocated over 12 years.

(b) Subsidies countervailed in the first two administrative reviews (*i.e.*, subsidies received in 1995, 1996, and 1997), which were allocated over the respondents' company-specific AULs, will continue to be allocated over the company-specific AULs.

(c) Subsidies received during the current POR (*i.e.*, 1998) will be allocated over 12 years as specified in the IRS tables, in accordance with our regulations because no company demonstrated that its AUL differed from the 12-year period in the IRS tables.

Benefits to Mills: During the POR, Tamma and Riscossa owned semolina mills (semolina is the main input product in pasta). Neither Tamma nor Riscossa's mills were separately incorporated, *i.e.*, both the semolina and the downstream product (pasta) were produced within a single corporate entity. Therefore, in accordance with section 351.525(b)(6)(i) of the regulations, the Department has attributed subsidies provided for the production of semolina and pasta to the sales by the corporate entities that received them.

Change in Ownership

One of the companies under review, Delverde, purchased an existing pasta factory from an unaffiliated party in 1991. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership. In *Pasta Investigation*, we calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *General Issues Appendix* (''GIA''), appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37265 (July 9, 1993). We followed the same methodology in *Pasta First Review* and *Pasta Second Review.*

After the Department's final determination in *Pasta Investigation*, Delverde sued in the CIT, arguing that the Department's spin-off methodology was erroneous and inconsistent with the Act. Initially, the CIT agreed with Delverde and remanded the case to the Department. *See Delverde I*, 989 F.Supp. at 234. However, after the Department had explained its spin-off methodology in more detail and further argued its reasonableness on remand, the CIT affirmed the Department's methodology. *See Delverde II*, 24 F.Supp.2d at 315 (''*Delverde II*''). *Delverde* appealed the CIT's decision to the Court of Appeals for the Federal Circuit (''CAFC'') which held on February 2, 2000, that the Department may not presume that non-recurring subsidies survive a transfer in a subsidized company's ownership. Accordingly, the CAFC vacated the CIT's decision in *Delverde II* and stated that it would instruct the CIT to remand the case to the Department. *See Delverde* v. *United States*, 202 F.3rd 1360, 1369 (Fed. Cir. 2000). On June 20, 2000, the CAFC denied the Department's petition for rehearing and suggestion for rehearing *en banc. See Delverde, S.r.L.* v. *United States*, Court No. 99–1186 (Fed. Cir. 2000).

The Department has not received a remand from the CIT and has, thus, not yet addressed what revisions to our change-in-ownership methodology are necessary. We are examining what information may be relevant to the change in ownership issue decided in *Delverde* and, if necessary, will issue a questionnaire as soon as possible. For these preliminary results, we have continued to use the spin-off methodology described in the GIA in the same way as it was used in *Pasta Investigation* and previous administrative reviews. We invite comments from interested parties on revisions to our change of ownership methodology.

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

1. Law 64/86 Industrial Development Grants

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project. (Loans were also provided under Law 64/86; *see* below.)

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to receive grants under Law 64/86 after 1993. Delverde, Tamma, and Riscossa benefitted from industrial

development grants under Law 64/86 during the POR.

In *Pasta Investigation*, the Department determined that these grants conferred a countervailable subsidy within the meaning of section 771(5) of the Act. They provided a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

In *Pasta Investigation*, the Department treated the industrial development grants as non-recurring based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. In *Pasta Investigation* and previous administrative reviews, we applied the methodology described in our old (proposed) countervailing duty regulations when determining whether to allocate non-recurring grants over time or expense them in the year of receipt (''the 0.5 percent test''). Accordingly, grant disbursements exceeding 0.5 percent of a company's sales in the year of receipt were allocated over time while grants below or equal to 0.5 percent of sales were countervailed in full (''expensed'') in the year of receipt (*see Countervailing Duties* (Proposed Rules), 54 FR 23366, 23384 (19 CFR 355.49(a)(3)) (May 31, 1989)). However, section 351.524(b)(2) of our new countervailing duty regulations directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of a company's sales in the year of authorization. We applied this new regulation only to disbursements received during the POR, *i.e.*, we did not redo the 0.5 percent test for disbursements received prior to the POR because we had already calculated a benefit stream for those disbursements in the investigation or in a previous administrative review.

Pursuant to section 351.504(c) of our regulations, we used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy from those grants that passed the 0.5 percent test. We divided the benefit attributable to each company in the POR by its total sales, or total pasta sales, as appropriate, in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 1.73 percent *ad valorem* for Delverde, 3.10 percent *ad valorem* for Tamma, and 0.77 percent *ad valorem* for Riscossa.

2. Law 488/92 Industrial Development Grants

In 1986, the European Union (''EU'') initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU (*see* below). The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants. (Loans are not provided under Law 488/92.) Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

Delverde and Tamma benefitted from Law 488/92 industrial development grants in the POR. The grants were provided for modernization of both companies' pasta factories and Tamma's warehouse.

Industrial development grants under Law 488/92 were found countervailable in *Pasta Second Review*. The grants were a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

In *Pasta Second Review*, the Department treated industrial development grants under Law 488/92 as non-recurring based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. We allocated the grant over time because it met the 0.5 percent test, as described above. Pursuant to section 351.504(c) of our regulations, we used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefits attributable to each company in the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.28 percent *ad valorem* from Delverde and 0.09 percent *ad valorem* for Tamma.

3. Law 183/76 Industrial Development Grants

Law 183/76 is known to the Department as a law that authorizes companies located in the Mezzogiorno to take reductions or exemptions in social security contributions for the hiring of new employees. Law 183/76 also allows for the provision of industrial development grants.

In 1983, Riscossa applied for an industrial development grant under Law 183/76. The GOI approved the application and disbursed the grant in tranches. Only the last of these disbursements, received by Riscossa in 1988, falls within that company's 12-year AUL period. Therefore, only this last disbursement has been countervailed in the current review.

In *Pasta Investigation* and the prior review, the Department determined that the industrial development grant received by Riscossa conferred a countervailable subsidy within the meaning of section 771(5) of the Act. It was a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, we found this grant to be regionally specific within the meaning of section 771(5A) of the Act. The Department has not received any new information in this review which would merit a reexamination of this determination.

We have previously treated Riscossa's industrial development grant as a non-recurring grant based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. We allocated the last disbursement of this grant over time because it met the 0.5 percent test, as described above. Pursuant to section 351.504(c) of our regulations, we calculated the countervailable subsidy using our standard grant methodology, as described in section 351.524(d) of the regulations. We divided the benefit attributable to Riscossa in the POR by the company's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy

from the Law 183/76 industrial development grant to be 0.08 percent *ad valorem* for Riscossa.

4. Law 64/86 Industrial Development Loans

In addition to the industrial development grants discussed above, Law 64/86 also provided reduced rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The interest rate on these loans was set at the reference rate with the GOI's interest contributions serving to reduce this rate. In 1992, the Italian parliament abrogated Law 64/86. This decision became effective in 1993. Project approved prior to 1993, however, were authorized to receive interest subsidies after 1993.

Delverde and Tamma benefitted from outstanding Law 64/86 industrial development loans during the POR.

In *Pasta Investigation*, the Department determined that the Law 64/86 loans conferred a countervailable subsidy within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

In accordance with section 351.505(c)(2) of our regulations, we calculated the benefit for the POR by computing the difference between the payments Delverde and Tamma made on their Law 64/86 loans during the POR and the payments the companies would have made on a comparable commercial loan. We divided Delverde's and Tamma's benefits attributable to the POR by their total sales or total pasta sales, as appropriate, in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.56 percent *ad valorem* for Delverde and 0.23 percent *ad valorem* for Tamma.

5. Law 304/90 Export Marketing Grants

Under Law 304/90, the GOI provided grants to promote the sale of Italian food and agricultural products in foreign markets. The grants were given for pilot projects aimed at developing links and integrating marketing efforts between Italian food producers and foreign distributors. The emphasis was on assisting small- and medium-sized producers.

Delverde received a grant under this program for an export sales pilot project in the United States. The purpose of the project was to increase the presence of all Delverde's products in the U.S. market, not only pasta.

In *Pasta Investigation*, the Department determined that these export marketing grants conferred a countervailable subsidy within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A) of the Act because their receipt was contingent upon exportation. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of this determination.

Each project funded by Law 304/90 grants requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in overseas markets. Therefore, in *Pasta Investigation,* the Department treated the grant received under this program as non-recurring based on the analysis set forth in the Allocation section of the *GIA,* 58 FR at 37226. In the current review, we have found no reason to depart from this treatment. We allocated the grant over time because it met the 0.5 percent test, as described above.

Pursuant to section 351.504 (c) of our regulations, we used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by the value of Delverde's total exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 304/90 export marketing grants to be 0.26 percent *ad valorem* for Delverde.

6. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions and reductions (*''sgravi''*) of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The *sgravi* benefits are regulated by a complex set of laws and regulations and are sometimes linked to conditions such as creating more jobs. The benefits under some of these laws (*e.g.,* Laws 1089/68, 183/76, 30/97, and 449/97) are available only to companies located in the Mezzogiorno. Other laws (*e.g.,* Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country. All the respondent companies in this review benefitted from the *sgravi* program during the POR.

In *Pasta Investigation,* the Department determined that the various forms of social security reductions and exemptions conferred countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI and confer a benefit in the amount of the savings received by the companies. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act because they were limited to companies in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

In the investigation and previous reviews, we treated social security reductions and exemptions as recurring benefits. In the current review, we have found no reason to depart from this treatment. To calculate the countervailable subsidy, we divided each company's savings in social security contributions during the POR by that company's total sales in the POR. In those instances where the applicable law provided a higher level of benefits to companies in the south, we divided the amount of the *asgravi* benefits that exceeded the amount available to companies in other parts of Italy by the recipient company's total sales in the POR, in accordance with section 351.503(d) of the regulations. On this basis, we preliminarily determine the countervailable subsidy from the *sgravi* program to be 0.30 percent *ad valorem* for Delverde, 0.21 percent *ad valorem* for Tamma, 0.36 percent *ad valorem* for Rummo, and 0.26 percent *ad valorem* for Riscossa.

7. Law 598/94 Interest Subsidies

Under Law 598/94, the GOI pays a portion of the interest on certain loans granted to small- and medium-sized industrial companies. These loans are to be used for investments related to technological innovation and/or environmental protection. Rummo received interest subsidies under this

program in the POR in connection with a long-term, variable-rate loan obtained prior to the POR. The GOI paid the interest subsidies directly to the lending bank shortly after Rummo had made the full twice-yearly interest payments to the bank. The bank then credited the amount of the GOI's payments to Rummo's account.

The GOI has stated that the general level of subsidies under Law 598/94 is 30 percent of the initial interest payable, but is 45 percent for companies in disadvantaged regions of Italy. Because Rummo is located in a disadvantaged region it received the higher level of benefits.

We preliminarily determine that the higher level of interest subsidies for companies in disadvantaged regions under Law 598/94 confers a countervailable benefit within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOI. As discussed in section 351.508 of the regulations, because the interest subsidy is tied to a particular loan and because Rummo knew that it would receive the subsidy when it applied for the loan, we are treating the interest subsidy as a reduced-interest loan in accordance with section 351.508(c)(2) of the regulations.

Because the higher level of subsidies under Law 598/94 is limited to companies in certain regions of Italy, we preliminarily determine that this program is regionally specific within the meaning of section 771(5A) of the Act. In accordance with sections 351.503(d) and 351.505(c)(2) of our regulations, we calculated the benefit for the POR by dividing the portion of the interest subsidy that exceeded the amount available to companies in non-disadvantaged regions by Rummo's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 598/94 interest subsidies to be 0.10 percent *ad valorem* for Rummo.

8. Law 236/93 Training Grants

Under Law 236/93, which is administered by the regional governments but funded by the GOI, grants are provided to Italian companies for worker training. Delverde received a grant under this program during the POR. The company submitted an application to the Regional Council of Abruzzo where Delverde is located. The application was examined by an evaluating committee appointed by the Regional Council, which approved the application in 1997. The grant was disbursed in tranches, the first of which was received by Delverde in the POR. Since the grant did not cover the entire training cost, Delverde also contributed its own funds.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it otherwise would have incurred. *See* section 351.513(a) of the regulations. Companies normally incur the costs of training to enhance the job-related skills of their own employees. Therefore, we preliminarily determine that the Law 236/93 training grant relieved Delverde of an obligation that the company otherwise would have incurred.

The Department has not received any information from the GOI or the Regional Government of Abruzzo (''GOA'') showing how the funds under Law 236/93 were distributed across Italian regions and industries. Delverde has stated that assistance under the program was available to production facilities in the region of Abruzzo, but there is no information on the record as to whether funding under Law 236/93 was also available to companies in other regions of Italy. Because this information is not on the record, we must base our preliminary specificity determination on facts available pursuant to section 776(a) of the Act.

Pursuant to section 776 (b) of the Act, we preliminarily determine that it is appropriate to use adverse facts available because the GOI and the GOA did not cooperate to the best of their ability to provide information requested on the distribution of benefits by industry and by region as requested by the Department. Specifically, in our January 12, 2000, supplemental questionnaire to the GOI, we asked that certain questions be forwarded to the GOA concerning the Law 236/93 training grants, including a request for information about which other industries received benefits under the program. We received a partial response from the GOA, but, as noted above, we did not receive a response to our question about which other industries had received benefits under this law. We, therefore, preliminarily determine that the GOI and the GOA have failed to cooperate by not acting to the best of their abilities to comply with our request for information regarding this program (*see* 19 CFR 351.308). On this basis, as adverse facts available, we preliminarily find the Law 236/93 grant received by Delverde to be specific.

We also preliminarily determine that the Law 236/93 grant confers a countervailable subsidy within the meaning of section 771(5) of the Act. It provides a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant.

Under section 351.524(c)(1) of the regulations, the Department normally considers worker training subsidies to provide recurring benefits. Therefore, to calculate the countervailable subsidy, we divided the amount received by Delverde in the POR by the company's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Law 236/93 training grant to be 0.02 percent *ad valorem* for Delverde.

9. European Social Fund

The European Social Fund (''ESF''), one of the EU's structural funds, was created under Article 123 of the Treaty of Rome to improve employment opportunities for workers and to help raise their living standards. There are six different objectives identified for the structural funds: Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under the age of 25; Objective 4 funds training for employees in companies undergoing restructuring; Objective 5 pertains to agricultural areas; and Objective 6 applies to regions with very low population (*i.e.,* the far north).

Delverde and Riscossa received ESF grants during the POR. Riscossa's grant was provided under Objective 4; there is no information on the record about the EU objective pertaining to Delverde's grant.

In the case of Riscossa, the Regional Government of Puglia (''GOP'') approved a program in 1997, allowing Riscossa to receive an employee training grant jointly funded by the ESF, the GOP, and the GOI through the National Rotational Fund. The GOP published the details and goals of the program in the Official Bulletin of the Puglia Region on January 30, 1997. Riscossa arranged for a private company to organize a training course and requested the GOP to provide funds to cover the cost of the course, as allowed by the program. These funds were given to Riscossa, which in turn paid the company offering the course. Riscossa itself was responsible for covering about 20 percent of the cost of the course.

In the case of Delverde, the company received a grant for employee training which was disbursed to the company in several tranches. The grant, which was provided under a regional operational program, was jointly funded by the ESF and the GOI through the National Rotational Fund. Previous tranches of this grant were found to be countervailable in *Pasta First Review.*

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it otherwise would have incurred. *See* 19 CFR 351.513(a). Companies normally incur the costs of training to enhance the job-related skills of their own employees. Riscossa in particular has stated that it would have paid for the training using its own funds in the absence of the grant. Therefore, we preliminarily determine that the training grants relieved Riscossa and Delverde of an obligation that the companies otherwise would have incurred.

The Department has requested, but has not received, information from the GOI and the EC showing how ESF funds under Objective 4 were distributed across Italian regions and industries. Nor, despite requests, have we received such information regarding payments from the National Rotational Fund, the GOP, or the regional operational program under which Delverde received its grant. Therefore, because this information is not on the record, we must base our preliminary specificity determination on facts available pursuant to section 776 (a) of the Act.

Pursuant to section 776(b) of the Act, we preliminarily determine that it is appropriate to use adverse facts available because the EC, the GOI and the GOP did not cooperate to the best of their ability to provide information requested on the distribution of benefits by industry and by region as requested by the Department. In its questionnaire response, the EC has stated that it does not maintain any company-specific data. For information on how EU funds are distributed within individual EU member countries, the EC refers to the national or regional government authorities in the country in question. Therefore, in our January 12, 2000, supplemental questionnaire, we asked the GOI to provide such information. In addition, we asked that certain questions be forwarded to the GOP concerning the training grant provided to Riscossa, including a request for information on which other industries in the region received benefits under the program. As noted above, we did not receive a response to any of these questions from either the GOI or the GOP. We, therefore, preliminarily determine that the GOI and the GOP have failed to cooperate by not acting to the best of their abilities to comply with our request for information regarding this program (*see* 19 CFR 351.308(a)). On this basis, as adverse facts available, we preliminarily find the ESF grants received by Delverde and Riscossa to be specific.

Accordingly, we preliminarily determine that the ESF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They provide a direct transfer of funds from the GOI, the GOP, and the EU bestowing a benefit a in the amount of the grant.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers worker training subsidies to provide recurring benefits. Therefore, to calculate the countervailable subsidy, we divided the amounts received by Delverde and Riscossa in the POR by the companies' total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.01 percent *ad valorem* for Delverde and 0.02 percent *ad valorem* for Riscossa.

10. Export Restitution Payments

Since 1962, the EU has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. The program is designed to compensate pasta producers for the difference between EU prices and world market prices for durum wheat. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EU calculates the restitution payment rate on a monthly basis by first computing the difference between the world market price of durum wheat and an internal EU price and then adding a monthly increment (in all months except June and July, which are harvest months). The EU will not normally allow the restitution payment rate to be higher than the levy that the EU imposes on imported durum wheat, as such a situation would lead to circular trade.

Because there was no significant price difference between the EU price and the world market price on durum wheat during most of the POR, the restitution payment rate was zero until mid-October 1998 when it was set at 0.91 percent for exports to the United States. The export restitution payments received by the respondents in the POR included restitution for exports made prior to the POR.

In *Pasta Investigation,* the Department determined that export restitution payments conferred a countervailable subsidy within the meaning of section 771(5) of the Act. Each payment represents a direct transfer of funds from the EU bestowing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, the GOI, the EU, and the responding companies have not provided new information which would warrant reconsideration of this determination.

Delverde and Rummo received export restitution payments during the POR for shipments of pasta to the United States.

In *Pasta Investigation,* we treated the export restitution payments as recurring benefits pursuant to 19 CFR 351.524(c). We have found no reason to depart from this treatment in the current review. Therefore, to calculate the countervailable subsidy, we divided the export restitution payments received by Delverde and Rummo in the POR for pasta shipments to the United States by the value of each company's pasta exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from the export restitution program to be 0.70 percent *ad valorem* for Delverde, and 0.07 percent *ad valorem* for Rummo.

II. Programs Preliminarily Determined Not To Confer Countervailable Subsidies in the POR

1. Social Security Reductions and Exemptions—Fiscalizzazione

Fiscalizzazione is a nationwide program that allows for a reduction of certain social security payments similar to the *sgravi* program discussed above. In *Pasta Investigation* and previous administrative reviews, the Department found the *fiscalizzazione* program to confer a countervailable subsidy on companies in the Mezzogiorno because manufacturing enterprises in the south were allowed to take higher deductions for certain categories of social security payments than companies in the north.

The questionnaire responses submitted in the current review show that the particular category of social security contributions for which higher deductions were allowed for companies in the south was abolished as of January 1, 1998. The only remaining *fiscalizzazione* program in 1998 was related to orphans of Italian workers (''ENAOLI''). Contributions under this

program were the same for all companies in the manufacturing sector regardless of where they were located. Thus, the particular deductions under the *fiscalizzazione* program which we previously found countervailable no longer exist. We, therefore, preliminarily determine that the *fiscalizzazione* program did not confer a countervailable subsidy in the POR.

2. Law 113/86 Training Grant

Rummo reported receiving grants under Law 113/86 in 1990 and 1994 to offset the cost of worker training. The program, which no longer is in effect, according to Rummo, was available only to companies located in the Mezzogiorno.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers worker training subsidies to provide recurring benefits. Because Rummo did not receive any training grants under Law 113/86 in the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

3. Law 64/86 VAT Reductions

During the period 1987 through 1991, Rummo was allowed to reduce the value added tax (''VAT'') the company paid on the purchase of fixed assets in accordance with Law 64/86. The VAT reduction was eight percent of the value of the asset.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers rebates of indirect taxes to provide recurring benefits. Because Rummo did not receive the VAT reductions under Law 64/86 in the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

4. Law 357/94 Tax Benefits

Rummo has stated that it received VAT tax benefits under Law 357/94 in 1995 and 1996 but that no benefits were received in the POR. No other information on this program has been made available to the Department.

Pursuant to section 351.524(c)(1) of the regulations, the Department normally considers tax programs to provide recurring benefits. Because Rummo did not use the tax benefits under Law 357/94 in the POR, we preliminarily determine that this program did not confer a countervailable subsidy in the POR.

III. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

1. Local Income Tax (''ILOR'') Exemptions
2. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77
3. Export Credits under Law 227/77
4. Capital Grants under Law 675/77
5. Retraining Grants under Law 675/77
6. Interest Contributions on Bank Loans under Law 675/77
7. Interest Grants Financed by IRI Bonds
8. Preferential Financing for Export Promotion under Law 394/81
9. Corporate Income Tax (''IRPEG'') Exemptions
10. Urban Redevelopment under Law 181
11. Debt Consolidation Law 341/95
12. Interest Contributions under Law 1329/65
13. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'')
14. European Agricultural Guidance and Guarantee Fund (''EAGGF'')
15. European Regional Development Fund (''ERDF'')

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1998 through December 31, 1998, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (''Customs'') to assess countervailing duties at these net subsidy rates. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies (except Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') which were excluded from the order during the investigation) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 38544 (July 24, 1996) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo which were excluded from the order during the original investigation.

Company	Ad valorem rate (percent)
Delverde S.p.A./Delverde S.r.L.	3.86
Tamma Industrie Alimentari S.r.L.	3.63
Pastificio Riscossa F.lli Mastromauro S.r.L.	1.14

Company	Ad valorem rate (percent)
Rummo S.p.A. Molino e Pastaficio	0.53

The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

Because we are rescinding the review with respect to La Molisana, the company-specific rate for this company remains unchanged.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19948 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080200C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of the joint New England Fishery Management Council/Mid-Atlantic Fishery Management Council Monkfish Oversight Committee and Monkfish Industry Advisory Panels on Wednesday, August 30, 2000 to consider actions affecting New England and Mid-Atlantic fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Councils for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, August 30, 2000, at 10 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel Providence, 2081 Post Road Warwick, RI 02886; telephone: (401)739–3000.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review the current status of the fishery as described in the recent 31st Stock Assessment Workshop Report and other available information, including landings data, survey indices and recommendations for updated biological reference points. The committee will identify issues and outline options for consideration in the annual plan adjustment, including options for separate management of inshore and offshore fisheries in the Southern Fishery Management Area (SFMA), options for fisheries in the deep-water canyons and for a Grand Banks fishery, and for the protection of spawning activity. The committee will also discuss the impact of sea turtle protection measures in the SFMA on the monkfish fishery. The committee will also discuss scheduling of upcoming meetings, including advisory panel meetings, to complete the annual plan adjustment framework.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 2, 2000.

Richard W. Surdi,

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

[FR Doc. 00–19994 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080200D]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat and Environmental Protection Advisory Panel (AP) in Charleston, SC.

DATES: The Habitat and Environmental Protection AP will meet on August 29, 2000, from 1:00 p.m. until 5:00 p.m., and on August 30, 2000, from 8:30 a.m. until 5:00 p.m.

ADDRESSES: These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000 or 1–800/334–6660.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: Issues to be discussed include but are not limited to; research efforts at offshore habitat areas ''The Point'' in North Carolina and ''The Charleston Bump'' in South Carolina, the development of North

Carolina State Habitat Conservation Plans, sand mining and beach renourishment activities and policy statement development, ecosystem management-report to Congress, National Coalition for Marine Conservation report on prey/predator interactions and management implications, marine fiber optic cable placement, Gray's Reef State of the Reef Report, dolphin/ wahoo essential fish habitat, marine reserves and marine protected areas, and deepwater port development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 21, 2000.

Dated: August 2, 2000.

Richard W. Surdi,

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

[FR Doc. 00–19995 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 000712204–0204–01]

SUBJECT: Further Extension of NEXRAD Information Dissemination Service (NIDS) Agreement until December 31, 2000

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice.

SUMMARY: The NWS is in the process of replacing the NIDS with a Government operated Radar Product Central Collection/ Distribution Service (RPCCDS). Once the RPCCDS is operational, it will be accessible by all users. To allow for a successful transition to this service, the NIDS Agreement with three private vendors distributing WSR–88D products to external users, will be extended through December 31, 2000.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Carelli, NWS NIDS Administrator, at (301) 713–1724 ext. 184, or e-mail: *Michael.Carelli@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NWS is in the process of replacing the NIDS with a Government operated Radar Product Central Collection/Distribution Service (RPCCDS). Once the RPCCDS is operational, it will be accessible by all users. The NIDS Agreement with three private vendors distributing WSR–88D products to external users was extended through September 30, 2000. The amended NIDS Agreement provides for additional extensions, beyond September 30, 2000, in 90-day increments, as necessary, until the NWS has completed the transition to the replacement RPCCDS.

The RPCCDS has been developed by the NWS and preliminary testing is in progress. The NWS Advanced Weather Interactive Processing System network is used to collect the WSR–88D products from the NWS, Federal Aviation Administration, and Department of Defense WSR–88D sites and deliver them to central radar collection servers that are integrated in the NWS Telecommunication Gateway in Silver Spring, Maryland. The NWS has developed a Demonstration Plan for the RPCCDS to validate the operational readiness of the RPCCDS. The Demonstration Plan is available in ''pdf'' format on the NWS RPCCDS web page at *http://www.nws.noaa.gov/oso/rpccds.html*.

In order to provide an adequate period of operational testing and sufficient advance notification to all users of the transition to the RPCCDS, the NIDS Agreement is further extended until December 31, 2000. Once the RPCCDS is operational, the NIDS Agreement will be terminated, but no sooner than December 31, 2000. Once operational, the NWS RPCCDS will provide an open distribution of radar products to all users without data redistribution restrictions.

Dated: July 31, 2000.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 00–20009 Filed 8–7–00; 8:45 am]

BILLING CODE 3510–KE–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0011]

Royal Sovereign Corp., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Royal Sovereign Corp., a corporation, containing a civil penalty of $20,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 23, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0011, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Margaret H. Plank, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1450.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 3, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–20007 Filed 8–7–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Comprehensive Analysis of the Kissimmee Chain of Lakes Drawdown and Habitat Enhancement Project, Kissimmee, 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 extreme drawdowns and habitat enhancement activities for the Kissimmee Chain of Lakes, 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. The Kissimmee Chain of Lakes is located in Central Florida. These lakes have previously undergone seven extreme drawdowns; Lake Tohopekaliga in 1971, 1979 and 1987; Lake Kissimmee in 1977 and 1996; East Lake Tohopekaliga in 1990 and Lake Alligator in 2000. The drawdowns were designed to improve aquatic habitat that had been negatively impacted by flood control practices and nutrient enrichment. Following refill of the lakes the number of fish food organisms, sport fish and forage fish increased; new desirable aquatic vegetation communities became established; and organic sediments decreased in the lakes.

b. The purpose of this project is to restore the environmental ecosystem of the lakes, which will provide habitat for fisheries, birds and other wildlife. Beneficial effects associated with the drawdown plan include bottom substrate improvements as organic build-up is reduced. This 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 the lakes 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. Drawdown and in-lake habitat enhancement efforts in the Kissimmee Chain of Lakes should be conducted on a regular basis to mimic natural processes that would benefit the natural resources of these lakes. Enhancement activities may include muck removal, burning, discing and herbicide application to reduce dense vegetation, tussock formation and organic build-up on lake bottoms.

d. In an effort to mimic natural processes the proposed cycle is for each lake to be drawn down every seven to ten years, which would mean rotating between lakes once a year. The rotating schedule will provide the benefit of supplying sportfish species somewhere in the area consistently and limit access problems to one area at a time.

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 followed 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 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. 00–20005 Filed 8–7–00; 8:45 am]

BILLING CODE 3710–AJ–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 10, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the

information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 2, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision of a currently approved collection.

Title: Student Right-to-Know (JS)*.

Frequency:

Affected Public: Individuals or household, Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 9,800.

Burden Hours: 189,900.

Abstract: These regulations require institutions that participate in a title IV, Higher Education Act of 1965 program to make available to students the graduation rates of full-time undergaduates, and institutions that also are attended by students receiving athletically related student aid to make available to prospective student-athletes, and their parents, coaches, and counselors the graduation rates of students, and student athletes, by race, gender, and sport. This exact collection was cleared in the spring of 1999. Nothing has been changed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–19976 Filed 8–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 10, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 3, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: National Early Intervention Longitudinal Study (NEILS).

Frequency: On Occasion, Weekly, Semi-Annually, Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,241.

Burden Hours: 5,898

Abstract: NEILS will provide the first national picture of experiences and outcomes for infants and toddlers served in early intervention (EI) under Part C of the Individuals with Disabilities Education Act (IDEA) and their families. Data is collected from families, service records, and service providers. Findings will inform special education policy and practice regarding early intervention for young children with disabilities and their families. The study will support the Government Performance and Results Act (GPRA) measurement and IDEA reauthorization with data from parents, service providers and teachers of children who received early intervention services.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–20006 Filed 8–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Transmission System Vegetation Management Program

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD for the Transmission System Vegetation Management Program Environmental Impact Statement (DOE/EIS–0285, May 2000). This program is the policy and direction for managing vegetation at Bonneville's facilities throughout its service area (seven states of the Pacific Northwest: Oregon, Washington, Idaho, western Montana, and small portions of northwest Wyoming, northern California, and Utah). Bonneville has decided to manage vegetation at its facilities by: (1) Promoting the establishment of low-growing plant communities on the rights-of-way to ''out-compete'' trees and tall-growing brush; (2) having all possible vegetation control methods available for use to maintain rights-of-way (manual, mechanical, biological, and herbicides—spot, localized, broadcast, and aerial applications); (3) allowing herbicides to be available for use on any kind of vegetation needing management on rights-of-way; (4) continuing our current practice of controlling vegetation in electrical yards using mostly pre-emergent herbicides; and (5) for other non-electric facilities, continuing to have available a variety of methods for use to manage vegetation, including manual, mechanical, herbicides, and fertilizers. Bonneville has also put in place planning steps and mitigaiton measures to be used to make site-specific project decisions tiered to the EIS and ROD.

ADDRESSES: Copies of the ROD and Environmental Impact Statement may be obtained by calling Bonneville's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Stacy Mason, Environmental Project Manager—KECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–5455, fax number (503) 230–5699, e-mail *slmason@bpa.gov.*

SUPPLEMENTARY INFORMATION: Bonneville is responsible for maintaining a network of 15,000 miles of electric transmission lines, 350 substations, and other related facilities. As vegetation grows near or into Bonneville's electrical facilities, or hampers access roads leading to those facilities, it can interfere with electric power flow, pose safety problems for Bonneville and neighboring members of the public, and interfere with Bonneville's ability to carry out both routine and emergency maintenance of these facilities. Bonneville's facilities include the following: rights-of-way (transmission lines—including trees just outside of the right-of-way, access roads, and microwave beam paths), electric yards (substations and switching stations), and non-electric facilities (maintenance work yards, landscaping around buildings, and microwave sites).

Issued in Portland, Oregon, on July 28, 2000.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 00–19986 Filed 8–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3283–000]

Arizona Public Service Company; Notice of Filing

August 2, 2000.

Take notice that on July 26, 2000, Arizona Public Service Company (APS), tendered for filing revised Exhibits A and C to APS' FERC Rate Schedule No. 225 between APS and Citizens Utilities Company (Citizens).

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, an not other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a results of these revisions.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19971 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–415–000]

Frontier Energy, L.L.C.; Notice of Application

August 2, 2000.

Take notice that on July 25, 2000, Frontier Energy, L.L.C. (Frontier Energy), c/o Sempra Energy, 555 West Fifth Street, Suite 1400, Los Angeles, California 90013–1011, filed in Docket No. CP00–415–000 an application pursuant to Sections 1(c) and 7(c) of the Natural Gas Act (NGA) and Section 284.224 of the Commission's regulations (18 CFR 284.224). Frontier Energy requested a finding that it is exempt from Commission jurisdiction pursuant to the ''Hinshaw exemption,'' and requested a blanket certificate of public convenience and necessity for authorization to transport natural gas in interstate commerce as though it were an intrastate pipeline as defined in Section 311 of the Natural Gas Policy Act. Frontier Energy also requested approval of rates for the services as set forth more fully in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Frontier Energy is a local distribution company which has constructed facilities used for the transportation and sale of natural gas in the State of North Carolina. The North Carolina Utilities Commission regulates the rates (including rates for retail gas transportation), services, and facilities of Frontier Energy in the North Carolina service areas served by Frontier Energy.

Frontier Energy interconnects with the interstate pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) within the State of North Carolina at a point approximately four miles southeast of Cooleemee, North Carolina, and transports gas from this point of interconnection through its facilities to deliver natural gas to customers within the State of North Carolina. Frontier Energy further states that all of the gas delivered by Frontier Energy to its

customers is expected to be obtained from the interconnection with Transco and all of the gas so obtained is consumed within the State of North Carolina.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 23, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and 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 herein provided for, unless otherwise advised, it will be unnecessary for Frontier Energy to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–19965 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–13–000]

Midwestern Gas Transmission Company; Notice Tariff Filing

August 2, 2000.

Take notice that on July 28, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 86, with an effective date September 1, 2000.

Midwestern states that the filed tariff sheet is being filed to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(l)(2) of the Commission's Regulations.

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, N.E., Washington, D.C. 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.

[0FR Doc. 00–19967 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–418–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

August 2, 2000.

Take notice that on July 28, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to become effective September 1, 2000.

Thirty Fifth Revised Sheet No. 5
Thirty Fifth Revised Sheet No. 6
Thirty Second Revised Sheet No. 7

MRT states that the purpose of this filing is to place into effect transportation surcharge rates for a period of three months (September 1–November 30, 2000) to recover a portion of MRT's Gas Supply Realignment Costs (GSRC) related to Gas Price Differential costs. The surcharge rates would be applied to Rate Schedules FTS reservation rate, SCT and ITS volumetric rates. MRT proposes a true-up of the collection of these costs within 90 days of November 30, 2000.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

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. 00–19970 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–14–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

August 2, 2000.

Take notice that on July 28, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 401 with an effective date of September 1, 2000.

Tennessee states that the filed tariff sheet is being filed to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations.

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. 00–19968 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–419–000]

Texas-Ohio Pipeline, Inc.; Notice of Application

August 2, 2000.

Take notice that on July 27, 2000, Texas-Ohio Pipeline, Inc. (Texas-Ohio), 1331 Seventeenth Street, Suite 601, Denver Colorado 80202, filed in Docket No. CP00–419–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the operation of a 980 horsepower, skid-mounted leased compressor unit, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Texas-Ohio states that it is currently paying $10,547 in compressor rental costs, Texas-Ohio also states that it has no firm customers, has received no requests for service since the last quarter of 1997, and, because of new pipeline facilities constructed by another interstate pipeline company, it is highly unlikely that a need for the compressor will exist at any time in the foreseeable future. Texas-Ohio indicates that the abandonment of the compressor is the first step in the process of Texas-Ohio abandoning all of its facilities and services and ceasing to operate as a natural gas company.

Any questions regarding the application should be directed to James D. Albright, Associate General Counsel of New Century Services, Inc., at (303) 294–2753.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and 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 herein provided for, unless otherwise advised, it will be unnecessary for Texas-Ohio to appear or be represented at the hearing.

David P. Boerger,

Secretary.

[FR Doc. 00–19966 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–419–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 2, 2000.

Take notice that on July 31, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective March 26, 2000:

Fourth Revised Sheet No. 215
Fourth Revised Sheet No. 216
Third Revised Sheet No. 218
Third Revised Sheet No. 221
Fourth Revised Sheet No. 222
Third Revised Sheet No. 222A

On February 9, 2000, and May 19, 2000, the Commission issued Order Nos. 637 and 637–A, respectively, in Docket Nos. RM98–10 and RM98–12 requiring pipeline companies to, among other things, waive the price ceiling for short-term capacity-release transactions beginning March 26, 2000, and extending through September 30, 2002. Pipeline companies are required to file tariff revisions within 180 days of the effective date of the rule, *i.e.*, March 26, 2000, to remove tariff provisions that are inconsistent with the waiver of the price cap. This filing reflects modifications in TransColorado's tariff to incorporate this requirement.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

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. 00–19964 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1177–001, et al.]

AmerGen Energy Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 31, 2000.

Take notice that the following filings have been made with the Commission:

1. AmerGen Energy Company, L.L.C.

[Docket No. ER00–1177–001]

Take notice on July 26, 2000, AmerGen Energy Company, L.L.C., tendered an amended filing of Reactive Power Compensation Agreement with GPU Energy under its FERC Electric Tariff Original Volume No. 1.

AmerGen is requesting an effective date of December 21, 1999, for the Reactive Power Compensation Agreement.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER00–3271–000]

Take notice that on July 26, 2000, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, Idaho Power Company and Basin Electric Power Cooperative.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power Company

[Docket No. ER00–3270–000]

Take notice that on July 26, 2000, Mississippi Power Company (Mississippi Power), tendered for filing a Transmission Interconnection Agreement with International Paper Company. The agreement will permit International Paper Company to interconnect its generating facilities at its Moss Point, Mississippi mill with the transmission facilities of Mississippi Power Company.

Copies of the filing were served upon International Paper Company, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. XENERGY, Inc.

[Docket No. ER00–3272–000]

Take notice that on July 26, 2000, XENERGY, Inc. (XENERGY), tendered for filing pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15, a Notice of Cancellation of its market-based rate tariff. XENERGY requests that the Notice of Cancellation be deemed effective as of July 27, 2000. To the extent required to give effect to the Notice of Cancellation, XENERGY requests waiver of the notice requirements pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER00–3273–000]

Take notice that on July 26, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a First Amendment to Service Agreement (Amendment), dated July 10, 2000, entered into by MidAmerican and the Resale Power Group of Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (FERC Docket No. ER96–719–000; amended in FERC Docket No. ER00–2051–000).

MidAmerican requests an effective date of July 27, 2000, for the Amendment and seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Resale Power Group of Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3274–000]

Take notice that on July 26, 2000 Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered Service Agreement No. 318 to add Washington Gas Energy Services, Inc., to Allegheny Power's Open Access Transmission Service Tariff. The proposed effective date under the agreement is July 25, 2000.

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 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation, The Potomac Edison Company, and West Penn Power Company (Allegheny Power) on behalf of Monongahela Power Company

[Docket No. ER00–3275–000]

Take notice that on July 26, 2000, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 317 to add SmartEnergy.com, Inc. to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is July 25, 2000.

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 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER00–3266–000]

Take notice that on July 26, 2000, Kentucky Utilities Company (KU), tendered for filing several executed contracts with its wholesale customers under which the customers are to receive the benefit of power made available to them from the Southeastern Power Administration.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER00–3267–000]

Take notice that on July 26, 2000, Florida Power & Light Company (FPL), tendered for filing proposed service

agreements with TXU Energy Trading Company for Non-Firm transmission service and Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on July 24, 2000.

FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Montana Power Company

[Docket No. ER00–3268–000]

Take notice that on July 26, 2000, Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement with Stimson Lumber Company Open Access Transmission Tariff).

A copy of the filing was served upon Stimson Lumber Company.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER00–3269–000]

Take notice that on July 26, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement for Duke Energy Trading and Marketing, L.L.C. and an executed ERCOT Ancillary Services Agreement for Sharyland Utilities, L.P. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after July 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: August 16, 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, N.E., Washington, D.C. 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. 00–19963 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

August 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 2585–004.

c. *Date Filed:* July 24, 2000.

d. *Applicant:* JLH Hydro, Incorporated.

e. *Name of Project:* Idols Hydroelectric Project.

f. *Location:* On the Yadkin River near the town of Clemmons in Davie and Forsyth counties, North Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* James L. Horton, President, JLH Hydro, Inc. at 1800 Statesville Blvd., Salisbury, NC 28144. Telephone 704–638–0506.

i. *FERC Contact:* Jim Haimes, *james.haimes@ferc.fed.us,* Telephone 202–219–2780.

j. *Deadline for Filing Additional Study Requests:* September 22, 2000.

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 whose name appears on 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. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The proposed project would consist of the following existing facilities: (1) A 10-foot-high, 660-foot-long, rubble masonry dam having an ungated 410-foot-long spillway; (2) a 1-mile-long, reservoir with a surface area of 35 acres, and no appreciable storage at normal pool elevation, 672.3 feet mean sea level; (3) a 900-foot-long, 100 to 150-foot-wide tailrace, separated from the main river channel by a 200-foot-long, concrete retaining wall and a mid-channel island; and (4) a 60-foot-long by 39-foot-wide brick utility building, which would contain the project's transformers.

The site's 146-foot-long by 36-foot-wide powerhouse, located at the northeast end of the dam, was a stone masonry and wood structure, which contained 6 vertical Francis-type turbines directly connected to 6 generators having a total installed capacity of 1,411 kilowatts. On February 8, 1998, a major fire destroyed the powerhouse's generators and electrical equipment as well as its wooden roof, walls, and floor.

The applicant proposes: (1) To use the project's existing dam, water intake structures, wicket gates, and turbines; (2) to reconstruct the powerhouse with a steel roof and red concrete block walls; (30 to install 6 generators having a combined capacity of 1,440 kilowatts in the restored powerhouse structure; (4) to install 3 dry-type transformers in the utility building; (5) to improve the existing canoe take-out, portage trail, and put-in area around the dam's west side; and (6) to operate the project in a run-of-river mode to produce an average of 5,866,000 kilowatt-hours of electricity per year.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call

(202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Under Section 4.32(b)(7) of the commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 00–19969 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

August 2, 2000.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 1971.

c. *Date filed:* July 18, 2000.

d. *Submitted by:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Project.

f. *Location:* On the Snake River near the Idaho-Oregon border.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83702. Contact Robert Stahman on 208–388–2676.

i. *FERC Contact:* Vincent H. Jones, (202) 219–2710, *vincent.jones@ferc.fed.us*

j. *Expiration Date of Current License:* July 31, 2005.

k. The Hells Canyon Project consist of three water power developments (Brownlee, Oxbow, and Hells Canyon Dam) located on the Snake River near the Idaho-Oregon border. The Brownlee Reservoir extends from Brownlee Dam upstream approximately 58 miles on the Snake River, with a surface area estimated at 14,621 acres at elevation 2,077.0. The Oxbow Development is the middle development of the three dam Hells Canyon Project. It is located 12.4 miles downstream of Brownlee Dam and 25.2 rivers miles upstream of Hells Canyon Dam, with a surface area estimated at 1,150 acres at elevation 1,805.0. The Hells Canyon Project is the lowermost development of the three dam project. It is located 25.2 miles downstream of Oxbow Dam and 37.6 river miles downstream of Brownlee Dam, with a surface area estimated at 2,412 acres at elevation 1,688.0.

1. The licensee states its unequivocal intent to submit an application for a new license for Project No. 1971, Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

A copy of the notice of intent 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 notice 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.

David P. Boergers,

Secretary.

[FR Doc. 00–19972 Filed 8–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Sacramento Area Voltage Support Project, California

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332, Western Area Power Administration (Western), intends to prepare an Environmental Impact Statement (EIS) addressing Western's actions to meet the future voltage requirements of the Central Valley Project (CVP) transmission system in the Sacramento, California area. Per 40 CFR part 1501.5(b), Western will serve as the lead agency to prepare the EIS.

This notice announces Western's intention to prepare an EIS and hold public scoping meetings for the proposed project. The scoping process will include notifying the general public and Federal, State, local, and tribal agencies of the proposed action. The purpose of scoping is to identify public and agency concerns, and alternatives to be considered in the EIS.

DATES: The meeting dates are:

1. September 12, 2000, 7 p.m. to 9 p.m., Lodi, California.

2. September 20, 2000, 1:30 p.m. to 3:30 p.m., and 7 p.m. to 9 p.m., Folsom, California.

3. September 21, 2000, 7 p.m. to 9 p.m., Marysville, California.

ADDRESSES: Written comments on the scope of the EIS for the proposed project will also be accepted; comments on the scope should be received no later than October 2, 2000, addressed to: Ms. Loreen McMahon, Environmental Project Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, fax (916) 985–1936, e-mail mcmahon@wapa.gov.

The meeting locations are:

1. City of Lodi Council Chambers, Carnegie Forum Room, 305 West Pine Street, Lodi, California.

2. Sierra Nevada Regional Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, California.

3. Yuba County Board of Supervisors Chambers, Third Floor, 215 Fifth Street, Marysville, California.

FOR FURTHER INFORMATION CONTACT: For general information on the U.S. Department of Energy's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western is a Federal power marketing administration, charged with the responsibility of marketing electricity generated by powerplants operated by

the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977, Western markets on a wholesale basis and transmits Federal hydroelectric power throughout a 1.3 million square mile service territory to more than 600 customers. Customers include rural electric cooperatives, municipal utilities, public utility districts, Federal and State agencies, irrigation districts, and Native American tribes. Western's power customers, in turn, provide service to millions of consumers in 15 western States. Western has four customer service regions: Sierra Nevada, Desert Southwest, Upper Great Plains, and Rocky Mountain, as well as the Colorado River Storage Project Management Center in Salt Lake City, Utah. The Sierra Nevada Regional Office is located in Folsom, California, and carries out Western's mission to customers in northern and central California. This Notice of Intent addresses only the voltage support needs for the Sacramento, California area.

Growth in the greater Sacramento area continues to increase the demand on the area's interconnected transmission system. This situation is reducing the reliability and security of the power system, particularly during summer peak periods. The majority of the Sacramento area's energy needs are imported over a limited transmission system that has reached, and occasionally exceeds, its maximum rated transfer limits. Western's CVP transmission system forms an integral part of the Sacramento area transmission grid.

In order to maintain the reliability and stability of the system, the Western Systems Coordinating Council has established minimum operating standards. When the standards cannot be met and the system is in danger of transmission system or area capacity shortages, system instability, or voltage collapse, the California Independent System Operator (Cal-ISO) declares staged emergencies. Stage 1 of the State's Electrical Emergency Plan is initiated to advise the public of potential power shortages and to ask all customers to voluntarily conserve electricity to ensure there will be enough power to meet demand. When a Stage 2 Emergency is declared, supply is decreased to large commercial customers that have agreed to voluntarily curtail power during high demand days. A Stage 3 Emergency initiates involuntary curtailment of service to customers, including ''rotating blackouts.''

Historically, eight Stage 1 Emergencies and four Stage 2 Emergencies were declared within the Cal-ISO-controlled area in 1998, but no Stage 3 Emergency notices were issued. In 1999, the numbers dropped somewhat with three Stage 1 Emergencies and one Stage 2 Emergency declared. However, as of July 25, 2000, eleven Stage 1 Emergency notices have been issued and five Stage 2 Emergencies have been declared.

Cal-ISO forecasts of insufficient power generation in the event of a ''hot'' summer this year could mean that the reliability of future electrical service is in further jeopardy. The forecast peak load for this year exceeds the sum of the resources for the area and identifies a power deficit of 1,110 megawatts. This deficit would reduce operating reserves to below minimum required levels. In order to meet the demand and ensure electrical service reliability, additional generation and additional transmission in the area is needed.

Area utilities have taken interim measures, such as load shedding, to manage peak power demands and avoid uncontrolled, systemwide outages. Load shedding is the process of deliberately removing pre-selected electric energy from a power system in order to maintain the reliability of the system under unusual conditions. As the usage increases within the Sacramento area, these interim measures will not be sufficient to prevent wide-scale power interruptions.

Western proposes to prepare an EIS to address Western's actions concerning the future voltage requirements of the Sacramento area. The EIS will describe the projected near-term voltage support requirements for a 100-mile radius around Sacramento, existing transmission lines bringing power into the Sacramento area, and the potential for new transmission lines and/or system upgrades in the Sacramento area to alleviate the current shortfall in electrical service.

The EIS will be prepared following the requirements of the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR part 1500–1508). The EIS will analyze the effects of constructing and operating all components of the project. The No Action Alternative will also be analyzed in the EIS. The EIS will address other alternatives within categories. The categories identified include: upgrade of existing transmission systems and facilities, new power generation, new transmission systems (including transmission responses to possible new power generation by others), demand-side management (*e.g.,* non-firm load and load shedding), and distributed generation (*e.g.,* solar, micro-turbines, fuel cells). The EIS will examine the potential impact to a number of resource areas including: terrestrial and aquatic environments, threatened and endangered species, cultural and historic resources, visual resources, recreation, socioeconomics, air resources, noise, geology and soils, water, and land use, in addition to any issues raised during the scoping process. Western intends to allow full public participation, disclosure, and coordination, and will encourage involvement from appropriate Federal, State, local, and tribal government agencies during the EIS process. The EIS process will include public information/scoping meetings (September 2000), public review of the Draft EIS (July 2001), a public hearing on the Draft EIS (August 2001), distribution of the Final EIS (April 2002), and Western's Record of Decision (June 2002).

Dated: July 31, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–19987 Filed 8–7–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–7]

Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Old World Trade Center Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of Settlement: in accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of a settlement concerning past response costs at the Old World Trade Center Superfund Site in Detroit, Michigan. This proposed agreement has been approved by the Attorney General, as required by Section 122(h)(1) of CERCLA.

DATES: Comments must be provided on or before September 7, 2000.

ADDRESSES: Comments should be addressed to Karen L. Peaceman, Assistant Regional Counsel, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should

refer to: In the Matter of Old World Trade Center Superfund Site.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5751.

SUPPLEMENTARY INFORMATION: The following parties executed binding certification of their consent to participate in the settlement: 5900 Associates, L.L.C. and Peter Adamo.

The settling parties will pay $100,000 for response costs related to the Old World Trade Center Superfund Site, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this notice.

U.S. EPA may enter into this settlement under the authority of Section 122(h)of CERCLA. Section 122(h)(1) authorizes EPA to settle any claims under Section 107 of CERCLA where such claim has not been referred to the Department of Justice. Pursuant to this authority, the agreement proposes to settle with parties who are potentially responsible for costs incurred by EPA at the Old World Trade Center Superfund Site.

A copy of the proposed administrative order on consent and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Karen L. Peaceman, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 00–20024 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–IN; FRL–6593–2]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Indiana Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On April 12, 2000, the State of Indiana submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Indiana's application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Indiana has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Indiana.

DATES: Comments, identified by docket control number PB–402404–IN, must be received on or before September 22, 2000. In addition, a public hearing request may be submitted on or before September 22, 2000.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–IN in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Ludmilla Koralewska, State of Indiana Project Officer, Pesticides and Toxics Branch, (DT–8J), U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, IL 60604; telephone: (312) 886–3577; e-mail address: koralewska.ludmilla@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in Indiana. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *In person.* The Agency has established an official record for this action under docket control number PB–402404–IN. The official record consists of the documents specifically referenced in this action, this notice, the State of Indiana's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the U.S. EPA Region V Office, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, Toxics Program Section, (DT–8J), 77 West Jackson Blvd., Chicago, IL 60604.

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–IN in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division,

Pesticides and Toxics Branch, (DT–8J), 77 West Jackson Blvd., Chicago, IL 60604.

2. *In person or by courier*. Deliver your comments and hearing requests to: U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, (DT–8J), 77 West Jackson Blvd, Chicago, IL 60604. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically*. You may submit your comments and hearing requests electronically by e-mail to: ''koralewska.ludmilla@epamail.epa.gov'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–IN. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

II. Background

A. What Action is the Agency Taking?

The State of Indiana has provided a certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Indiana lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., April 12, 2000). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the Indiana application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities. Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Indiana's proposed program has been provided by the applicant.

Under Indiana Statute IC 13–17–14–5, the Indiana Department of Environmental Management (Department), was designated the State agency to develop and administer a lead-based paint licensing program and training course approval program for the State of Indiana. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child-occupied facilities, and any other type of building does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than 6 years of age. The Department is granted all powers necessary to fulfill the duties as prescribed in Indiana Statutes and to bring any and all enforcement actions as necessary, including but not limited to civil and criminal actions.

326 IAC 23, Indiana Administrative Code, has been promulgated by IDEM

under the authority of IC 13–17–14–5, Indiana Statute, to ensure that persons who perform lead-based paint activities do so safely to prevent exposure of building occupants to hazardous levels of lead. This is accomplished by requiring that before a person performs, supervises, or offers to perform or supervise a lead-based paint activity involving target housing (built before 1978) or a child-occupied facility or the real property on which the target housing or child-occupied facility stands, the person shall be licensed by the Department.

Both lead contractors and individual lead professionals must be licensed to perform any of the following lead-based paint activities: Inspection, risk assessment, project design, supervision or conducting work on a lead-based paint project. These rules do not apply to the following: A person conducting an inspection under the authority of IC 22–8–1.1 (the Indiana Occupational, Safety, and Health Act) or a person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by a person, other than the owner or owner's immediate family while these activities are being performed, or a child who is 6 years of age or younger and resides in the building and has been identified as having an elevated blood lead level.

Licensing of individuals is offered in the following disciplines: Lead inspector, risk assessor, project designer, supervisor, worker, and contractor. To be licensed, an individual must meet the discipline, education and experience requirements, successfully complete an Indiana-approved lead-based paint training course in the discipline in which they are seeking licensure, and in the case of lead inspectors, risk assessors, and supervisors, to pass the appropriate third party exams administered by the Department.

Check-lists are used by the Department in the review process of both individual and contractor licenses. In addition to the above licensing requirements, to be licensed as a contractor:

1. A company shall not allow an agent or employee of the contractor to exercise control over a lead-based paint activities project, come into contact with lead-based paint in connection with lead-based paint activities, or engage in lead-based paint activities unless the agent or employee is licensed under 326 IAC 23.

2. The contractor and all of its agents and employees shall, when performing lead-based paint activities projects, comply with all work practice standards as found in 326 IAC 23-4 using documented methodologies as specified in 326 IAC 23-4 and Indiana's Nonrule Policy.

3. Require that at least one licensed lead-based paint project supervisor is responsible for direct supervision of workers in the work area of the project and that workers have access to the supervisors throughout the duration of the project.

4. The contractor shall ensure that the current lead-based paint licenses of all supervisors and workers are kept on the job site during all lead-based paint activities. Furthermore, the contractor shall ensure that all lead-based paint activities records are kept in accordance with the manner prescribed in 326 IAC 23.

The Department does not address multi-dwelling clearance testing specifically. The Department instead addresses clearance testing for all projects, regardless of multi-dwelling or single dwelling status as outlined in 326 IAC 23-4-10.

The Department approves training courses which prepare individuals for licensure for the following disciplines: Inspector, risk assessor, project designer, supervisor, and worker. No person may offer, advertise, claim to provide, or conduct a lead training course that is represented as qualifying a person for licensure unless the course has received approval from the Department. Applicants for training course approval must meet all requirements as outlined in 326 IAC 23-3 (Indiana's Rule of Lead-Based Paint Training Courses and Instructors). Approval requires, but is not limited to the following: approval of principal instructors, use of only approved instructors, ownership by or employment of an approved training manager, approval of all course materials/curriculums, and development and implementation of recordkeeping requirements. The Department further requires that the training manager submits a letter to the Department that indicates that the course meets the applicable requirements of the rule (326 IAC 23-3-2(1)(e)). As a part of this, the training manager must ensure that only qualified instructors and training managers are used as outlined in 326 IAC 23-3-8. The training provider must also submit an application for each course approval it is seeking. This application requires a signed certification that there is no misrepresentations in, or falsifications of, information submitted in the application or addenda and further certifies that the course will meet all Federal, State and local regulations including 40 CFR part 745. This ensures that the course meets the requirements in both the Federal and State rules and that training managers and instructors meet the minimum requirements as outlined. 326 IAC 23-3-6 requires that the training managers allow the Department to audit the training course to verify compliance with the lead-based paint rules. During the desk reviews (for contingent approval) and course audits (for full approval), the Department will use check-lists to determine the training course provider eligibility for approval.

Enforcement Capabilities

Indiana Administrative Code 13-30 empowers the State of Indiana or its designated representative to bring an action for declaratory and equitable relief in the name of the State of Indiana for the protection of the environment of Indiana from significant pollution, impairment, or destruction. In addition, the Indiana audit law, amended in May 1999, presents no barrier to the authorization, approval, and/or delegation of the lead-based paint program.

The Department has the right, under 326 IAC 23-2-7, to deny an application for an individual or contractor license, to reprimand a license (issuance of warning letters), or to suspend or revoke a license for any reason as so outlined in this provision. The Department did not include modification within the licensing portion of its rule. Unlike the EPA, the Department does not modify licenses. Under 326 IAC 23-3-9, the Department may suspend, revoke, or modify training course provider approval. The Department does allow modification for training course providers, since a training provider may from time to time sell its business (transfer of ownership), change its name or have changes in its training managers, instructors, and so on. This allows the Department the capability to make any necessary modifications to the training course approval.

Staff Training

The Department will ensure that all lead-based paint staff (including inspectors, licensing and training provider staff, and enforcement staff) are trained at EPA-authorized lead-based paint training courses. In addition, the Department will ensure that all staff receive the necessary training in computer use, enforcement procedures, and standards for inspections. Staff will be updated and trained accordingly, as to any changes in Federal, State, and local regulations pertaining to lead-based paint activities.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

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 certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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 document in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

Francis X. Lyons,

Regional Administrator, Region V.

[FR Doc. 00–20019 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–1]

State Program Amendment; Addendum to EPA/LDEQ MOA for Administration of the National Pollutant Discharge Elimination System (NPDES) Program; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to the Memorandum of Agreement.

SUMMARY: A Court Order dated October 1, 1999, in the case *Sierra Club et al.* v. *Clifford et al.,* No. 96–0527 (E.D. La.), directs EPA to amend the Memorandum Of Agreement (MOA) for the Louisiana Pollutant Discharge Elimination System (LPDES) Program pursuant to section 402 of the Clean Water Act (CWA). By letter dated March 30, 2000, the Secretary for the Louisiana Department of Environmental Quality (LDEQ) agreed to amend the MOA to include an addendum addressing the Court's order. EPA is providing notice on the addendum to the LPDES program signed by Secretary Givens on March 31, 2000. Pursuant to the Court orders dated October 1, 1999, and June 21, 2000, EPA was ordered to sign and approve the MOA revisions. Acting EPA Regional Administrator, Sam Coleman, signed the MOA addendum approving the MOA revision on June 28, 2000. The procedures for revising NPDES state programs are set forth in federal regulations found at 40 CFR 123.62. 40 CFR 123.62(b)(4) and Section X of the MOA provide that LPDES program revisions become effective once the EPA Region 6 Administrator approves revisions submitted by the State. Approval of substantial revisions must be noticed in the **Federal Register**. Today, to satisfy its regulatory responsibilities and to allow for public participation, EPA provides notice of a comment period on its approval of such program revisions. Having approved LDEQ's program amendments, EPA now seeks public input on the amendment, and therefore, is providing opportunity for the public to provide comments on this action to determine if further action is appropriate. Upon consideration of information gathered under this comment period EPA may request the Court to allow EPA to make appropriate changes.

DATES: EPA Region 6 will accept written comments on the revisions to the MOA through September 7, 2000.

ADDRESSES: Written comments must be submitted to: Ms. Evelyn Rosborough; Customer Service Branch;Water Quality Protection Division; EPA Region 6; 1445 Ross Avenue; Dallas, Texas 75202; Mail Stop Code: (6WQ–CA); (214) 665–7515.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Rosborough, Customer Service Branch; Water Quality Protection Division, EPA Region 6; 1445 Ross Avenue; Dallas, TX 75202; telephone: (214) 665–7515. Copies of the amended MOA submitted to EPA by LDEQ, are available for review at EPA Region 6, Customer Service Branch, Water Quality Protection Division; 1445 Ross Avenue, Dallas, TX 75202, between 8:00 a.m. and 4:30 p.m., Monday through Friday. EPA recommends that you write or call the contact above for an appointment, so the record(s) will be available at your convenience. The MOA signed August 27, 1996, and other pertinent regulations may be viewed at website *http://yosemite.epa.gov/r6/genper.nsf/pages/npdespn.*

PUBLIC HEARING PROCEDURES: EPA's comments and public hearing procedures may be found at 40 CFR 123.62(b)(2). The comment period during which written comments on the amended MOA may be submitted extends for thirty (30) days from the date of this Notice. During the comment period any interested person may request a public hearing by filing a written request which must state the issues to be raised. A public hearing will be held if there is significant public interest based on requests.

SUPPLEMENTARY INFORMATION: As a result of litigation in *Sierra Club et al.* v. *Clifford et al.,* No. 96–0527 (E.D. La.), the Court ordered, among other things, that EPA Region VI amend its MOA with Louisiana. The principal regulations governing the MOA are found in 40 CFR 123.24. These regulations provide that, among other requirements, the MOA shall be submitted to EPA by the state that seeks to administer the NPDES program. The MOA specifies the responsibilities of EPA, and the state and provides structure for the state's program management and EPA's program oversight. The MOA provides that EPA will review certain preliminary draft permits and permit modifications to ensure that permits will comply with federal guidelines and requirements and may review others.

The MOA provides provisions for modification as well. Section X of the MOA (modification) provides that the MOA shall be reviewed and revised appropriately at least within five years of the effective date. Either EPA or LDEQ may initiate action to modify the MOA at any time. Any substantial changes must be in writing and signed by the LDEQ Secretary and the EPA Regional Administrator. The MOA addendum submitted by the state of Louisiana was signed by the Secretary of LDEQ on March 31, 2000, and by the Acting EPA Regional Administrator on June 28, 2000.

The language at issue in this approved MOA revision is found in paragraphs 6, 7 and 9 of the Court's October 1, 1999, Order, which state the following:

''(6) The defendants [EPA] shall implement the total maximum daily loads in permits by amending the agreement with Louisiana under Section 402 of the Clean Water Act to require that the limits for point sources established in total maximum daily loads be achieved:

(a) By any point source that discharges pursuant to a new permit

issued after the total maximum daily load has been established.

(b) By every point source discharging pursuant to an existing permit within the earlier of six years from the date the total maximum daily load is established or three years following the first expiration of the permit after the total maximum daily load is established.

(7) The defendants [EPA] shall amend the agreement with Louisiana under Section 402 of the Clean Water Act to require the state to provide the EPA with a copy of every permit application (whether for a new permit or renewal of an existing permit) if the application seeks a discharge limit in excess of any limit established in a total maximum daily load.

(9) The defendants [EPA] shall amend the agreement with Louisiana under Section 402 of the Clean Water Act to require the state to provide EPA with a copy of every application for a new permit that proposes to allow the discharge of a pollutant with respect to which a water does not meet water quality standards.''

Following several communications between LDEQ and EPA Region 6, LDEQ submitted a signed MOA Addendum on March 31, 2000, that includes language required by paragraphs 6, 7, and 9 of the Court's Order. In addition, LDEQ submitted a cover letter signed March 30, 2000, which addressed requirements for accomplishing an MOA revision under 40 CFR 123.62(b)(1). Pursuant to the Court's order dated June 21, 2000, EPA signed the Addendum on June 28, 2000. Under 40 CFR 123.62(b)(2), ''[w]henever EPA determines that the program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days.'' Because the Court-ordered revisions constitute substantial revisions to the LPDES program, EPA is providing an opportunity for public comment in accordance with the regulations. EPA will consider all comments and determine if further action is appropriate. At that time, EPA may request the Court to allow EPA to make appropriate changes as a result of the information provided under the comment period and hearing process, if held.

EPA notes specifically that neither the EPA regulations, the authorized LPDES program or the August 27, 1996 MOA contain implementation requirements as restrictive as those found in paragraph 6 of the Court's Order.

1. The EPA/LDEQ MOA Amendments

The principal regulations governing MOAs are found at 40 CFR 123.24. An MOA is a document signed by each agency committing them to specific responsibilities. An MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight. The MOA Addendum submitted by the State of Louisiana has been signed by the Secretary of the Department of Environmental Quality March 31, 2000, and the Acting Regional Administrator of U.S. EPA Region 6 June 28, 2000. The MOA amendment requested by EPA and submitted by LDEQ includes the following:

Addendum

National Pollutant Discharge Elimination System Memorandum of Agreement Between Louisiana Department of Environmental Quality and the United States Environmental Protection Agency

Consistent with the October 1, 1999, Court Order in *Sierra Club* v. *Clifford,* No. 96–0527 (E.D. La.), the Environmental Protection Agency (''EPA''), Region 6 and Louisiana Department of Environmental Quality (''LDEQ'') hereby revise the Louisiana Pollutant Discharge Elimination System (''LPDES'') program. The revisions add the following Sections and language to the August 27, 1996, Memorandum of Agreement (''MOA'') between LDEQ and EPA Region 6:

III.C.2.a LDEQ shall implement the total maximum daily loads in permits to require that the limits for point sources established in total maximum daily loads be achieved:

(i) By any point source that discharges pursuant to a new permit issued after the total maximum daily load has been established.

(ii) By every point source discharging pursuant to an existing permit within the earlier of six years from the date the total maximum daily load is established or three years following the first expiration of the permit after the total maximum daily load is established.

III.T. Permit Applications for water quality limited segments and established TMDLs.

III.T.1 LDEQ shall provide EPA with a copy of every permit application (whether for a new permit or renewal of an existing permit) if the application seeks a discharge limit in excess of any limit established in a total maximum daily load.

III.T.2 LDEQ shall provide EPA with a copy of every application for a new permit that proposes to allow the discharge of a pollutant with respect to which a water does not meet water quality standards.

The MOA also states: ''Nothing in this MOA Addendum shall be construed to nullify the Modification (Section X) process described in the August 27, 1996, MOA. In addition, this MOA Amendment Addendum shall become effective when approved by both the EPA Regional Administrator pursuant to 40 CFR 123.24(a) and the LDEQ Secretary.'' The MOA Addendum was signed by Dale Givens, Secretary of the Environment for Louisiana on March 31, 2000, and by the Acting EPA Regional Administrator on June 28, 2000.

2. Total Maximum Daily Loads Process as it Relates to the LPDES Program

The Total Maximum Daily Load (TMDL) process is an important element of the water quality-based approach. It identifies pollutant load allocations necessary to meet water quality standards.

A TMDL must be developed for each waterbody and pollutant combination on a State's CWA Section 303(d) list. The objective of a TMDL is to allocate allowable loads among different pollutant sources so that the appropriate control actions/management measures can be taken and water quality standards will be achieved. A TMDL includes consideration of existing pollutant loads from all sources. The TMDL process distributes portions of the waterbody's assimilative capacity for a pollutant to various pollution sources—including load allocations (LAs) to nonpoint sources and natural background, wasteload allocations (WLAs) to point sources, and a margin of safety to account for any lack of knowledge concerning the relationship between effluent limitations and water quality—so that the waterbody achieves its water quality standards. The TMDL establishes allowable loads and helps provide the basis for establishing or modifying controls or management measures on pollutant sources. Wasteload allocations established in TMDLs provide basis for effluent limitations necessary to protect water quality in the receiving water and ensure attainment of water quality standards.

Once allowable loadings have been developed through WLAs for specific pollutant sources, limits are incorporated into NPDES/LPDES permits. A current version of the Court ordered Section 303(d) list for Louisiana along with EPA established TMDLs in the Mermentau and Vermilion/Teche watersheds may be viewed and downloaded from the Region 6 TMDL website at *www.epa.gov/region6/water/tmdl.htm.*

3. Effects of This Action

The Court Order appears to restrict flexibility provided by federal and state regulations for EPA and Louisiana under the NPDES program which allow construction schedules for existing facilities which may need to install or construct additional treatment to meet effluent limitations. The Court's order, and the Addendum likely will affect some point source dischargers to

Louisiana stream segments for pollutants identified on the State's Section 303(d) list of impaired waters. This action may change the flexibility of the State to provide compliance schedules for dischargers in these cases. Once a TMDL for a particular stream segment is established or approved by EPA, the court-ordered MOA Addendum amendments provides existing dischargers on these segments with as little as 3 to 6 years to achieve the limitations based on the TMDL's wasteload allocations. Federal regulations at 40 CFR 122.47 and corresponding Louisiana regulations provide for compliance schedules of up to 3 years in permits where necessary to comply with more stringent limitations. Due to the five year permit cycle under the CWA, some permits may not come up for renewal until four or five years after a TMDL has been finalized. EPA Region VI believes a significant number of LPDES permits fall within this category. In these specific cases, permit construction/compliance schedule may be further limited by time frames set out in the Court order for achievement of TMDL allocations.

Burdens associated with the shortened time frames may be off-set if dischargers are aware of TMDL allocations for their point source discharges and plan ahead for the additional limitations that will be forthcoming in the next cycle of their LPDES permit. While EPA and the State believe the above described situations can be avoided by dischargers planning ahead, or the State modifying or reopening permits to include new TMDL-based limits, some permits may have to be issued with shortened or no compliance schedules. In such cases, compliance with TMDL based limits could be addressed through a Compliance or Administrative Order.

In addition, the MOA modifications may change the permit issuance priority for the State and increase the number and type of draft permits that the State will send to EPA. Prioritizing State permit issuance based on the approval date of a TMDL and requiring the State to submit all draft permits for TMDL segments to EPA has several potential impacts on the regulated community, the State, and EPA. To accommodate the court-ordered changes in the LPDES program, the State may need to defer action on new discharge permits or reissuance of major permits in order to work on minor permits in a TMDL waterbody. New dischargers needing permits or facilities needing permit modification to legally discharge into non-TMDL waterbodies may experience delays in permitting due to the priority given to TMDL waterbody permits.

EPA and LDEQ want to encourage public participation on this revision of the MOA so that the citizens of Louisiana will understand more fully and be able to comment on their state's program. Therefore, EPA requests that the public review the MOA Addendum and provide any comments they feel are appropriate. EPA and the State want the public to be able to effectively coordinate with LDEQ on LPDES permitting and enforcement actions. EPA will consider all comments on the LPDES program amendments and determine if EPA should request the court to allow EPA and LDEQ to make appropriate changes.

EPA considers a determination to approve or deny a State NPDES program submission an adjudication within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 551 and 554. An approval of a State NPDES program revision constitutes an order under the APA and is the product of an adjudication. Therefore, this revision of the LPDES program is an adjudication.

EPA is not requesting comment concerning the overall LPDES program, however, EPA is requesting comment on the revisions identified in this public notice (e.g. the MOA Addendum and related documents), and as set forth in the October 1, 1999, Court Order. EPA also requests that the public provide any significant data and information, including economic impacts, concerning this LPDES program revision.

Dated: July 7, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 00–20018 Filed 8–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–1]

Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft modification of NPDES general permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG2800000).

SUMMARY: The Regional Administrator (RA) of EPA, Region 4 (''Region 4''), is today proposing to modify, in part, the National Pollutant Discharge Elimination System (NPDES) general permit for the OCS of the Gulf of Mexico (General Permit No. GMG280000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) as authorized by section 402 of the Clean Water Act (''CWA'' or the ''Act''), 33 U.S.C. 1342. The existing general permit, issued by Region 4, and published at 63 FR 55718, October 16, 1998, authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the Eastern Gulf of Mexico seaward of the outer boundary of the territorial seas. Today EPA is proposing to modify the general permit numbering system to make it specific to the Region 4 area of responsibility. Additional modifications are being made to add tables for produced water discharge critical dilution concentrations and for chemically treated seawater used to pressure test piping and pipelines. These modification are being incorporated into part I.B.10 of the permit along with associated effluent limitations and monitoring.

This permit modification is in accordance with a settlement entered into by EPA with various parties which filed a petition for review of the October 16, 1998, general permit in the Fifth Circuit Court of Appeals under the caption *Marathon Oil Company et al.* v. *Browner, Civ. 99–60090.* After the permit was issued, and aside from other provisions within the permit which specify that any operator authorized by the permit may request to be excluded from coverage and receive an individual permit pursuant to 40 CFR 122.28(a)(4)(iii), EPA determined that the method for calculating effluent limitations and monitoring requirements for produced water discharges that appear as part I.B.3 in the permit are not appropriate for coverage under a general permit in the manner set forth in the October 16, 1998, general permit. The intent of this proposed modification is to establish a table of critical dilution concentrations for use in determining toxicity limitations. Those permittees that have produced water discharges that would fall outside of the proposed table would need to apply for and receive individual NPDES permits.

In brief, EPA today proposes to modify the general permit as follows: changing the general permit numerical designation; requiring permittees to indicate what type of effluents the facility is expected to discharge within

the written notification of intent; allowing approval of a shorter notice to drill (NTD) notification period in certain circumstances; the addition of a section 403(c) reopener clause; inclusion of a new table to be used by those permittees discharging produced water to calculate the critical dilution concentration; and the addition of limitations and monitoring requirements for those permittees discharging chemically treated freshwater or seawater used for the hydrostatic testing of new pipes and pipelines and condensation. Any operator seeking coverage under the general permit may be subject to some or all of the proposed modifications.

Finally, EPA also is providing today some additional clarifications and minor corrections of existing general permit language based upon questions and comments received by the Agency subsequent to the original permit issuance. This information is provided for clarification purposes only and is not part of the permit modifications being noticed for comment today.

DATES: Comments on this proposed action must be received by October 10, 2000.

ADDRESSES: Persons wishing to comment upon or object to any of the proposed permit modifications in Section III or wishing to request a public hearing, are invited to submit same in writing within sixty (60) days of this notice to the NPDES and Biosolids Permits Section; United States Environmental Protection Agency, Region 4; Atlanta Federal Center; 61 Forsyth St. S.W.; Atlanta, GA 30303–3104, Attention: Ms. Ann Brown.

FOR FURTHER INFORMATION CONTACT: Mr. William Truman, Environmental Scientist, telephone number (404) 562–9457, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, NPDES and Biosolids Permits Section, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303.

Table of Contents

I. Introduction

In 1972, section 301(a) of the Federal Water Pollution Control Act (also referred to as the Clean Water Act) was amended to provide that the discharge of any pollutants to waters of the United States (U.S.) from any point source is unlawful, except if the discharge is in compliance with an NPDES permit.

On October 16, 1998, Region 4, issued a general permit for discharges of pollutants from exploration, development, and production facilities located in all Federal waters of the Eastern Gulf of Mexico seaward of the outer boundary of the territorial seas. The previous permit (July 9, 1986, reissued by Region 4 in 1991) was issued jointly by Region 4 and Region 6. Region 6 subsequently, reissued a permit in 1992 and 1999 for the Western Portion of the Outer Continental Shelf (''Western Planning Area'').

For consistency, Region 4, developed a permit similar to those issued by Region 6, taking into account any site-specific considerations. Both Regions adopted the same method of determining produced water toxicity limitations using the Cornell Mixing Zone Expert System (CORMIX) to calculate critical dilutions. However, information from the vast number of operating facilities in the Western Planning Area as compared to the relatively few operating facilities in the Eastern Planning Area, enabled Region 6 to develop model input parameters based upon information from a large number of operating facilities. Region 6 also was able to develop a series of critical dilution tables based upon this information, and critical dilution tables for a large segment of potential permittees were developed and included within the Region 6 general permit.

In this modification, EPA is publishing critical dilution tables as part of the general permit, such as those used in Region 6's general permit. Due to the fact that fewer than 30 produced water dischargers exist in Region 4's permit coverage area, Region 4 elected to model the toxicity limitations using the range of data gathered from the operators within this area. Region 4 believes this approach will include all the expected permittees, and will avoid the significant resource demands that would have been required to support a critical dilution table for the ranges used by Region 6. The derivation of critical dilution tables on the scale of those developed by Region 6 would have required over 200 runs of the CORMIX model just to generate ranges that take into account the variations in discharge flow rate, discharge pipe diameter, and distance from the pipe to the sea floor. Currently, EPA is unaware of any facilities in Region 4's area which fall outside of the critical dilution tables in today's proposed draft. The small number of potential permittees did not justify the expenditure of available resources to produce numerous tables.

EPA, Region 4, proposes to modify this general permit by including a critical dilution table comparable to those utilized by the Region 6 general permit. In accordance with 40 CFR 122.28(3)(i) and (c)(1), any owner or operator with a facility with produced water effluent will be required meet the critical dilution values within the limits of the table, or to apply for and obtain an individual permit in order to discharge into U.S. waters. Existing discharges of produced water shall continue to be authorized under the 1991 general permit as reissued by Region 4, if a timely Notice of Intent (NOI) was submitted to obtain coverage under the general permit issued on October 16, 1998.

Additionally, EPA has received numerous requests regulated community regarding the need of a NPDES permit for the discharge of fluids used in the hydrostatic testing of pipelines. These fluids primarily consist of seawater, biocides, corrosion inhibiting solvents (CIS), and other treatment chemicals. The Region 6 general permit addresses this activity under miscellaneous discharges, with prescribed limits on chemical concentration and toxicity. For consistency, Region 4, proposes to modify the general permit to include effluent limitations and monitoring requirements for chemically treated seawater.

EPA, Region 4, also proposes to include an additional requirement for submitting an NOI. Under paragraph (4), part I.4., Notification Requirements (Existing Sources and New Sources), the permittee shall provide information on the types of discharges expected along with data regarding outfall locations.

In addition, to further distinguish permits issued under this general permit from those previously issued by Regions 4 and 6, Region 4 proposes to modify the general permit number to include an alpha character in the 6th position. Permit coverage will be assigned as GMG28A001—A999, GMG28B001—B999, GMG28C001—C999, *etc.*

II. Coverage of General Permit

Section 301(a) of the CWA provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. The EPA has determined that oil and gas facilities seaward of the 200 meter water depth in certain parts of the Eastern Portion of the Gulf of Mexico as described in the NPDES general permit are more

appropriately controlled by a separate general permit, individual permits, or both, 40 CFR 122.28(c). This determination covers both existing sources and new sources. This decision is based on the Federal regulations at 40 CFR 122.28, 40 CFR part 125 (Subpart M—Ocean Discharge Criteria); the Environmental Impact Statement; and the Agency's previous decisions in other areas of the Gulf of Mexico's OCS. As in the case of individual permits, noncompliance with any condition of a general permit constitutes an enforceable violation of the Act under section 309 of the Act.

With this proposed permit modification, all lease blocks with operating facilities discharging produced water will be required to meet the critical dilution limitations in the table, or to apply for and obtain individual permits in order to discharge into waters of the U.S. This notice to modify the general permit will also clarify and correct certain aspects of the general permit issued on October 16, 1998.

III. Proposed General Permit Modifications

Today, EPA is proposing the following permit modifications. These provisions represent the only revisions in this notice that are subject to the federal public notice and comment requirements.

1. General Permit Number (63 FR 55718, October 16, 1999)

The original general permit, issued jointly by Regions 4 and 6 on July 9, 1986, carried the permit number of GMG280000. On November 19, 1992, Region 6 issued a final permit for the Western Gulf of Mexico under GMG290000. In order to distinguish the current permit coverage numbers from those facilities covered by the permits previously issued by Regions 4 and 6, EPA is proposing to designate those facilities covered by the Region 4 permit as General Permit Number GMG28AXXX, where the 6th significant figure will carry an alphabetic designation. The new numbering convention will be, *e.g.,* GMG28A001—A999, GMG28B001—B999, GMG28C001—C999, *etc.* All notices of general permit coverage provided since the effective date of the November 16, 1998 permit, will be changed to as indicated above. The last three digits of the assigned permit number will remain the same.

2. Notice of Intent (NOI) Requirements (Part I.B.4, 63 FR 55747)

Part I., section A. 4.(4) requires information identifying the receiving waters and the location of the discharge outfalls. EPA believes that more information is required pertaining to the nature of the permitted discharges. To aid in compliance tracking, EPA proposes that the permittee identify the types of discharges expected for the operation applied for under the general permit. Expected discharges would be identified by the nomenclature used in part I., section B.1–10. Additional information may be required regarding miscellaneous discharges (63 FR 55750).

3. Notice To Drill (Part I.A.4, 63 FR 55747)

In recognition that there are situations where a permittee may be unable to meet the minimum 60 day notice period due to unforeseen circumstances, EPA today proposes to modify the 60 day requirement by adding ''or lesser notice as approved by the Director'' to allow for case-by-case requests for a shortened notice period.

In emergency situations where ''Severe Property Damage'' may result (see definition 47, 63 FR 55756), or loss of life, or personal injury, bypass provisions at part II.B.3. (63 FR 55752) may be utilized. Upset provisions may also be available as specified at part II.B.4. (Id.).

4. Section 403(c) Reopener Clause

As a result of the President's Executive Order 13158 on Marine Protected Areas dated May 26, 2000, the EPA has been directed to reduce pollution of beaches, coasts, and ocean waters by developing CWA regulations that strengthen water quality protections for coastal and ocean waters. These new standards will guide the agency when it reviews proposals for onshore and offshore activities that result in discharges to ocean or coastal waters. In developing these regulations, EPA may set higher levels of protection in especially valued or vulnerable areas. As a result of this development the following reopener clause will be added as new paragraph 7, part I., section A. Permit Applicability and Coverage Conditions as follows:

7. 403(c) Reopener Clause.

In addition to any other grounds specified herein, this permit may be modified or revoked at any time if, on the basis of any new data or requirements, EPA determines that continued or increased discharges may cause unreasonable degradation of the marine environment or if EPA determines that additional conditions are necessary to protect the marine environment or special aquatic sites. Also, coverage under this permit may be denied or revoked and an individual NPDES permit application required such that any concerns, as stated, may be included in an individual NPDES permit.

5. Produced Water Discharges (Part I.B.3, 63 FR 55749)

The nature of produced water discharges could be toxic to marine organisms in the immediate vicinity of these discharges. Rapid and dispersed mixing are important to reducing and eliminating toxic effects. The measure of any toxic effects vary with discharge volume, density, depth, flow rate, discharge pipe opening diameter and orientation, and current speed. EPA proposes to replace Appendix A for the calculation of permit limitation for produced water toxicity. Rather, these variables will be considered within a table of produced water critical dilutions developed using CORMIX model (Version 3.2). The Limiting Permissible Concentration (LPC), the critical dilution, at the edge of the 100-meter mixing zone is defined as the arithmetic formula of $0.1 \times LC_{50}$, or $LC_{50}=10 \times$ critical dilution. This corrects the 0.01 multiplier originally used in the general permit. Finally, for purposes of this general permit, the small quantities of water generated during production as a result of condensation are exempt as ''produced water'' and subject to the ''miscellaneous discharge'' limitations and monitoring requirements of the permit (see infra).

The table is only for produced water effluent discharged below the surface using a vertical port orientation:

TABLE 4.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF LESS THAN 200 METERS

Discharge rate (bbl/day)	Pipe diameter		
	>0″ to 5″	>5″ to 7″	>7″ to 9″
>0 to 500	0.11	0.11	0.11
501 to 1000	0.22	0.22	0.22

TABLE 4.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF LESS THAN 200 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter		
	>0″ to 5″	>5″ to 7″	>7″ to 9″
1001 to 2000	0.37	0.37	0.37
2001 to 3000	0.48	0.48	0.48
3001 to 4000	0.56	0.56	0.56
4001 to 5000	0.65	0.66	0.66
5001 to 6000	0.73	0.78	0.78
6001 to 7000	0.77	0.78	0.78
7001 to 8000	0.84	0.86	0.86

TABLE 4–A.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF GREATER THAN 200 METERS

Discharge rate (bbl/day)	Pipe diameter		
	>0″ to 5″	>5″ to 7″	>7″ to 9″
>0 to 500	0.08	0.08	0.08
501 to 1000	0.12	0.12	0.12
1001 to 2000	0.18	0.18	0.18
2001 to 3000	0.22	0.22	0.22
3001 to 4000	0.24	0.25	0.25
4001 to 5000	0.28	0.28	0.28
5001 to 6000	0.30	0.30	0.31
6001 to 7000	0.32	0.32	0.32
7001 to 8000	0.35	0.35	0.35

The tables were formulated using the following CORMIX (Version 3.2) input parameters:

Surface density: 1023.0 kg/m^3
Discharge density: 1070.2 kg/m^3
Density gradient: 0.163 kg/m^3/m (linear)
Discharge concentration: 100%
Legal mixing zone: 100 meters
Darcy-Wiesbach friction constant: 0.02
Current speed: 5 cm/sec (< 200 meters), 15 cm/sec (>200 meters)
Vertical discharge angle (Theta) 90° is directed toward the surface, −90° is directed toward the seafloor
Wind speed: 4 m/sec

6. Miscellaneous Discharges (Part I.B.10, 63 FR 55750; Table 2, 63 FR 55759 and Table 3, 63 FR 55761)

EPA is proposing to modify the existing list of miscellaneous discharges to add additional wastewater sources: (1) chemically treated freshwater and seawater which has been used to hydrostatically test new piping and pipelines, and (2) water produced as a result of condensation during the production process. These discharges will be limited for free oil, concentration of treatment chemicals, and toxicity. Effluent limitations and monitoring requirements will be the same as authorized by the Region 6 general permit (part I.B.11, 64 FR 19162 and 19163).

Proposed Permit Limitations

Treatment Chemicals. The concentration of treatment chemicals in discharged chemically treated freshwater and seawater which has been used to hydrostatically test new piping and pipelines shall not exceed the most stringent of the following three constraints:

(1) The maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product, or

(2) The maximum manufacturer's recommended concentration, or

(3) 500 mg/l.

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visible sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

Toxicity. The 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC), or if specified the 7-day average minimum and monthly average minimum NOEC, must be equal to or greater than the critical dilution concentration specified in this permit in Table 4–A for seawater discharges and 4–B for freshwater discharges. Critical dilution shall be determined using Table 4 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC (or 7-day average minimum NOEC) values determined during the month.

Proposed Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The required frequency of testing for continuous discharges shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.

Discharge rate	Toxicity testing frequency
4,600 bbl/day and above ...	Once per month.

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

TABLE 5–A.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR SEAWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

Depth difference (meters)	Discharge rate (bbl/day)	Pipe diameter			
		>0″ to 2″	>2″ to 4″	>4″ to 6″	>6″
All	0 to 1,000	12	24.7	24.5	24.6
	>1,000 to 10,000	11.2	12.4	12.2	14
	>10,000	9.6	24	23	20

TABLE 5–B.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR FRESHWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

Depth difference (meters)	Discharge rate (bbl/day)	Pipe diameter			
		>0″ to 2″	>2″ to 4″	>4″ to 6″	>6″
All	0 to 1,000	1.1	1.2	2.9	2.9
	>1,000 to 10,000	19	39	28	24
	>10,000	13	63	41	74

IV. Clarifications and Minor Corrections

EPA also is providing the information in this section to help further explain or clarify existing requirements of the general permit based on questions and comments received following the original issuance of the permit.

1. Permit Transfers (Part I.A.4, 63 FR 55747)

The Agency has received several comments regarding the transfer of discharge authority where a facility is sold during the period of general permit's coverage. Part of the confusion over transfers resulted in the requirement for an NOI with required information be submitted to the EPA for each discharging facility in order to secure permit coverage. If a facility is purchased or sold to another operator, permittees have raised the concern that the new operator will be required to resubmit the same data from the original operator's NOI to maintain permit coverage. This would result in a redundant review by EPA of this information and untimely delays. EPA is clarifying that where the operator notifies EPA within 30 days prior to the transfer, no additional NOI documentation need be submitted.

The Agency is not deviating from standard procedures for transfer of NPDES permits as set forth in 40 CFR 122.63. EPA does not believe this requirement to be burdensome to industry. It is not EPA's intent to conduct another NOI review. Presumably, all of the NOI requirements would have been previously submitted to EPA for review, and subsequently approved by EPA. If the facility remains operational, then the NOI by the new operator, should simply reference the previously submitted NOI, EPA's authorization to proceed, and the assigned permit number. It is not EPA's intent to encumber the industry's transactions, but rather to keep the Agency informed as to ownership and entitlement of the permitting responsibilities.

There is also some confusion by industry over the steps required to submit an NOI for non-operational or newly acquired leases. For these leases, the general permit states that an exploration or development production plan must be prepared and submitted to EPA before an NOI can be accepted. These plans are normally the responsibility of the Mineral Management Service (MMS), and not part of the EPA permit process. This requirement is corrected to read: ''No NOI will be accepted for either a non-operational or newly acquired lease until such time as an exploration or development production plan has been prepared.''

2. Notice To Drill (''NTD'') (Part I.A.4, 63 FR 55747)

The general permit states that an NTD shall contain the assigned NPDES general permit number ''assigned to the lease block.'' EPA has realized that this language has caused some confusion as general permit coverage is given on an individual facility basis within a given lease block, rather than to the lease block itself. Therefore, EPA is clarifying that it is the facility's assigned permit coverage number that must be included in the NTD.

3. Notice of Intent—Latitude and Longitude Requirements (Part I.B.4, 63 FR 55747)

Under the general permit, as part of the facility's submission, the NOI

requires inclusion of the latitude and longitude of proposed outfall location(s). Concerns have been raised that, in addition to the environmental conditions experienced at the time of siting, due to inherent errors in the positioning equipment the exact outfall location can vary from the originally proposed site. Additionally, while a well surface location may be fixed, the location of the discharge will be in part dictated by the size, layout and actual orientation of the facility in the lease block. This uncertainty can be in the range of several hundred meters. EPA recognizes the practical realities of this type of operation and, therefore, is clarifying that EPA will allow flexibility in the actual placement of a facility after review of the photodocumentation survey. Consistent with MMS protocol, EPA will allow flexibility in placement of a surface location. However, the final siting shall be placed no further than 500 m from the proposed surface location covered by a photodocumentation survey.

4. Notice of Intent—Update of Technical References and Notification Address (Part I.A.4, 63 FR 55747)

Part I.A.4.(10) and (11) refer to the bottom conditions within 1000 meters of the proposed discharge site. For clarification purposes, EPA is taking this opportunity to update its technical references as follows:

''(10) Technical information on the characteristics of the sea bottom in accordance with MMS Notice To Lessees 98–20, Shallow Hazard Requirements, or the most current MMS guidelines for shallow hazard investigation and analysis.''

''(11) MMS live bottom survey in accordance with MMS Notice To Lessees 99–G16 Live-Bottom Surveys and Reports, or the most current MMS guidelines for live-bottom surveys and reports,'' for facilities * * *.

EPA also is updating the Agency address for submission of all notices required under the general permit. All NOIs, NTDs, Notices of Commencement of Operations (NCOs), Notices of Termination of Operations (NTOs), and other subsequent reports shall be sent by certified mail to the following address: Director, Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960. Part III A. of the permit addresses the submittal process for monthly monitoring results and other related reports.

5. Photodocumentation Surveys (Part I.A.4(11), 63 FR 55747)

CWA. The general permit requires photodocumentation surveys for operational facilities in less than 100 meters water depth in the Central Planning Area, except facilities with current active discharges on the effective date of the general permit (November 16, 1998). EPA has been asked to clarify whether the exception includes ''operational leases'' as defined on page 55718 of the permit (operational leases are defined as ''leases on which a discharge has taken place within two years of the effective dates of the general permits''). The answer is no.

As provided in the permit, only currently active dischargers are operational facilities and thus excluded from the NOI requirement for photodocumentation. The exemption only applies to ''facilities'' that have discharged within two years of the effective date of the permit, not the entire lease containing the facility (*i.e.*, the ''operational lease''). Such a lease-wide exemption would only be allowed if the entire block had been surveyed by photodocumentation.

However, EPA has reserved the right to deny this exemption for operational facilities if a significant increase in discharge volume will occur, or if a change in the nature (kind) of effluent to be discharged will occur where no previous photodocumentation has been done at said facility. EPA understands that some deviation from noticed surface locations is expected. Consistent with MMS protocol, EPA will allow flexibility in placement of a surface location. However, for notification purposes, the final surface location shall be placed no further than 500 feet from the proposed surface location. Should the final location be placed within 500 m of an area previously covered by a photodocumentation survey, then no additional survey is required.

6. Correction to Notification Requirements (Part I.A.4., 63 FR 55747)

The general permit requires the operator to submit a notice of commencement of operations (NCO) for several activities. EPA is providing the following typographical correction to the 6th paragraph under part I., section A.4. of the general permit as follows: ''In addition, a notice of commencement of operations (NCO) is required to be submitted for each of the following activities: placing a production platform in the general permit coverage area (within 30 days after placement); and discharging *produced* water within the coverage area.''

7. Correction to the Sanitary Flow Measurement (Table 2, 63 FR 55758 and Table 3, 63 FR 55760).

The general permit requires the estimated flow to be recorded monthly. The tables entitled ''Existing Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit'' (Table 2) and ''New Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit'' (Table 3) do not include the requirement to report the estimated flow on the monthly reports.

EPA has corrected its inadvertent omission of the ''Recorded/Reported Value'' from Tables 2 (p. 55758) and 3 (p. 55760) of the permit for Sanitary Waste outfall. Consistent with the requirements of section B.7(c), the average flow in million gallons per day (MGD) must be estimated and recorded for the flow of sanitary wastes once per month and submitted on the DMR.

8. Correction to Oil and Grease Limitations of Produced Water Discharges (Part I.B.3., 63 FR 55749)

The reporting requirement for the monthly DMR, is clarified to read: ''The highest daily *maximum* oil and grease concentration and the monthly average concentration shall be reported on the monthly DMR.''

9. Clarification to the (Exception) for Sanitary Waste Facilities (Part I.B.7., 63 FR 55749 and Part I.B.8., 63 FR 55750)

The exception to the permit limitations for sanitary waste is clarified to read: ''(Exception) Any facility which properly *operates and* maintains a marine sanitation device (MSD) that complies with * * *.

10. Clarification to Monitoring Reports (Part III.A, 63 FR 55754)

Part III.A. deals with the proper labeling and submission of discharge monitoring reports (DMRs). EPA inadvertently stated that the operator of each ''lease block'' shall be responsible for submitting DMRs. Since Region 4 issues the general permit to an individual facility, and not a lease block, the operator of each facility is responsible for submitting the appropriate DMR. EPA is providing the following typographical change in the general permit:

The operator of each *facility* shall be responsible for submitting *its* monitoring results.

11. Termination of Coverage Under the 1991 General Permit Issued (63 FR 55746)

The general permit, issued on October 16, 1998, required facilities covered under the previous general permit to submit a written notice of intent within 60 days of the effective date of the permit (November 16, 1998). NPDES permit coverage was terminated for those facilities with continuing operations after that deadline who had not submitted the requisite NOI. Therefore, those facilities which had not submitted the requsite NOI are currently operating without proper permit coverage.

V. Cost Estimate

The cost of compliance with a general permit is lower than that of an individual permit. Therefore, there is a comparative financial benefit to coverage under the general permit even with produced water requirements from coverage under an individual permit.

VI. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, *e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA, or any other law * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits also are not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comments on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide an ''opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 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 UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

EPA has determined that the proposed permit modification would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small government jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means government of cities, counties, towns, *etc.* with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit modification, as proposed, also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small government to operate facilities authorized to discharge by this permit.

VII. Paperwork Reduction Act

The information collection required by these permits has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

EPA did not prepare an Information Collection Request (ICR) document for today's permit modification because the information collection requirements in this permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the CWA.

VIII. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's proposed general permit is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA only applies to rules subject to notice and comment rulemaking requirements under the Administrative Procedures Act (APA) or any other statute. As previously stated, the permit modification proposed today is not a ''rule'' subject to the RFA. Although this proposed general permit is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to this general permit and, in light of the facts presented above, I hereby certify pursuant to the provisions of the RFA that these proposed general permit modifications will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the vast majority of the parties regulated by this permit have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq*. (February 9, 1984). For those operators having fewer than 500 employees, this permit issuance will not have significant economic impact. These facilities are classified as Major Group 13—Oil and Gas Extraction SIC Crude Petroleum and Natural Gas.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 30, 2000.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

Draft Modification of National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

For reasons set forth in the preamble, the NPDES General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000) is proposed to be modified as described below. EPA is proposing to delete the existing appendix A from the general permit along with several other additional modifications and clarifications. These proposed modifications and additional requirements will become effective on the date of **Federal Register** publication of the modifications.

General Permit Number [Modification]

(1) As of the effective date of the **Federal Register** publication of these modifications, the general permit number, originally identified as GMG280000, will be modified to read as GMG28AXXX, where the 6th significant figure will carry an alphabetic designation. The new numbering convention will be, *e.g.,* GMG28A001–A999, GMG28B001–B999, GMG28C001–C999, *etc.*

Part I. Requirements for NPDES Permits

(2) On page 55747, paragraph (4) is modified to add additional information requirements and corrected to update the technical references, as follows:

Section A. Permit Applicability and Coverage Conditions

4. Notification Requirements (Existing Sources and New Sources) [Modified and Corrected]

Written notification of intent (NOI) to be covered in accordance with the general permit requirements shall state whether the permittee is requesting coverage under the existing source general permit or new source general permit, and shall contain the following information:

(1) The legal name and address of the owner or operator;

(2) The facility name and location, including the lease block assigned by the Department of the Interior, or if none, the name commonly assigned to the lease area;

(3) The number and type of facilities and activity proposed within the lease block;

(4) The waters into which the facility is or will be discharging; including a map with longitude and latitude of current or proposed outfall locations and expected discharges identified by the nomenclature used in part I., section B.1–10. Additional information may be requested by the Director regarding miscellaneous discharges.

* * * * *

(10) Technical information on the characteristics of the sea bottom in accordance with MMS Notice To Lessees 98–20, Shallow Hazard Requirements, or the most current MMS guidelines for shallow hazard investigation and analysis.

(11) MMS live bottom survey in accordance with MMS Notice To Lessees 99–G16 Live–Bottom Surveys and Reports, or the most current MMS guidelines for live-bottom surveys and reports, for facilities in less than 100 meters water depth in the Central Planning Area. (Exception: Current active discharging facilities on the effective date of the new general permit will be exempt from photo-documentation surveys for the life of that discharge: (Refer to Comment No. 69 for clarification)

* * * * *

(3) On page 55747, paragraph 4, is corrected to clarify NOI notification requirements for a newly acquired lease as follows:

For operating leases, the NOI shall be submitted within sixty (60) days after publication of the final determination on this action. Non-operational facilities are not eligible for coverage under these new general permits. No NOI will be accepted from either a non-operational or newly acquired lease until such time as an exploration plan or development production plan has been prepared.

* * * * *

(4) On page 55747, paragraph 4, is modified regarding NTD notice requirements and clarified to update the Agency address for submission of notices under the general permit follows:

For drilling activity, the operator shall submit a Notice to Drill (NTD) sixty (60) days, or lesser notice as approved by the Director, prior to the actual move-on date. This NTD shall contain: (1) The assigned NPDES general permit number assigned to the facility, (2) the latitude and longitude of the proposed discharge point, (3) the water depth, and (4) the estimated length of time the drilling operation will last. This NTD shall be submitted to Region 4 at the address above, by certified mail to: Director, Water Management Division, NPDES and Biosolids Permit Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

* * * * *

All NOIs, NTDs, NCOs, and any subsequent reports required under this permit shall be sent by certified mail to the following address: Director, Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

* * * * *

(5) On page 55747, paragraph 4, is modified to remove the reference to appendix A and corrected to remove two typographical errors as follows:

In addition, a notice of commencement of operations (NCO) is required to be submitted for each of the following activities: placing a production platform in the general permit coverage area (within 30 days after placement); and discharging produced water within the coverage area.

* * * * *

6. Intent To Be Covered by a Subsequent Permit [Corrected]

(6) On page 55747, paragraph 6, is clarified to update the Agency address for submission of notices under the general permit follows:

This permit shall expire on October 31, 2003. However, an expired general permit continues in force and effect until a new general permit is issued. Lease block operators authorized to discharge by this permit shall by certified mail notify the Director, Water Management Division, NPDES and Biosolids Permit Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, on or before April 30, 2003, that they intend to be covered by a permit that will authorize discharge from these facilities after the termination date of this permit on October 31, 2003.

Permittees must submit a new NOI in accordance with the requirements of this permit to remain covered under the continued general permit after the expiration of this permit. Therefore, facilities that have not submitted an NOI under the permit by the expiration date cannot become authorized to discharge under any continuation of this NPDES general permit. All NOI's from permittees requesting coverage under a

continued permit should be sent by certified mail to: Director, Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

* * * * *

7. Section 403(c) Reopener [New]

(7) On page 55747, a new paragraph 7, is added to address the mandatory Section 403(c) reopener clause, as follows:

7. Section 403(c) Reopener

In addition to any other grounds specified herein, this permit may be modified or revoked at any time if, on the basis of any new data or requirements, EPA determines that continued or increased discharges may cause unreasonable degradation of the marine environment or if EPA determines that additional conditions are necessary to protect the marine environment or special aquatic sites. Also, coverage under this permit may be denied or revoked and an individual NPDES permit application required such that any concerns, as stated, may be included in an individual NPDES permit.

* * * * *

Part I. Requirements for NPDES Permits

(8) On page 55749, Section B, paragraph (3) is modified to remove the reference to Appendix A, correct the arithmetic formula regarding limiting permissible concentrations, correct the reporting requirement for oil and grease limitation, and referencing the new produced water critical dilution tables, as follows:

Section B. Effluent Limitations and Monitoring Requirements

3. Produced Water [Modified]

(b) *Limitations.* Oil and Grease. Produced water discharges must meet both a daily maximum limitation of 42 mg/l and a monthly average limitation of 29 mg/l for oil and grease. A grab sample must be taken at least once per month. The daily maximum samples may be based on the average concentration of four grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. If more samples are taken, they may exceed the monthly average for any one day, provided that the average of all samples taken meets the monthly limitation. The gravimetric method is specified at 40 CFR part 136. The highest daily *maximum* oil and grease concentration and the monthly average concentration shall be reported on the monthly DMR.

Toxicity. Produced water discharges must meet a toxicity limitation projected to be the limiting permissible concentration (0.1 × LC50) at the edge of a 100-meter mixing zone. The toxicity limitation will be determined by the using the produced water critical dilutions in Tables 4- or 4–A.

* * * * *

(9) On page 55749, paragraph (7) is modified to further define the exemption for sanitary waste discharges, as follows:

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(b) *Limitations.* Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharges of sanitary waste must contain a minimum of 1 mg residual chlorine/l and shall be maintained as close to this concentration as possible. The approved analytical method is Hach CN–66–DPD. A grab sample must be taken once per month and the concentration reported.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested annually for proper operation and the test results maintained at the facility. The operator shall indicate use of an MSD on the monthly DMR.

* * * * *

(10) On page 55750, paragraph (8) is modified to further define the exemption for sanitary waste discharges, as follows:

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) *Prohibitions.* Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day when the facility is manned, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed shall be recorded.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested annually for proper operation and the test results maintained at the facility. The operator shall indicate use of an MSD on the monthly DMR.

* * * * *

(11) On page 55750, paragraph (10) is modified to include additional defined ''miscellaneous discharges.'' as follows:

10. *Miscellaneous Discharges.* Desalination Unit Discharge; Blowout Preventer Fluid; Uncontaminated Ballast Water; Uncontaminated Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Uncontaminated Freshwater; Excess Cement Slurry; Diatomaceous Earth Filter Media; chemically treated freshwater and seawater used for the hydrostatic testing of new piping and pipelines; and waters resulting from condensation.

* * * * *

(12) On page 55750, paragraph (10) is modified to include additional effluent limitations and monitoring requirements for chemically treated freshwater and seawater used for the hydrostatic testing of new piping and pipelines, as follows:

The discharge of miscellaneous discharges shall be limited and monitored by the permittee as specified in tables 2 and 3 and as below.

(a) *Free Oil.* No free oil shall be discharged. Monitoring shall be performed using the visual sheen test method once per day when discharging on the surface of the receiving water or by use of the static sheen method at the operator's option. Both tests shall be conducted in accordance with the methods presented at IV.A.3 and IV.A.4. Discharge is limited to those times that a visual sheen observation is possible. The number of days a sheen is observed must be recorded.

(Exception): Miscellaneous discharges may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facility is not manned. Discharge is not restricted to periods when observation is possible; however, the static (laboratory) sheen test method must be used during periods when observation of a sheen is not possible, such as at night or during inclement conditions. Static sheen testing is not required for miscellaneous discharges occurring at the sea floor.

(b) *Treatment Chemicals.* The concentration of treatment chemicals in discharged chemically treated freshwater and seawater shall not

exceed the most stringent of the following three constraints:

(1) The maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product, or

(2) The maximum manufacturer's recommended concentration, or

(3) 500 mg/l.

(c) *Toxicity.* The toxicity of discharged chemically treated freshwater and seawater shall be limited as follows: the 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC), or if specified the 7-day average minimum and monthly average minimum NOEC, must be equal to or greater than the critical dilution concentration specified in this permit in Table 5–A for seawater discharges and 5–B for freshwater discharges. Critical dilution shall be determined using Table 5 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC (or 7-day average minimum NOEC) values determined during the month.

(d) Monitoring Requirements for discharged chemically treated freshwater and seawater:

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The required frequency of testing for continuous discharges shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.
4,600 bbl/day and above	Once per month.

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

* * * * *

Part III. Monitoring Reports and Permit Modification

(13) On page 55754, Section A is corrected to recognize that monitoring reports are to be submitted by the facility operator, as follows:

Section A. Monitoring Reports

The operator of each facility shall be responsible for submitting monitoring results for each facility within each lease block.

* * * * *

Appendix A [Modification]

(14) On page 55761, EPA is proposing to delete appendix A and replace it with two new Tables—Critical Dilution Tables 4 and 4–A, as follows.

TABLE 4.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF LESS THAN 200 METERS

Discharge rate (bbl/day)	Pipe diameter		
	>0″ to 5″	>5″ to 7″	>7″ to 9″
>0 to 500	0.11	0.11	0.11
501 to 1000	0.22	0.22	0.22
1001 to 2000	0.37	0.37	0.37
2001 to 3000	0.48	0.48	0.48
3001 to 4000	0.56	0.56	0.56
4001 to 5000	0.65	0.66	0.66
5001 to 6000	0.73	0.78	0.78
6001 to 7000	0.77	0.78	0.78
001 to 8000	0.84	0.86	0.86

TABLE 4–A.—PRODUCED WATER CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR WATER DEPTHS OF GREATER THAN 200 METERS

Discharge rate (bbl/day)	Pipe diameter		
	>0″ to 5″	>5″ to 7″	>7″ to 9″
>0 to 500	0.08	0.08	0.08
501 to 1000	0.12	0.12	0.12
1001 to 2000	0.18	0.18	0.18
2001 to 3000	0.22	0.22	0.22
3001 to 4000	0.24	0.25	0.25
4001 to 5000	0.28	0.28	0.28
5001 to 6000	0.30	0.30	0.31
6001 to 7000	0.32	0.32	0.32
7001 to 8000	0.35	0.35	0.35

(15) On pages 55757–55758, on Table 2 ''Existing Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit'' and Table 3 ''New Sources-Effluent Limitations, Prohibitions, and Monitoring Requirements for the Eastern Gulf of Mexico NPDES General Permit'' a correction is made to the Sanitary Flow

Measurement reporting requirements to add a ''Recorded/Reported Value'' for ''Estimated Flow'', as follows:

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT

[Existing sources]

Discharge	Regulated and monitored discharge parameter	Discharge limitation/ prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
Drilling Fluids	Oil-based Drilling Fluids.	No discharge.			
	Oil-contaminated Drilling Fluids.	No discharge.			
	Drilling Fluids to Which Diesel Oil has been Added.	No discharge.			
	Mercury and Cadmium in Barite.	No discharge of drilling fluids if added barite contains Hg in excess of 1.0 mg/kg or Cd in excess of 3.0 mg/kg (dry wt).	Once per new source of barite used.	Flame and flameless AAS.	mg Hg and mg Cd/kg in stock barite.
	Toxicity [a]	30,000 ppm daily minimum.	Once/month ..... Once/end of well [b]	Grab/96-hr LC50 using *Mysidopsis bahia;* Method at 58 FR 12507.	Minimum LC50 of tests performed and monthly average LC50.
		30,000 ppm monthly average minimum.	Once/month.		
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Maximum Discharge Rate.	1,000 barrels/hr	Once/hour	Estimate	Max. hourly rate in bbl/hr.
	Mineral Oil	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
	Drilling Fluids Inventory.	Record	Once/well	Inventory	Chemical constituents.
	Volume	Report	Once/month	Estimate	Monthly total in bbl/month.
	Within 1000 Meters of an Areas of Biological Concern (ABC).	No discharge.			
Drill Cuttings	Note: Drill cuttings are subject to the same limitations/prohibitions as drilling fluids except *Maximum Discharge Rate*.				
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Volume	Report	Once/month	Estimate	Monthly total in bbl/month.
Produced Water	Oil and Grease	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month [c]	Grab/Gravimetric	Daily max. and monthly avg.
	Toxicity	Acute toxicity (LC50); critical dilution as specified by the requirements at Part I.B.3(b) and Appendix A of this permit.	Once/2 months	Grab/96-hour LC50 using *Mysidopsis bahia* and inland silverside minnow (Method in EPA/600/4-90/027F).	Minimum LC50 for both species and full laboratory report.
	Flow (bbl/month)	.....	Once/month	Estimate	Monthly rate.
	Within 1000 meters of an Area of Biological Concern (ABC).	No discharge.			
Deck Drainage	Free Oil	No free oil	Once/day when discharging [d].	Visual sheen	Number of days sheen observed.
	Volume (bbl/month) ..	.....	Once/month	Estimate	Monthly total.
Produced Sand	No Discharge.				
Well Treatment, Completion, and Workover Fluids (includes packer fluids) [e].	Free Oil	No free oil	Once/day when discharging.	Static sheen	Number of days sheen observed.

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

[Existing sources]

Discharge	Regulated and monitored discharge parameter	Discharge limitation/ prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
	Oil and Grease	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month	Grab/Gravimetric	Daily max. and monthly avg.
	Priority Pollutants	No priority pollutants	.....	Monitor added materials.	
	Volume (bbl/month) ..	.....	Once/month	Estimate	Monthly total.
Sanitary Waste (Continuously manned by 10 or more persons) [f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
	Residual Chlorine	At least (but as close to) 1 mg/l.	Once/month	Grab/Hach CN–66–DPD.	Concentration.
	Flow (MGD)	.....	Once/month	Estimate	Monthly ave.
Sanitary Waste (Continuously manned by 9 or fewer persons or intermittently by any) [f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
Domestic Waste	Solids	No floating solids; no food waste within 12 miles of land; comminuted food waste smaller than 25-mm beyond 12 miles.	Once/day following morning or midday meal at time of maximum expected discharge.	Observation	Number of days solids observed.
Miscellaneous Discharges—Desalination Unit; Blowout Preventer Fluid; Uncontaminated Ballast/Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Uncontaminated Fresh Water; Excess Cement Slurry; Diatomaceous Earth; Filter Media; Condensation water.	Free Oil	No free oil	Once/day when discharging.	Visual sheen	Number of days sheen observed.
Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added.	Treatment Chemicals	Most Stringent of: EPA label registration, maximum manufacturer's recommended dose, or 500 mg/l.			
	Free Oil	No Free Oil	1/week	Visual Sheen	Number of days sheen observed.
	Toxicity	48-hour ave. minimum NOEC and monthly ave. minimum NOEC.	Rate Dependent	Grab	Lowest NOEC observed for either of the two species.

[a] Toxicity test to be conducted using suspended particulate phase (SPP) of a 9:1 seawater:mud dilution. The sample shall be taken beneath the shale shaker, or if there are no returns across the shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[b] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[c] The daily maximum concentration may be based on the average of up to four grab sample results in the 24 hour period.

[d] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[e] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[f] Any facility that properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT

[New sources]

Discharge	Regulated and monitored discharge parameter	Discharge limitation/ prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
Drilling Fluids	Oil-based Drilling Fluids.	No discharge.			
	Oil-contaminated Drilling Fluids.	No discharge.			
	Drilling Fluids to Which Diesel Oil has been Added.	No discharge.			
	Mercury and Cadmium in Barite.	No discharge of drilling fluids if added barite contains Hg in excess of 1.0 mg/kg or Cd in excess of 3.0 mg/kg (dry wt).	Once per new source of barite used.	Flame and flameless AAS.	mg Hg and mg Cd/kg in stock barite.
	Toxicity[a]	30,000 ppm daily minimum.	Once/month ..... Once/end of well[b]	Grab/96–hr LC50 using Mysidopsis bahia; Method at 58 FR 12507.	Minimum LC50 of tests performed and monthly average LC50.
		30,000 ppm monthly average minimum.	Once/month.		
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Maximum Discharge Rate.	1,000 barrels/hr	Once/hour	Estimate	Max. hourly rate in bbl/hr.
	Mineral Oil	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill..			
	Drilling Fluids Inventory.	Record	Once/well	Inventory	Chemical constituents.
	Volume	Report	Once/month	Estimate	Monthly total in bbl/month.
	Within 1000 Meters of an Areas of Biological Concern (ABC).	No discharge.			
Drill Cuttings	(4) Note: Drill cuttings are subject to the same limitations/prohibitions as drilling fluids except *Maximum Discharge Rate.*				
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Volume	Report	Once/month	Estimate	Monthly total in bbl/month.
Produced Water	Oil and Grease	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month[c]	Grab/Gravimetric	Daily max. and monthly avg.
	Toxicity	Acute toxicity (LC50); critical dilution as specified by the requirements at Part I.B.3(b) and Appendix A of this permit.	Once/2 months	Grab/96-hour LC50 using Mysidopsis bahia and inland silverside minnow (Method in EPA/600/4–90/027F).	Minimum LC50 for both species and full laboratory report.
	Flow (bbl/month)	.....	Once/month	Estimate	Monthly rate.
	Within 1000 meters of an Area of Biological Concern (ABC).	No discharge.			
Deck Drainage	Free Oil	No free oil	Once/day when discharging[d].	Visual sheen	Number of days sheen observed.
	Volume (bbl/month) ..	.....	Once/month	Estimate	Monthly total.
Produced Sand	No Discharge.				
Well Treatment, Completion, and Workover Fluids (includes packer fluids)[e].	Free Oil	No free oil	Once/day when discharging.	Static sheen	Number of days sheen observed.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

[New sources]

Discharge	Regulated and monitored discharge parameter	Discharge limitation/ prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
.					
	Oil and Grease	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month	Grab/Gravimetric	Daily max. and monthly avg.
	Priority Pollutants	No priority pollutants	.....	Monitor added materials.	
	Volume (bbl/month) ..	.....	Once/month	Estimate	Monthly total.
Sanitary Waste (Continuously manned by 10 or more persons)[f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
	Residual Chlorine	At least (but as close to) 1 mg/l.	Once/month	Grab/Hach CN–66–DPD.	Concentration.
	Flow (MGD)	.....	Once/month	Estimate	Monthly ave.
Sanitary Waste (Continuously manned by 9 or fewer persons or intermittently by any)[f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
Domestic Waste	Solids	No floating solids; no food waste within 12 miles of land; comminuted food waste smaller than 25–mm beyond 12 miles.	Once/day following morning or midday meal at time of maximum expected discharge.	Observation	Number of days solids observed.
Miscellaneous Discharges—Desalination Unit; Blowout Preventer Fluid; Uncontaminated Ballast/Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Uncontaminated Freshwater; Excess Cement Slurry; Diatomaceous Earth Filter Media; Condensation water.	Free Oil	No free oil	Once/day when discharging.	Visual sheen	Number of days sheen observed.
Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added..	Treatment Chemicals	Most Stringent of: EPA label registration, maximum manufacturer's recommended dose, or 500 mg/l.			
	Free Oil	No Free Oil	1/week	Visual Sheen	Number of days sheen observed.
	Toxicity	48–hour ave. minimum NOEC and monthly ave. minimum NOEC..	Rate Dependent	Grab	Lowest NOEC observed for either of the two species.

[a] Toxicity test to be conducted using suspended particulate phase (SPP) of a 9:1 seawater:mud dilution. The sample shall be taken beneath the shale shaker, or if there are no returns across the shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[b] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[c] The daily maximum concentration may be based on the average of up to four grab sample results in the 24 hour period.

[d] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[e] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

f Any facility that properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

[FR Doc. 00–19913 Filed 8–7–00; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6847–8]

Notice of Approval of the State of Minnesota's Submission Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given of approval of the State of Minnesota's submission of criteria, methodologies, policies and procedures for the Great Lakes System pursuant to Section 118(c) of the Clean Water Act.

DATES: EPA's approval is effective on August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mery Jackson-Willis, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604, or telephone her at (312) 353–3717.

Copies of a letter from EPA to the State of Minnesota describing EPA's decision are available upon request by contacting Ms. Jackson-Willis. This letter and other related materials submitted by the State in support of its submission and considered by EPA in its decision, as well as documents generated by EPA explaining the basis for its decision, are available for review by appointment at U.S. EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604. Appointments may be made by calling Ms. Jackson-Willis.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR Part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 and 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of Part 132 that shall apply for discharges within the State.

On April 28, 1998, EPA published in the **Federal Register** notice of its receipt of Minnesota's Great Lakes Guidance submission and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portion of that submission. 63 FR 23285. On September 28, 1999, EPA issued a letter notifying the Minnesota Pollution Control Agency (MPCA) that, based upon commitments by MPCA, including a commitment to enter into an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program, EPA believed that the State of Minnesota had generally adopted requirements consistent with the Guidance. On October 20, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its September 28, 1999, letter. 64 FR 56505. On May 1, 2000, Minnesota fulfilled the commitments described in the letter, including entering into an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which MPCA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance.

EPA has determined that the entirety of Minnesota's submission is consistent with 40 CFR Part 132. The elements of Minnesota's submission that EPA is approving consist of standards, methodologies, policies and procedures adopted in accordance with the following provisions of the Guidance: 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 of Part 132; the antidegradation policy in Appendix E of Part 132; and the implementation procedures in Appendix F of Part 132. EPA approves these elements in Minnesota's submission pursuant to 40 CFR 132.5. Today's final action only addresses the Minnesota provisions adopted to comply with section 118(c)(2) of the Clean Water Act and 40 CFR Part 132. EPA is taking no action at this time with respect to other revisions Minnesota may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–20023 Filed 8–7–00; 8:45 am]
BILLING CODE 6560–5–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

August 3, 2000.

Deletion of Agenda Items from August 3rd Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the August 3, 2000, Open Meeting and previously listed in the Commission's Notice of July 27, 2000. Item 4 has been adopted by the Commission.

Item No., Bureau, and Subject

3—Common Carrier—Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider an Order on Reconsideration and Second Further Notice of Proposed Rule Making regarding the collocation obligations of incumbent LECs.

4—International—Title: Applications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit (File Nos. SAT–A/O–20000119–00002 to SAT–A/O–20000119–00018; SAT–AMD–20000119–00029 to SAT–AMD–20000119–00041; SAT–LOA–20000119–00019 to SAT–LOA–20000119–00028. Summary: The Commission will consider a Memorandum Opinion Order and Authorization concerning applications requesting (1) licenses to operate 17 existing C-band and Ku-band satellites, presently owned and operated by the International Telecommunications Satellite Organization (INTELSAT); (2) licenses to construct, launch and operate 10 planned satellites by INTELSAT for operation in these bands; and (3) for authority to relocate certain currently operating satellites to other orbit locations upon the launch of planned satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–20188 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Clearwater and Roseau Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19981 Filed 8–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period and the expansion of the incident type for this disaster. The incident period for this declared disaster is now May 17—July 26, 2000. The incident type is now amended to include tornadoes.

The notice is further amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27,2000:

Yellow Medicine County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–19982 Filed 8–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1336–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont FEMA–1336–DR, dated July 27, 2000, and related determinations.

EFFECTIVE DATE: July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe storms and flooding on July 14–18, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster: Addison, Bennington, Orange, Rutland, Windham, and Windsor Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–19983 Filed 8–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Columbia and Iowa Counties for Individual Assistance (already designated for Public Assistance).

Waukesha County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–19980 Filed 8–7–00; 8:45 am]

BILLING CODE 6718–02–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 September 1, 2000.

A Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Farmers National Banc Corp., Canfield, Ohio; to merge with Security Financial Corp., Niles, Ohio, and thereby indirectly acquire Security Dollar Bank, Niles, Ohio.

2. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Heritage Bancshares, Inc., Orange Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank of North Florida (formerly known as Clay County Bank), Orange Park, Florida.

Board of Governors of the Federal Reserve System, August 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–20016 Filed 8–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Citizens Community Bancorp, Inc.*, Marco Island, Florida; to acquire Citizens Financial Corporation, Marco Island, Florida, and thereby engage in activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–20017 Filed 8–7–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting on August 30–31, 2000.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Wednesday, August 30, 2000, from 9:00 AM to 4:00 PM, and Thursday, August 31, 2000, from 9:00 AM to 4:00 PM, in room 7C13, the Elmer staats Briefing Room, 441 G St., NW, Washington, DC.

The purpose of the meeting is to discuss:

—Stewardship reporting issues,

—National Defense PP&E issues, and

—A request to amend SFFAS 7, *Accounting for Revenue and Other Financing Sources.*

A Steering Committee meeting of the Board's Principal Board members will be held in conjunction with the Board meeting. A more detailed agenda will be available after August 18 on the FASAB website (*www.financenet.gov/fasab.htm*) or by calling 202–512–7350.

Any interested person may attend the meeting as an observer. Board discussion and reviews are open to the public. Security requires advance notice of your attendance. Please notify FASAB by August 28 of your planned attendance by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 6814, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: August 2, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–19999 Filed 8–7–00; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

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 1. Voluntary Industry Partner Surveys to Implement Executive Order 12862—Extension—0990–0220—The Department of Health and Human Services plans to conduct surveys of its contractors in each agency to obtain feedback for improving the Department's procurement process. *Respondents:* Contractors of the Department—*Reporting Burden Information—Number of Respondents:* 2400; *Average Burden per Response:* 12 minutes; *Total Annual Burden:* 480 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, D.C., 20201. Written comments should be received on or before October 10, 2000.

Dated: July 31, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–20011 Filed 8–7–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Agency Information Collection Activities: Submission for OMB review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. OCR Pre-grant Automation Project—NEW—The Office for Civil Rights (OCR) has developed a standardized automated review format for the conduct of civil rights compliance investigations of health care providers who have requested certification to participate in the Medicare program. Health care providers requesting certification must review their policies/practices and submit material to demonstrate compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. *Respondents:* Businesses or other for-profit, State, Local or Tribal Government; *Annual Number of Respondents:* 3,000; *Frequency of Response:* one time; *Average Burden per Response:* 16 hours; *Annual Burden:* 48,000 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: July 31, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–20010 Filed 8–7–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

Time and Date: 8:00 a.m.–5:00 p.m. EDT, August 18, 2000.

Place: The Harvard Faculty Club, 20 Quincy Street, Cambridge, MA 02138.

Status: Open.

Purpose: This meeting of the Executive Subcommittee will be held as a retreat for Committee planning purposes. Planning issues will include how the Committee might better organize and integrate across priorities, the efficiency and effectiveness of the current Committee structure and meeting schedule, and whether the Committee is appropriately positioned to address new and emerging topics. Plans will also be made for future Committee meetings later in 2000 and in early 2001.

Contact Person for more Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: htt://www.ncvhs.hhs.gov/, where further information will be posted when available.

Dated: August 2, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–20012 Filed 8–7–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1374]

Revisions of Certain Food Chemicals Codex Monographs, New General Test Procedures, Revisions of General Test Procedures, and Revisions of Test Solutions; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specification monographs, general test procedures, and test solutions in the fourth edition, as well as on proposed new general test procedures. Revisions and corrections to current specification monographs for certain substances used as food ingredients, new and revised general test procedures, and revised test solutions are being prepared by the National Academies (previously the National Academy of Science) Institute of Medicine (IOM) Committee on Food Chemicals Codex (the committee). This material is expected to be presented in the next publication of the Food Chemicals Codex (the third supplement to the fourth edition), scheduled for public release in the summer of 2001.

DATES: Submit written comments by September 22, 2000. (The committee advises that comments received after this date may not be considered for the third supplement to the fourth edition. Comments received too late for consideration for the third supplement will be considered for later supplements or for a new edition of the Food Chemicals Codex.)

ADDRESSES: Submit written comments and supporting data and documentation to the Committee on Food Chemicals Codex/FO–3042, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the proposed revisions to current monographs, the proposed new general test procedures, the proposed revised general test procedures, and the proposed revised test solutions may be obtained upon written request from IOM (address above) or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs, general test procedures, or test solutions desired. Copies may also be obtained through the Internet at http://www.nas.edu/iom/fcc.

FOR FURTHER INFORMATION CONTACT:

Ricardo Molins, Project Director/FO–3042, Committee on Food Chemicals Codex, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Division of Product Manufacture and Use (HFS–246), Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with the IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of January 29, 1999 (64 FR 4667), and of May 25, 1999 (64 FR 28204), FDA announced that the committee was considering new and revised monographs and new and revised general analytical procedures for inclusion in the second supplement to the fourth edition of the Food Chemicals Codex. The second supplement to the fourth edition of the Food Chemicals Codex was released by the National Academy Press (NAP) in April 2000. It is now available for sale from NAP (1–800–624–6242; 202–334–3313; FAX 202–334–2451; Internet http://www.nap.edu); 2101 Constitution Ave. NW., Lockbox 285, Washington, DC 20055.

FDA is announcing that the committee is soliciting comments and information on additional proposed changes to certain current monographs, on proposed new general test procedures, on proposed revised general test procedures, and on proposed revised test solutions. These revised monographs, general test procedures, and test solutions, as well as the new general test procedures, are expected to be published in the third supplement to the fourth edition of the Food Chemicals Codex. Copies of the proposed items may be obtained upon written request from IOM at the address listed above or on the Internet at http://www.nas.edu/iom/fcc.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's revised monographs, new and revised general test procedures, or revised test solutions into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the proposed revisions of 131 current monographs, the 3 proposed new general test procedures, 2 proposed revisions of general test procedures, and 2 proposed revisions for test solutions listed below:

I. Current Monographs to which the Committee Proposes to Make Revisions

Ammonium Phosphate, Dibasic (fluoride test corrected)
L-Arginine (identification test corrected)
DL-Aspartic Acid (identification test corrected)
L-Aspartic Acid (identification test corrected)
Cellulose Gum (assay updated)
FD&C Blue No. 1 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Blue No. 2 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Green No. 3 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Red No. 3 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Red No. 40 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Yellow No. 5 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
FD&C Yellow No. 6 (entire monograph rewritten to reflect U.S. FDA regulations regarding certified FD&C color additives)
Flavor Chemicals

Acetoin (monograph divided into monomer and dimer; refractive index and specific gravity revised)
2-Acetylpyrrole (color and melting range revised; water specification deleted)
Allyl Isothiocyanate (boiling point revised)
1-Amyl Alcohol (odor revised)
Amyl Butyrate (odor revised)
Amyl Formate (odor revised)
Butyric Acid (specific gravity revised)
Cyclohexyl Acetate (odor revised)
p-Cymene (odor revised)
(*E*),(*E*)-2,4-Decadienal (odor and solubility revised)
(*E*)-2-Decenal (odor and solubility revised)
(*Z*)-4-Decenal (odor and solubility revised)
1,2-Di-[(1-ethoxy)ethoxy]propane (odor revised)
Dihydrocarveol (odor and solubility revised)
d-Dihydrocarvone (odor and other requirements revised)
Dimethyl Benzyl Carbinyl Butyrate (odor and solubility revised)
2,3-Dimethylpyrazine (odor and solubility revised)
2,5-Dimethylpyrrole (odor revised)
Dimethyl Succinate (odor revised)
Dimethyl Sulfide (boiling point revised)
δ-Dodecalactone (solubility revised)
(*E*)-2-Dodecen-1-al (solubility revised)
Ethone (odor revised)
Ethyl Acetoacetate (odor revised)
Ethyl Benzoyl Acetate (odor revised)
Ethyl-(*E*)-2-Butenoate (odor revised)
Ethylene Brassylate (assay revised)
2-Ethyl Hexanol (odor revised)
Ethyl Lactate (odor revised)
Ethyl Levulinate (odor and boiling point revised)
Ethyl 2-Methylbutyrate (odor, solubility and refractive index revised)
Ethyl 2-Methylpentanoate (odor revised)
Ethyl 3-Methylthiopropionate (odor and assay revised)
Ethyl Salicylate (odor and refractive index revised)
Ethyl 10-Undecenoate (odor revised)
Ethyl Valerate (odor revised)
Farnesol (solubility revised)
Fusel Oil, Refined (odor revised)
(*E*),(*E*)-2,4-Heptadienal (solubility revised)
Heptanal (specific gravity revised)
(*Z*)-4-Hepten-1-al (solubility revised)
(*E*)-2-Hexen-1-al (odor and solubility revised)
(*Z*)-3-Hexenyl Isovalerate (odor, solubility, and specific gravity revised)
(*Z*)-3-Hexenyl 2-Methylbutyrate (odor, solubility, and assay revised)
Hexyl Alcohol (assay revised)
Hexyl 2-Methylbutyrate (solubility revised)
Isoamyl Alcohol (odor revised)
Isoamyl Butyrate (Assay, refractive index, and specific gravity revised)
Isoamyl Phenyl Acetate (odor revised)
Isoamyl Salicylate (odor revised)
Isobutyl Cinnamate (assay revised)
Isobutyraldehyde (assay revised)
Isopropyl Acetate (odor revised)
Levulinic Acid (odor revised)
l-Limonene (other requirements revised)
Menthol (odor, physical form, and solubility revised)
l-Menthone (odor and solubility revised)
dl-Menthyl Acetate (specific gravity revised; solubility in alcohol added)
l-Menthyl Acetate (specific gravity and other requirements revised)
2-Methoxy-3(5)-Methylpyrazine (odor and solubility revised)
2-Methyl Butanal (odor revised)
3-Methyl Butanal (odor revised)
2-Methylbutyl Acetate (odor revised)
2-Methylbutyl Isovalerate (FEMA number revised)
Methyl Butyrate (odor revised)
2-Methylbutyric Acid (odor revised)
Methyl Ionones (odor and solubility revised)
Methyl Isobutyrate (odor revised)
Methyl-3-Methylthiopropionate (odor and boiling point revised)
4-Methyl-2-Pentanone (refractive index revised)
Methyl Propyl 3-Methyl Butyrate (odor revised)
4-Methyl-5-Thiazole Ethanol (odor revised)
Nerolidol (formula weight and odor revised)
(*E*),(*E*)-2,4-Nonadienal (solubility revised)
(*E*),(*Z*)-2,6-Nonadienal (solubility and assay revised)
(*E*),(*Z*)-2,6-Nonadienol (solubility revised)
Nonanoic Acid (odor revised)
(*E*)-2-Nonenal (solubility and specific gravity revised)
(*E*)-2-Nonen-1-ol (solubility revised)
(*Z*)-6-Nonen-1-ol (odor and solubility revised)
3-Octanol (solubility revised)
1-Octen-3-yl Acetate (odor and solubility revised)
1-Octen-3-yl Butyrate (odor and solubility revised)
Propenylguaethol (odor and solubility revised)
Propyl Acetate (odor revised)
Propyl Alcohol (odor revised)
Propyl Propionate (odor revised)
Terpinen-4-ol (odor revised)
α-Terpineol (odor and assay revised)
Terpinyl Acetate (assay revised)
Terpinyl Propionate (odor and assay revised)
2-Tridecenal (solubility revised)
Trimethylamine (refractive index revised)
3,5,5-Trimethyl Hexanal (odor revised)
2,3,5-Trimethylpyrazine (solubility revised)
1,3,5-Undecatriene (assay revised)
(*E*)-2-Undecenol (solubility in alcohol added)
Verataldehyde (odor revised)
Zingerone (odor revised)

Grape Skin Extract (assay and lead specification corrected, arsenic and pesticides specifications deleted)
DL-Isoleucine (identification test corrected)
L-Isoleucine (identification test corrected)
Lanolin, Anhydrous (arsenic specification deleted)
Lemongrass Oil (angular rotation changed to reflect commercial standards)
DL-Leucine (identification test corrected)
Lovage Oil (solubility in alcohol and specific gravity changed to reflect commercial standards)
Mentha Arvensis Oil, Partially Dementholized (angular rotation changed to reflect commercial standards)
Pectins (degree of amide substitution and total galacturonic acid in the pectin component corrected)
Potassium Sorbate (color of sample in description corrected)
L-Proline (identification test corrected)
Quinine Hydrochloride (barium specification deleted)
DL-Serine (identification test corrected)
L-Serine (identification test corrected)
Silicon Dioxide (instructions for the conduct of the Heavy Metals test clarified, Arsenic specification deleted)

Sodium Phosphate, Tribasic (assay and fluoride tests corrected)

Sorbic Acid (sample color in description corrected)

L-Threonine (identification test corrected)

Triacetin (description corrected to show solubility)

L-Valine (identification test corrected)

II. Proposed New General Test Procedures

α-Acetolactatedecarboxylase Activity (new enzyme assay)

Aminopeptidase (Leucine) Activity (new enzyme assay)

Lysozme Activity (new enzyme assay)

III. Proposed Revised General Test Procedures

Curcumin Content (standard preparation revised to indicate product source)

Fluoride Limit Test (Method IV) (modified to a pass/fail system with a 10-mg/kg lower limit)

IV. Proposed Revised Test Solutions

Quimociac TS (form of quinoline revised)

Sodium Hydroxide, 1 *N* (use of barium hydroxide removed)

Interested persons may, on or before September 22, 2000, submit to IOM written comments regarding the monographs, general test procedures, and test solutions listed in this notice. Timely submission will ensure that comments are considered for the third supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the third supplement, but will be considered for subsequent supplements or for a new edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs, the general test procedures, or test solutions listed in this notice are to be submitted to IOM (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. IOM will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 2000.

L. Robert Lake,

Director for Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–19993 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing changes to its Orphan Products Development (OPD) grant program for fiscal year (FY) 2001. The previous announcement of this program, which was published in the **Federal Register** of July 23, 1999, is superseded by this announcement.

DATES: The application receipt dates are October 16, 2000, and March 15, 2001.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Maura C. Stephanos, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–522), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183. (Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.)

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Maura C. Stephanos (address and telephone number cited above).

Regarding the programmatic aspects of this notice: Ronda A. Balham, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: FDA is announcing the anticipated availability of funds for FY 2001 for awarding grants to support clinical trials on the safety and effectiveness of products for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Contingent on availability of FY 2001 funds, it is anticipated that $12.5 million will be available, of which $8.5 million will be for noncompeting continuation awards. This will leave $4 million for funding approximately 12 to 15 new applications. Of this amount, approximately $1 million will be awarded in the first half of the funding cycle to successful applications received on the October 15, 2000, due date. The earliest start date for these awards may be anytime after March 1, 2001. All approved applications not funded in the first half of the funding cycle will remain in competition for the second half of the funding cycle. The anticipated start date for these applications will be September 30, 2001. Applicants are advised that applications submitted for the first due date and funding cycle may be withdrawn and resubmitted for the second due date and funding cycle.

Any phase clinical trial is eligible for up to $150,000 in direct costs per annum plus applicable indirect costs for up to 3 years. Phase 2 and 3 clinical trials are eligible for up to $300,000 in direct costs per annum plus applicable indirect costs for up to 3 years.

FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a national activity to reduce morbidity and mortality and to improve the quality of life. Applicants may obtain a hard copy of the Healthy People 2010 objectives, Volumes I and II, Conference Edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center, P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of Healthy People 2010 is priced at $2 per copy. Telephone orders can be placed to the Center on 301–468–5690. The Center also sells the complete Conference Edition in CD–ROM format (B0071) for $5. This publication is available as well as on the Internet at www.health.gov/healthypeople. Website viewers should proceed to ''Publications.''

PHS policy is that applicants for PHS clinical research grants are required to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study; special emphasis must be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions which disproportionately affect them. This policy is intended to apply to males and females of all ages. If women or minorities are excluded or inadequately represented in clinical research, particularly in proposed population-based studies, a clear compelling rationale must be provided.

I. Program Research Goals

OPD was established to identify and facilitate the availability of orphan products. In the OPD grant program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is lower than 200,000 per annum.

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder. The grants are funded under the legislative authority of section 301 of the PHS Act (42 U.S.C 241).

The goal of FDA's OPD grant program is the clinical development of products for use in rare diseases or conditions where no current therapy exists or where current therapy would be improved. FDA provides grants to conduct clinical studies intended to provide data acceptable to the agency that will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the ''Background and Significance'' section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. Information regarding meetings and/or discussions with FDA reviewing division staff about the product to be studied should also be provided as an appendix to the application. This information is extremely important for the review process.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the PHS Act (42 U.S.C. 262). All studies of new drug and biological products must be conducted under the FDA's investigational new drug (IND) procedures and studies of medical devices must be conducted under the investigational device exemption (IDE) procedures. Studies of approved products to evaluate new orphan indications are also acceptable; however, these are also required to be conducted under an IND or IDE to support a change in labeling. (See section V.B of this document (Program Review Criteria) for critical requirements concerning IND/IDE status of products to be studied under these grants.)

Studies submitted for the larger grants ($300,000) must be continuing in phase 2 or phase 3 of investigation. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with it. Phase 3 trials gather additional information about effectiveness and safety that is necessary to evaluate the overall risk-benefit relationship of the product and to provide an adequate basis for physician labeling. Studies submitted for the smaller grants ($150,000) may be phase 1, 2, or 3 trials. If a study is submitted as a phase I/II trial, the maximum budget support for all years requested may not exceed $150,000 per year. Budgets for all years of requested support may not exceed the $300,000 or $150,000 limitation, whichever is applicable.

Applications must propose a clinical trial of one therapy for one indication. The applicant must provide supporting evidence that a sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients is available for the study.

Funds may be requested in the budget for travel to FDA to meet with reviewing division staff about product development progress.

II. Human Subject Protection and Informed Consent

A. Protection of Human Research Subjects

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Human Research Protection (OHRP) (formerly the Office for Protection from Research Risks) prospective recipients must have on file with OHRP an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board (IRB) for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OHRP, a formal request for the required Assurance will be issued by OHRP at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OHRP, may spend funds on human subject activities or accrue subjects. No performance site, even with an OHRP-approved and applicable Assurance, may proceed without approval by OHRP of an applicable Assurance for the recipients. Applicants may wish to visit the OHRP website at http://ohrp.osophs.dhhs.gov/ to obtain preliminary guidance on human subjects issues. Applicants wishing to contact OHRP should provide their institutional affiliation, geographic location, and all available request for applications (RFA) citation information.

Applicants are advised that the section on human subjects in the application kit entitled ''Section C. Specific Instructions—Forms, Item 4, Human Subjects,'' on pages 7 and 8 of the application kit, should be carefully reviewed for the certification of the IRB approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review. Those

approved applicants who do not have a current multiple project assurance with OHRP will be required to obtain a single project assurance from OHRP prior to award.

B. Informed Consent

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The elements of informed consent are stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic elements of informed consent.

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others that may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent.

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study.

The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws that require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

III. Reporting Requirements

An annual Financial Status Report (SF–269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

For continuing grants, an annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

Additionally, all new and continuing grants must comply with all regulatory requirements necessary to maintain active status of their IND/IDE. This includes, but is not limited to, submission of an annual report to the appropriate regulatory review division within FDA. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be prepared by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the official grant file and may be available to the grantee upon request consistent with FDA disclosure regulations. Additionally, the grantee organization will be required to comply with all Special Terms and Conditions which state that future funding of the study will be contingent on recommendations from the OPD Project Officer verifying that: (1) There has been adequate progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial (e.g., annual report to IND/IDE file, communication of all protocol changes to the appropriate FDA Center, etc.).

A final program progress report, Financial Status Report (SF–269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

IV. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The National Institutes of Health's (NIH) modular grant program does not apply to this FDA grant program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 355, 360b, and 360e), section 351 of the PHS

Act (42 U.S.C. 262), and regulations issued under any of these sections.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards.

C. Length of Support

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year; (2) the availability of Federal funds; and (3) compliance with regulatory requirements of the IND/IDE.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Before an award will be made, OPD will verify the active status of the IND/IDE for the proposed study. If the IND/IDE for the proposed study is not active or if an annual report has not been submitted to the IND file in the last 12 months, no award will be made. Further, documentation of IRB approvals for all performance sites must be on file with the Grants Management Office, FDA (address above), before an award can be made.

V. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness to this RFA. Responsiveness is defined as adherence to the following Program Review Criteria. Applications that are found to be nonresponsive will be returned to the applicant without further consideration.

B. Program Review Criteria

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the OPD program staff and all questions of an administrative or financial nature must be directed to the grants management staff. (See **FOR FURTHER INFORMATION CONTACT** section of this document.) Responsiveness will be based on the following criteria:

1. The application must propose a clinical trial intended to provide safety and/or efficacy data of one therapy for one orphan indication. Additionally, there must be an explanation in the ''Background and Significance'' section of how the proposed study will either facilitate product approval or provide essential data needed for product development.

2. The prevalence, not incidence, of population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the ''Background and Significance'' section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. If the product has been designated by FDA as an orphan product for the proposed indication, a statement of that fact will suffice. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per annum.

3. The number assigned to the IND/IDE for the proposed study should appear on the face page of the application with the title of the project. Only medical foods that do not require premarket approval are exempt from this requirement. The IND/IDE must be in active status and in compliance with all regulatory requirements of FDA at the time of submission of the application. In order to meet this requirement, the original IND/IDE application, pertinent amendments, and the protocol for the proposed study must have been received by the appropriate FDA reviewing division a minimum of 30 days prior to the due date of the grant application. Studies of already approved products, evaluating new orphan indications, must also have an active IND. Exempt IND's must have their status changed to active to be eligible for this program. If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor verifying access to the IND/IDE is required, and both the application's principal investigator and the study protocol must have been submitted to the IND/IDE.

4. The requested budget should be within the limits (either $150,000 in direct costs for each year for up to 3 years for any phase study, or $300,000 in direct costs for each year for up to 3 years for phase 2 or 3 studies) as stated in this request for applications. Multi-phase studies that include phase I are only eligible for $150,000 per annum for the entire 3–year period. Any application received that requests support in excess of the maximum amount allowable for that particular study will be considered nonresponsive and returned to the applicant unreviewed.

5. Consent and/or assent forms, and any additional information to be given to a subject, should be included in the grant application.

6. All applicants should follow guidelines specified in the PHS 398 Grant Application kit.

7. Evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation must be included in the application. A current letter from the supplier as an appendix will be acceptable.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

C. Scientific/Technical Review Criteria

The ad hoc expert panel will provide the first level of review. The application will be judged on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study;

2. The quality and appropriateness of the study design to include the rationale for the statistical procedures;

3. The statistical justification for the number of patients chosen for the trial, based on the proposed outcome measures and the appropriateness of the statistical procedures to be used in analysis of the results;

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

5. The qualifications of the investigator and support staff, and the resources available to them;

6. The adequacy of the justification for the request for financial support;

7. The adequacy of plans for complying with regulations for protection of human subjects; and

8. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this RFA.

The priority score will be based on the scientific/technical review criteria in section V.C of this document. In addition, the reviewers may advise the program staff concerning the appropriateness of the proposal to the goals of the OPD Grant Program described in section I (Program Research Goals) of this document.

D. Award Criteria

Resources for this program are limited. Therefore, should two or more applications be received and approved by FDA which propose duplicative or very similar studies, FDA will support only the study with the best score.

VI. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98) or the original and two copies of the PHS 5161 (Rev. 6/99) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura C. Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of the PHS 5161. The application receipt dates are October 16, 2000, and March 15, 2001. No supplemental or addendum material will be accepted after the receipt date. Evidence of final IRB approval will be accepted for the file after the receipt date.

The outside of the mailing package and item two of the application face page should be labeled, ''Response to RFA FDA OPD–2001.''

If an application for the same study was submitted in response to a previous RFA (RFA FDA–OPD–2000) but has not yet been acted upon, a submission in response to this RFA will be considered a request to withdraw the previous application. Resubmissions are treated as new applications; therefore, the applicant may wish to address the issues presented in the summary statements from the previous review.

VII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt dates.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to the NIH, that is then forwarded to FDA and received after the applicable due date, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address http://www.nih.gov/grants/funding/phs398/phs398.html; the forms can be found at http://www.nih.gov/grants/funding/phs398/forms__toc.html). However, as noted above, applications are not to be mailed to the NIH. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by the NIH on its applications). Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications via the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the CSR, NIH. Applications from State and Local Governments may be submitted on Form PHS 5161 (Rev. 6/99) or Form PHS 398 (Rev. 4/98).

The face page of the application should reflect the request for applications number RFA–FDA–OPD–2001. The title of the proposed study should include the name of the product and the disease/disorder to be studied along with the IND/IDE number. The format for all subsequent pages of the application should be single-spaced and single-side.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: July 31, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19991 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1343]

Medical Devices; Exemption From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a notice announcing that it has received a petition requesting exemption from the premarket notification requirements for the barium enema retention catheter with or without bag class II device (special controls). FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by September 7, 2000.

ADDRESSES: Submit written comments on this notice to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act)

(21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513 (c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to published in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify 159 when prompted for the document shelf number.

III. Petition

FDA received the following petition requesting an exemption from premarket notification for class II devices: E–Z–EM, Inc, Barium enema retention catheter with or without bag (21 CFR 876.5980).

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this petition by September 7, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–19951 Filed 8–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 28211]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public law 97–451, a petition for reinstatement of oil and gas lease CACA 28211 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from November 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 28211 effective November 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: July 27, 2000.

Modesto Tamondong,

Acting Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 00–19957 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Actions, Plumas County, California

ACTION: Termination of Recreation and Public Purposes Classification (CACA–23622) and Notice of Noncompetitive Sale of Public Land in Plumas County, California; (CACA–23622–02).

SUMMARY: This notice effects public lands in Plumas County, California within T.22N., R.14E., Sections 23 and 26, M.D.M. Classification under the Recreation and Public Purposes Act will be terminated and public lands will be offered for noncompetitive sale to Portola Cemetery District.

SUPPLEMENTARY INFORMATION: On July 27, 1989, public lands in Plumas County, California, described below were segregated and classified as suitable for sale to the Portola Cemetery District pursuant to the Recreation and Public Purposes act (R&PP: T.22N., R.14E., Section 23, SW¼SE¼SW¼SW¼, SE¼SW¼SW¼SW¼; Section 26, NW¼NE¼NW¼NW¼, NE¼NW¼NW¼NW¼, M.D.M., containing 10 acres more or less. The R&PP classification is hereby terminated to allow other uses consistent with planning and current land classification. The lands are opened only to disposal by noncompetitive sale to Portola Cemetery District pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713). Lands described as T.22N., R.14E., Tract 37, Sections 23 and section 26, M.D.M., containing .65 acre more or less have been examined and found suitable for direct sale at not less than the estimated fair market value of $500. The land will not be offered for sale until at least October 10, 2000. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is not essential to any bureau of Land Management program and no resource needed by the public will be lost through the transfer to private ownership. Conveyance is consistent with current BLM land use planning and is in the public interest.

The land is being offered for direct sale to the Portola Cemetery District for the continued operation of a cemetery. It has been determined that the subject parcel contains no known mineral values; therefore mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976, Section 209 entitled Reservation and Conveyance of Minerals.

The patent, when issued, may contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of sale, are available for review at the Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA 96130.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the lands to the Field Manager at the above address. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the lands will be offered for sale to Portola Cemetery District.

Dated: August 1, 2000.

Linda D. Hansen,

Field Manager.

[FR Doc. 00–19977 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mining Access Plan of Operations, Death Valley National Park, CA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior, National Park Service (NPS) announces the availability of a Mining Access Plan of Operations. The NPS received a proposal (a mining plan of operations) from a private party, Big Pine Distributors, to use an open dirt road within Death Valley National Park for commercial mining purposes—for access and egress to an unpatented talc mine outside the park on Bureau of Land Management land. The NPS road section is 1.2 miles long. It is the only route to the mining claims.

An environmental assessment (EA) on the subject was completed. It presents the proposal and the alternatives, and it presents an analysis of their environmental impacts. The NPS announces the availability of the EA, open for public comment until August 31, 2000. The NPS is asking for comments on the EA—its accuracy, completeness, and scope. Comments will help the NPS in its permit planning, to make a better, more informed decision on this pending access permit request.

DATES: Submit comments on the environmental assessment by August 31, 2000.

ADDRESSES: Please send requests for the Plan of Operations or the EA to Richard Anderson, Environmental Specialist, Death Valley National Park, Death Valley, CA 92328, or by fax at 760–786–3258, or by email at deva_resource_management@nps.gov. The EA will be posted on the park's web page at www.nps.gov/deva (click on Resource Management and Planning).

FOR FURTHER INFORMATION CONTACT: Richard Anderson, 760–786–3251.

Richard H. Martin,

Superintendent.

[FR Doc. 00–19953 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and Preserve and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Subsistence Resource Commission for Denali National Park and Preserve. The following agenda items will be discussed:

(1) Call to order by Chair.

(2) SRC roll call and Confirmation of Quorum.

(3) Welcome and introductions.

(4) Approval of minutes of last meeting.

(5) Additions and corrections to agenda.

(6) Business:

a. Denali Subsistence Brochure.

b. Toklat-Sanctuary Wolf Issues.

c. Denali Back Country Management Plan.

d. Denali Subsistence Management Plan.

(7) Public and other agency comments.

(8) Set time and place of next SRC meeting.

(9) Adjournment.

DATES: The meeting will begin at 9 a.m. on Friday, August 18, 2000 and conclude at approximately 5 p.m.

LOCATION: Cantwell Community Center, Cantwell, Alaska.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence Coordinator, P.O. Box 9, Denali Park, Alaska 99755. Phone (907) 683–9544 or (907) 456–0595.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul Anderson,

Deputy Regional Director.

[FR Doc. 00–19954 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From Fresno, Kings, and Madera Counties, CA in the Possession of the Department of Anthropology, California State University, Fresno, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Department of Anthropology, California State University, Fresno, CA. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Department of Anthropology, California State University, Fresno, professional staff.

During the 1950's and 1960's, human remains representing a minimum of 122 individuals were recovered from excavations conducted by Fresno State College staff, in addition to individuals given to the college by various law enforcement agencies. The packaging and labeling of the human remains was destroyed many years ago, making positive identification for these human remains impossible. Extant documentation, including field notes and reports of the archeological projects conducted by Fresno State College, now the California State University, Fresno, indicates that these remains probably came from sites in Fresno, Kings, and Madera Counties, CA. No known individuals were identified. No associated funerary objects are present.

The absence of specific information on the provenience, age, or cultural context of these remains makes it impossible to determine their cultural affiliation, and they have been inventoried as ''culturally unidentifiable.'' Department of Anthropology, California State University, Fresno, officials consulted with the four Federally recognized Native American tribes and non-Federally recognized Native American groups of the central San Joaquin Valley, the geographic area of the probable origin of the remains, and all parties agreed that the remains should be repatriated to the Central Valley and Mountain Reinterment Association, which has been authorized to act on behalf of the Native American tribes and groups.

On April 15, 1999, California State University, Fresno, petitioned the Native American Graves Protection and Repatriation Review Committee concerning the Central Valley and Mountain Reinterment Association's request for repatriation of these individuals listed as ''culturally unidentifiable'' on the Department of Anthropology, California State University, Fresno, NAGPRA inventory. Representatives of the university, North Fork Rancheria, and the Tuolumne Me-Wuk Tribal Councils presented the petition to the Review Committee at its May, 1999 meeting. The Review Committee recommended that the university repatriate these remains to the Central Valley and Mountain Reinterment Association. This recommendation was transmitted to the university by the National Park Service in a letter of September 3, 1999.

Based on the above-mentioned information, officials of the Department of Anthropology, California State University, Fresno, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 122 individuals of Native American ancestry. Also, officials of the Department of Anthropology, California State University, Fresno, have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between these Native American human remains and a Federally recognized Indian tribe.

This notice has been sent to officials of the Big Sandy Rancheria, Picayune Rancheria, Table Mountain Rancheria, North Fork Rancheria, Cold Springs Rancheria, the Santa Rosa Rancheria Tachi Tribe, and the Tuolumne Me-Wuk Tribal Council. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Professor Roger LaJeunesse, Department of Anthropology, California State University, Fresno, CA, 93740–8001, telephone (559) 278–4900, before September 7, 2000. Repatriation of the human remains occurred on December 5, 1999.

Dated: July 18, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–19956 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Reopening of Comment Period

AGENCY: National Park Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: On April 7, 2000 the National Park Service (NPS) published in the **Federal Register** for notice and comment Director's Order #47 on Soundscape Preservation and Noise Management. The notice provided for a comment period ending on May 8, 2000. In response to the request from Congressman Hansen, Chairman of the Subcommittee on National Parks and Public Lands, to extend the comment period for 30 days, the National Park Service determined that the comment period should be reopened for this extended period. This reopening of the comment period will allow the National Park Service to consider comments received after May 8, 2000, the date it was initially closed.

DATES: The comment period for the notice of Director's Order #47 which was published on April 7, 2000 at 65 FR 18350 is reopened until August 18, 2000.

ADDRESSES: Draft Director's Order #47 is available on the Internet at http://www.nps.gov/refdesk/DOrders/index.htm. Requests for copies and written comments should be sent to Dr.Wes Henry, National Park Service, Ranger Activities Division, 1849 C

Street, NW., Room 7418, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Wes Henry at 202/208–5211 or Dr. William Schmidt at 202/501–9269.

Maureen Finnerty,

Associate Director, Park Operations and Education.

[FR Doc. 00–19955 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Criteria

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of public availability of information submitted on a draft environmental impact statement for the proposed adoption of Colorado River Interim Surplus Criteria: INT–DES 00–25.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued a Draft Environmental Impact Statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years. A notice of availability and public comment period was provided in a **Federal Register** notice published on July 7, 2000 (65 FR 42028).

As noted in the **Federal Register** notice published on May 18, 1999 (64 FR 27008), during this NEPA process Reclamation is consulting with state representatives of each of the Governors of the seven Colorado River Basin States, Indian Tribes, members of the general public, representatives of academic and scientific communities, environmental organizations, the recreation industry and contractors for the purchase of Federal power produced at Glen Canyon Dam. Reclamation has received information from the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming during the public comment period on the proposed adoption of Colorado River Interim Surplus Criteria. The information provided to Reclamation is the product of significant effort on the part of the representatives of the Governors of the Colorado River Basin States. As noted in the **Federal Register** notice published on May 18, 1999 (64 FR 27008), the statutory framework for operation of Colorado River Reservoirs underscores the importance of working with the Colorado River Basin States in developing interim surplus criteria. Reclamation has made a preliminary review of the specific surplus criteria in the information presented by the Basin States and has made a preliminary determination that such criteria are within the range of alternatives and impacts analyzed in the DEIS. The information provided by the States does contain details regarding proposed surplus criteria that may be helpful to others preparing comments in response to the **Federal Register** notice published on July 7, 2000 (65 FR 42028). Accordingly, Reclamation is providing this information for public consideration during the public comment period on this action. That period will not be extended. Reclamation will be analyzing the issues and information presented in this submission, along with all other public comments on the Draft Environmental Impact Statement (DEIS) on the proposed adoption of Colorado River Interim Surplus Criteria. Reclamation, along with the Department of the Interior, will utilize this information, along with all other public comments, as appropriate, during its preparation of a Final Environmental Impact Statement and accompanying Record of Decision. The information provided by the representatives of the Colorado River Basin States may be found below in the **SUPPLEMENTARY INFORMATION** section.

The DEIS, and the information provided in the **SUPPLEMENTARY INFORMATION** section below are available for viewing on the Internet at http://www.lc.usbr.gov and http://www.uc.usbr.gov.

ADDRESSES: The comment period on the DEIS remains unchanged. Send comments on the DEIS to Ms. Jayne Harkins, Attention BCOO–4600, PO Box 61470, Boulder City, Nevada, 89006–1470, or fax comments to Ms. Harkins at (702) 293–8042. As provided in the **Federal Register** notice published on July 7, 2000 (65 FR 42028), comments on the DEIS must be received no later than September 8, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Copies of the DEIS, in the form of a printed document or on compact disk, remain available upon written request to the following address: Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293-8785, or by fax at (702) 293–8042.

DATES: The public comment period on the DEIS remains unchanged and comments on this DEIS must be received no later than September 8, 2000.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785.

SUPPLEMENTARY INFORMATION: The following information was received from the Colorado River Basin States:

Interim Surplus Guidelines—Working Draft

I. Background

A. The Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the ''BCPA''), authorized the Secretary of the Interior (the ''Secretary'') to construct Hoover Dam and the All-American Canal, and to contract for the delivery and use of water from such facilities for irrigation and domestic uses. The effectiveness of the BCPA was contingent upon ratification of the Colorado River Compact of 1922 (the ''Compact'') by the Colorado River Basin States, or, in the alternative, upon ratification by six of said states, including California. The effectiveness of the BCPA was further contingent upon agreement by the state of California, by act of its legislature, irrevocably and unconditionally with the United States and for the benefit of the other Colorado River Basin States, as an express covenant and in consideration of the passage of the BCPA, to limit the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in California, to no more than 4.4 million acre-feet (''maf'') per year of the waters apportioned to the Lower Basin States by Article III(a) of the Compact, plus not more than one-half of any excess or surplus waters unapportioned by the

Compact, such use to be always subject to the terms of the Compact.

Six states, including California, ratified the Compact by 1929. The California Legislature also passed the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.). Thus, the conditions of the BCPA were satisfied, the President proclaimed the BCPA effective on June 25, 1929 and the Secretary thereafter constructed Hoover Dam and the All-American Canal and executed contracts for the delivery and use of water from such facilities. Arizona ratified the Compact in 1944.

Before the Secretary entered into water delivery contracts with California agencies, he requested such agencies to agree to relative priorities of rights among them. This was accomplished by the California Seven-Party Agreement of August 18, 1931, incorporated into the water delivery contracts (the ''California Seven Party Agreement''), which established the following priorities within California:

CALIFORNIA SEVEN-PARTY AGREEMENT

Priority	Description	Acre-feet annually
1	Palo Verde Irrigation District—gross area of 104,500 acres	
2	Yuma Project (Reservation Division)—not exceeding a gross area of 25,000 acres	
3(a)	Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by the All-American Canal.	3,850,000
3(b)	Palo Verde Irrigation District—16,000 acres of mesa lands	
4	Metropolitan Water District and/or City of Los Angeles and/or others on coastal plain.	550,000
5(a)	Metropolitan Water District and/or City of Los Angeles and/or others on coastal plain.	550,000
5(b)	City and/or County of San Diego [1]	112,000
6(a)	Imperial Irrigation District and lands in Imperial and Coachella Valley	
6(b)	Palo Verde Irrigation District—16,000 acres of mesa lands	300,000
7	Agricultural Use in the Colorado River Basin in California	
Total		5,362,000

[1] In 1946, the City of San Diego, San Diego County Water Authority, Metropolitan Water District and the Secretary entered into a contract in which the right to storage and delivery of Colorado River water vested in the City of San Diego was merged with and added to the rights of the Metropolitan Water District under conditions since satisfied.

The California Seven-Party Agreement thus allocated water both within California's limitation of 4.4 maf per year, as well as surplus water above that amount. Only about one-half of the water under Priorities 4, 5(a) and 5(b) diverted by the Metropolitan Water District of Southern California (the ''MWD'') through its Colorado River Aqueduct is within the 4.4 maf limitation. Diversions under Priorities 5(a) and (b) are dependent upon surplus water being made available. The amounts of water allocated to Priorities 1, 2, 3(a) and 3(b) were not quantified by priority, but were aggregated to not exceed 3.85 maf.

In 1964, the U.S. Supreme Court entered its Decree in *Arizona* v. *California,* 376 U.S. 340 (1964) (the ''Decree''), pursuant to its Opinion in the same case, 373 U.S. 546 (1963). The Decree and the Court's Opinion confirmed and ordered the apportionment by the BCPA of water available for release from water controlled by the United States in the mainstream of the Colorado River downstream from Lee Ferry and within the United States to the states of Arizona (2.8 maf per year); California (4.4 maf per year); and Nevada (0.3 maf per year). The Decree also established certain federal reserved rights, and provided for the quantification of present perfected rights, all to be supplied from the apportionments decreed to each of the respective states. The Decree enjoins the Secretary from releasing mainstream water controlled by the United States for irrigation and domestic use in the Lower Division States (Arizona, California and Nevada) except in the following circumstances:

1. If sufficient mainstream water is available for release to satisfy 7.5 maf of annual consumptive use in the three Lower Division States, such water shall be made available in accordance with the basic apportionments set forth above. This is referred to as a ''Normal Year.'' (Article II(B)(1)).

2. If sufficient mainstream water is available for release to satisfy in excess of 7.5 maf of annual consumptive use in the three Lower Division States, water in excess of 7.5 maf shall be apportioned 50% for use in Arizona and 50% for use in California; provided, however, that in the event the United States so contracts with Nevada (which it has) then 46% of such surplus is apportioned for use in Arizona and 4% of such surplus is apportioned for use in Nevada. This is referred to as a ''Surplus Year.'' (Article II(B)(2)).

3. If insufficient mainstream water is available for release to satisfy 7.5 maf of annual consumptive use in the three Lower Division States, then after satisfying present perfected rights in order of priority, such water shall be apportioned consistent with the BCPA and the opinion of the Court, but in no event shall more that 4.4 maf be apportioned for use in California including all present perfected rights. Under § 301(b) of the Colorado River Basin Project Act of 1968, 82 Stat. 885, diversions from the Colorado River for the Central Arizona Project (the ''CAP'') shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works theretofore constructed, and by other existing Federal reservations in that State, of 4.4 maf, and by users of the same character in Arizona and Nevada. This is referred to as a ''Shortage Year.'' (Article II(B)(3)).

4. If, in any one year, water apportioned for consumptive use in a State will not be consumed in that State, the Secretary may make available such apportioned but unused water during such year for consumptive use in another Lower Division State. No rights to the recurrent use of such water shall accrue by reason of the use thereof. (Article II(B)(6))

In the *Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado*

River Basin Project Act of September 30, 1968 (P.L. 90–537) (the ''Criteria''), the Secretary adopted Criteria implementing his authorities under the BCPA, as enjoined by the Decree. Article III of the Criteria provides for the determination of Normal, Surplus and Shortage conditions for the release from Lake Mead of mainstream water downstream from Lee Ferry for use in the Lower Division States.

B. California's basic annual mainstream apportionment of Colorado River water is 4.4 maf, whereas its use of Colorado River water has ranged from 4.2 to 5.2 maf since 1975. In the past, California was able to consumptively use water above its basic annual apportionment because the water use by both Arizona and Nevada was below their basic annual apportionments.

In 1991 and 1992, as California faced its fifth and sixth consecutive years of severe drought, entities in California were able to divert all of the water that they requested or could transport from the Colorado River within the Lower Basin's apportionment. However, Nevada's Colorado River water use was forecasted to exceed its basic apportionment of 300,000 acre-feet (''af'') in the first decade of the 21st century, and Arizona's water use was projected to reach its basic annual apportionment of 2.8 maf. This meant that, in the future, without the Secretary declaring a Surplus condition, California's use of Colorado River water would be limited to its 4.4 maf basic apportionment, some 750,000 af less than its forecasted use of Colorado River water. The bulk of any mandated reduction in California's water use would occur within the priorities held by MWD, which serves the coastal plain of southern California through its Colorado River Aqueduct.

Since 1964, California has made significant investments to offset the eventual reduction in available Colorado River water. These investments have included: developing additional sources of imported water, conservation (demand reduction and use efficiency improvements), surface and groundwater storage, local supplies, conjunctive use programs, reclaimed water projects, and recovery and treatment of contaminated groundwater. While these investments have significantly increased supplies and reduced demand for imported water, they have not been adequate to offset the reduction of Colorado River water to 4.4 maf per year, when considered in conjunction with population increases and the reduction in dependable State Water Project (the ''SWP'') and Los Angeles Aqueduct supplies. This reality has fueled further efforts to maximize the beneficial use of Colorado River water in California through cooperative conservation programs and transfers of conserved water.

C. Nevada is quickly approaching full use of its 0.3 maf basic apportionment. Nevada's basic apportionment is projected to meet its domestic needs (excluding groundwater recharge) until approximately 2007. Also, Nevada has a need for additional water above its basic apportionment before 2007 for groundwater recharge in local groundwater basins.

Nevada's long-term options for additional water supply include surplus Colorado River water, participation in the Arizona groundwater bank, a number of in-state options such as the Muddy and Virgin Rivers, recovery and treatment of poor quality shallow groundwater, import of groundwater from basins within Nevada, and recovery of water from local groundwater banks. Nevada projects that even with an aggressive water conservation program it will need additional water for domestic needs in about 2007 and the need will steadily increase to almost 40,000 af in 2016. Nevada also projects it could use an additional 30,000 to 50,000 af per year for local groundwater recharge when surplus supplies are available.

D. Arizona's Lower Basin apportionment is divided among a number of major agricultural, Indian, and municipal contractors. Geographically, there are numerous diversions by contractors located along the River corridor and there is the singular diversion by the CAP which delivers water through a series of aqueducts to the interior portion of the State.

Arizona's uses of Colorado River water are increasing rapidly, but primarily because the CAP, which was declared substantially complete in the early 1990's, is becoming more fully utilized. In contrast, uses by contractors located along the Colorado River in the Yuma and Parker areas have been developed for many years and their consumption has been stable. Increased municipal growth in the Yuma and Mohave County areas will gradually increase water demands over a period of many years, but some of the growth will result in a corresponding decrease in agricultural demand as farm lands are subdivided and urbanized. On-reservation uses by Indian Tribes located in proximity to the River are also well established, although the potential for increased consumptive use exists, especially on the Colorado River Indian Tribes (the ''CRIT'') Reservation.

CAP water uses will increase over time as municipal and Indian contractors complete necessary water treatment and delivery infrastructure. In the meantime, the CAP will deliver significant quantities of water to irrigation districts who will use the water to displace groundwater supplies. Arizona has also developed a major capability to use CAP water that would otherwise be unordered, for groundwater recharge activities. The largest purchaser of water for recharge purposes is the Arizona Water Banking Authority (the ''AWBA''), whose primary purpose is to firm municipal CAP water deliveries.

E. In January 1986, the Bureau of Reclamation (Reclamation) issued a special report titled *Colorado River—Alternative Operating Strategies for Distributing Surplus Water and Avoiding Spills.* This report suggested operating strategies for avoiding Lake Mead spills that went beyond the *Field Working Agreement between the Bureau of Reclamation and the Army Corps of Engineers for Flood Control Operation of Hoover Dam and Lake Mead,* but were, in essence, based on similar principles. Under one of these strategies, limited surpluses would be determined based on the need to provide adequate storage capacity for an assumed runoff rather than the actual yearly forecast in order to reduce the probability of reservoir spills.

One of the alternatives considered assumed that runoff to be the value of the 70th percentile of exceedance based on the historic record, which is equivalent to about 17.331 maf runoff above Lake Powell. This strategy was named OS 0.70 (''70R'') or ''space building to avoid reservoir spills'' in the 1986 report. This and other strategies have been utilized for long-range operation projections since 1986.

F. On October 18, 1999, the respective boards of Coachella Valley Water District (''CVWD''), Imperial Irrigation District (''IID''), MWD and the State of California released the Key Terms for Quantification Settlement (the ''Key Terms'') as the basis for obtaining public input and completing a Quantification Settlement Agreement (''Settlement Agreement'') among the districts. The Settlement Agreement provides the basis for California to reduce its reliance on Colorado River water above its basic apportionment. The agreement further will quantify the rights and uses of Colorado River water by designating water budgets for CVWD, IID, and MWD. The quantification of the rights and uses of water with respect to priorities 3 and 6 of the 1931 California Seven Party Agreement is designed to

help facilitate implementation of cooperative water supply programs, and provide a quantified baseline from which conservation and transfer programs can be measured. The Settlement Agreement is expected to be fully executed in January 2001, after the conditions precedent contained in the Key Terms have been satisfied.

California's Colorado River Water Use Plan (the ''Plan''), is a framework by which programs, projects, actions, policies and other activities would be coordinated and cooperatively implemented allowing California to meet its Colorado River water needs within its basic apportionment in Normal years.

The Plan describes resource and financial investments and provides overall coordination on important initiatives undertaken by the Colorado River Board of California member agencies and others. The diverse components of the Plan are designed to help protect and optimize California's Colorado River resources. Some of these are associated components, meaning that they don't directly involve Colorado River water but are needed by implementing entities to meet their water needs within California's Colorado River water apportionment. The components of the Plan are broad in scope addressing both quantity and quality of California's share of Colorado River water.

The California agencies with Colorado River rights and contractual interests are the principal implementing entities for the programs and projects described in the Plan, and for obtaining the necessary program and project approvals, conducting appropriate environmental reviews, and ensuring compliance with endangered species acts (federal and state).

The Plan is intended to be dynamic and flexible enough to allow for modifications in, and periodic updates to, the framework when and where appropriate, and to allow for the substitution of programs and projects within the Plan's components when they have been found to be more cost effective and/or appropriate. Programs undertaken by the California agencies to transition California's use of Colorado River water to its basic apportionment without potential major water supply and economic disruptions include:

- Further quantification of rights and use of Colorado River water in California where helpful to facilitate the optimum use of California's Colorado River resources;
- Cooperative core water supply programs and voluntary transfers;
- Increased efficiencies in water conveyance and use;
- Water storage and conjunctive use programs to increase normal and dry year water supplies;
- Voluntary water exchanges;
- Administrative actions necessary for effective use and management of water supplies;
- Improved reservoir management and operations;
- Drought and surplus water management plans;
- Coordinated project operations for increased water supply yield; and
- Groundwater management.

The State of California has supported Plan implementation from the General Fund. Most notably, $235 million was appropriated in 1998 for lining portions of the All American and Coachella Canals ($200 million) and for groundwater storage and conjunctive use programs ($35 million) identified in the Plan. Also, between 1996 and 2000, California voters approved historic levels of general obligation bond financing for improving California water supply reliability, water quality and for restoring watershed ecosystems. The funding support provided by the $995 million Safe, Clean, Reliable Water Supply Act in 1996; the $2.1 billion Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act in 2000; and the $1.97 billion Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act in 2000 extend to the implementation of the Plan.

The proposed Settlement Agreement, other proposed interagency agreements and associated implementation agreement(s) with the Secretary, together with the Secretary's administration of water rights and use below Glen Canyon Dam, constitute the principal binding and enforceable provisions of the Plan. Provisions regarding third and sixth priority use provide the mechanisms needed to help facilitate the voluntary shift of approximately 380,000 af per year from agricultural use to urban use on the coastal plain of Southern California and the needed quantified baseline by which such programs can be measured.

The Settlement Agreement, when fully executed, provides the basis for California to meet its Colorado River water supply needs from within its annual apportionment of Colorado River water. Specific terms of the settlement include:

- A shift of 380,000 acre-feet per year from agriculture to urban use, through water acquisitions from IID and CVWD to MWD and SDCWA and forbearance of the use of 38,000 acre-feet per year of 6th priority water by IID and CVWD for MWD's use;
- Caps on use of water by IID and CVWD under the third priority at 3.1 maf and 0.33 maf, respectively;
- The exclusive right for MWD to utilize all water below 420,000 acre-feet per year unused by the Palo Verde Irrigation District and the Yuma Project-Reservation Division collectively;
- A permanent water supply of 16,000 acre-feet per year for the San Luis Rey (the ''SLR'') Indian Water Rights Settlement, from the All American and Coachella Canal Lining Projects;
- Deductions from IID, CVWD, and MWD's supplies to permit the Secretary to satisfy use of miscellaneous and Indian present perfected rights by holders of those rights as they were not addressed in the 1931 Seven-Party Agreement, the majority of the rights having been quantified in 1979; and
- A net yield of up to 90,000 acre-feet per year from the IID–MWD Conservation Program for MWD over a period of up to approximately 75 years.

Table 1 summarizes the yields and estimated start dates of the core cooperative voluntary water conservation/transfer projects and associated exchanges:

TABLE 1.—COOPERATIVE WATER CONSERVATION/TRANSFER PROJECTS

Cooperative water conservation/transfer projects	Annual yield (af)	Estimated start date
MWD/IID 1988 Water Conservation Program	100,000–110,000 [2]	([1])
SDCWA/IID Transfer and SDCWA/MWD Exchange	130,000–200,000 [3]	2002
MWD/CVWD SWP Water Transfer/Colorado River Water Exchange	35,000	2003
Coachella Canal Lining-MWD/SLR [4]	26,000	[5] 2005
All American Canal Lining-MWD/SLR [3]	367,700	[4] 2006

TABLE 1.—COOPERATIVE WATER CONSERVATION/TRANSFER PROJECTS—Continued

Cooperative water conservation/transfer projects	Annual yield (af)	Estimated start date
IID/CVWD/MWD Conservation Program	100,000 [6]	2007

[1] Complete.
[2] Yield to MWD, except for 20,000 af per year to be made available to CVWD.
[3] Yield to SDCWA.
[4] Yield to MWD and San Luis Rey Indian Water Rights Settlement Parties.
[5] Date by which full conservation benefits will be achieved.
[6] Yield to CVWD, MWD has an option to acquire water CVWD does not need. MWD assumes responsibility for 50,000 af per year to CVWD after year 45 of the Settlement Agreement.

The agencies' Colorado River entitlement water use budgets are adjusted for each increment of transfer, resulting in an overall reduced use of Colorado River water by California. There is approximately a 20-year transition period before the core water conservation/transfers are fully implemented. All of the core conservation/transfers to the coastal plain of southern California are proposed to occur within a ten-year implementation period.

The agencies responsible for implementing the components of the Plan intend to move forward as quickly as possible. In a number of cases, environmental documentation must be prepared and, in certain cases, permits and approvals must be secured from state and/or federal agencies to permit projects to move forward. It should be understood that some components and/or associated components may be modified but would still produce the same conceptual results, or that other options may be substituted if they are found to be more effective and appropriate. There are also related activities, such as the Salton Sea (the ''Sea'') restoration efforts. Congress specified in Public Law 105–372 that alternatives to restore the Sea should not include importation of any new or additional water from the Colorado River and should account for the transfer of water out of the Salton Sea Basin.

The Plan also includes consideration of environmental factors. Implementation of the Plan will reduce California's reliance on the Colorado River without severe dislocations in either urban or agricultural areas. Fundamentally, programs and projects in the Plan are not designed to increase water supplies to accommodate increased population growth. Thus, their implementation will not stimulate new growth, foster unplanned urban development, affect demands on local or regional transportation systems, require new public services and utilities, or create long-term increases in ambient noise levels. Their implementation will make a *de minimis* contribution to cumulative land use impacts and have a *de minimis* effect on associated socioeconomic resources, such as employment, earnings, and housing. The Plan and the accompanying Settlement Agreement programs and projects are designed to preserve the ability to meet existing needs while diverting less water from the Colorado River.

In accordance with the Plan, California's use of Colorado River water during the Interim Period will decline over time. During the Interim Period (2002–2016), MWD will use surplus water, when available, to meet direct water supply demands on the coastal plain while programs and projects in the Plan are implemented, as well as to provide a source of water for conjunctive use and storage programs. Following the Interim Period, beyond 2016, MWD's water supply demands will be met from occasional years of surplus water, conjunctive use and storage withdrawals, dry year transfers, and other water acquisitions.

California expects to have the projects shown in Table 1 yield the following amounts of water in the years shown:

Date	Acre feet
2006	340,000
2011	460,000
2016	490,000
2021	510,000
2026	540,000

II. Authority and Purpose

The purpose of these Guidelines is to provide direction for an Interim Period for the annual determination by the Secretary of Normal, Surplus, and Shortage conditions for the pumping or release from Lake Mead of mainstream water downstream from Lee Ferry for use in the Lower Division States. These Guidelines are used under the authority of the Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the ''BCPA''), the Decree in *Arizona* v. *California,* 376 U. S. 340 (1964) (the ''Decree'') and in furtherance of Article III of the *Criteria for the Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (P.L. 90–537)* (the ''Criteria''). Additionally, these Guidelines rely on the authority of the Secretary to make apportioned but unused water in one Lower Division State available for use for irrigation and domestic uses in another state under Article II(B)(6) of the Decree. These Guidelines are adopted for the purpose of providing enhanced domestic water supply reliability in the Lower Division States during a transition period ending December 31, 2016 (the ''Interim Period''), in accordance with the priorities contained in water delivery contracts or agreements.

These Guidelines become effective only when the Settlement Agreement becomes effective. The Guidelines include triggers that will implement Normal, Surplus or Shortage deliveries at specified target elevations of storage in Lake Mead. They also include benchmarks, reporting mechanisms and reviews by which California and agencies within California will demonstrate measurable and defined progress in meeting the goals of the California's Plan described herein. If sufficient progress is not being made, these Guidelines will automatically terminate.

The State of California and its affected agencies have recognized and agreed upon, and the Secretary has agreed with, the plan for implementation of agreements that will increase the efficiency of use within Priorities 1 through 3 of the California Seven-Party Agreement of August 18, 1931, and thereby reduce the amount of water required for irrigation and potable uses under such priorities. Savings shall be made available for use on the coastal plain of Southern California within California's basic annual apportionment of 4.4 maf.

These Guidelines include measures to be undertaken by MWD to provide reparation to Arizona for increased water supply shortages associated with interim operations, both during the

effective period and for so long thereafter as such risk is present. During the Interim Period and after the termination of these Guidelines, the Secretary will withhold, deliver and account for water in accordance with such described reparation.

These Guidelines are not intended to, and do not:

- Guarantee or assure any water user a firm supply for any specified period;
- Change or expand existing authorities under the body of law known as the ''Law of the River'';
- Address intrastate storage or intrastate distribution of water;
- Change the apportionments made for use within individual States, or in any way impair or impede the right of the Upper Basin to consumptively use water available to that Basin under the Compact;
- Affect any obligation of any Upper Division State under the Colorado River Compact;
- Affect any right of any State or of the United States under § 14 of the Colorado River Storage Project Act of 1956 (70 Stat. 105); § 601(c) of the Colorado River Basin Project Act of 1968 (82 Stat. 885); the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.); or any other provision of the ''Law of the River''; or
- Affect the rights of any holder of present perfected rights or reserved rights, which rights shall be satisfied within the apportionment of the State within which the use is made in accordance with the Decree.

For purposes of these guidelines, the following definitions do apply:

''Domestic'' use shall have the meaning defined in the Compact. ''Direct Delivery Domestic Use'' shall mean direct delivery of water to domestic end users of other municipal and industrial water providers within the contractor's area of normal service, including incidental regulation of Colorado River water supplies within the year of operation but not including Off-stream Banking. ''Direct Delivery Domestic Use'' for MWD shall include delivery of water to end users within its area of normal service, incidental regulation of Colorado River water supplies within the year of operation, and Off-stream Banking only with water delivered through the Colorado River Aqueduct. ''Off-stream Banking'' shall mean the diversion of Colorado River water to underground storage facilities for use in subsequent years from the facility used by a contractor diverting such water.

III. Allocation of Unused Apportionment Water Under Article II(B)(6)

Article II(B)(6) of the Decree allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one year only and no rights to recurrent use of the water accrue to the state that receives the allocated water. Historically, this provision of the Decree has been used to allocate Arizona's and Nevada's apportioned but unused water to California.

Water use projections made for the analysis of these interim Guidelines indicate that neither California nor Nevada is likely to have significant volumes of apportioned but unused water during the Interim Period. Depending upon the requirements of the AWBA for intrastate and interstate Off-Stream Banking, Arizona may have significant amounts of apportioned but unused water.

Before making a determination of an interim Surplus condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water from the basic apportionments under Article II(B)(6), and will allocate such water in the following order of priority:

1. Meet the Direct Delivery Domestic Use requirements of Metropolitan Water District of Southern California (''MWD'') and Southern Nevada Water Authority (''SNWA''), allocated as agreed by said agencies;

2. Meet the needs for Off-stream Banking activities in California by MWD and in Nevada by SNWA, allocated as agreed by said agencies; and

3. Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Settlement Agreement.

IV. Determination of Lake Mead Operation During the Interim Period

A. Normal

In years when available Lake Mead storage is projected to be at or below elevation 1,125 ft. and above the Shortage triggering level on January 1, the Secretary shall determine a Normal year.

B. Surplus

1. *Partial Domestic Surplus:* In years when Lake Mead storage is projected to be between elevation 1125 ft. and elevation 1145 ft. on January 1, the Secretary shall determine a Partial Domestic Surplus. The amount of such Surplus shall equal:

a. For Direct Delivery Domestic Use by MWD, 1.212 maf reduced by: 1.) the amount of basic apportionment available to MWD and 2.) the amount of its domestic demand which MWD offsets in such year by offstream groundwater withdrawals or other options. The amount offset under 2.) shall not be less than 400,000 af in 2001 and will be reduced by 20,000 af/yr over the Interim Period so as to equal 100,000 af in 2016.

b. For use by SNWA, one-half of the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.

c. For Arizona, one-half of the Direct Delivery Domestic Use in excess of the State of Arizona's basic apportionment.

2. *Full Domestic Surplus:* In years when Lake Mead content is projected to be above elevation 1145 ft., but less than the amount which would initiate a Surplus under B.3 or B.4 hereof on January 1, the Secretary shall determine a Full Domestic Surplus. The amount of such Surplus shall equal:

a. For Direct Delivery Domestic Use by MWD, 1.250 maf reduced by the amount of basic apportionment available to MWD.

b. For use by SNWA, the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.

c. For use in Arizona, the Direct Delivery Domestic Use in excess of Arizona's basic apportionment.

3. *Quantified Surplus:* In years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the OS 0.70 alternative strategy (''70R'') as described in the Bureau of Reclamation's *CRSSez Annual Colorado River System Simulation Model Overview and Users Manual,* revised May 1998, the Secretary shall determine and allocate a Quantified Surplus sequentially as follows:

a. Establish the volume of the Quantified Surplus.

b. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to c. through g. that follow.

c. Distribute California's share first to meet basic apportionment demands and MWD's Direct Delivery Domestic Use and Off-stream Banking demands, and then to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and then to the remaining Direct Delivery Domestic Use and Off-stream Banking demands.

Distribute Arizona's share to surplus demands in Arizona including Off-stream Banking and interstate banking demands. Arizona, California and Nevada agree that Nevada would get first priority for interstate banking in Arizona.

d. Distribute any unused share of the Quantified Surplus in accordance with Section III, *Allocation of Unused Apportionment Water Under Article II(B)(6).*

e. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Section IV.B.2., *Full Domestic Surplus* if a Quantified Surplus had not been declared. If they have not, then determine and meet all demands provided for in Section IV.B.2. (a), (b) and (c).

f. Any remaining water shall remain in storage in Lake Mead.

4. *Flood Control Surplus:* In years in which the *Field Working Agreement between the Bureau of Reclamation and the Army Corps of Engineers for Flood Control Operation of Hoover Dam and Lake Mead* requires releases greater than the downstream beneficial consumptive use demands, the Secretary shall determine a Flood Control Surplus in that year or the subsequent year. In such years, releases will be made to satisfy all beneficial uses within the United States, including unlimited off-stream groundwater banking, and section 215 deliveries under the Reclamation Reform Act of 1982 (96 Stat. 1263) (the ''RRA''). After all beneficial uses within the United States have been met, the Secretary shall notify the United States Section of the International Boundary and Water Commission that there may be a surplus of water as provided in Article 10 of the Mexican Water Treaty of 1944.

C. Shortage

In a year when the Secretary projects that future water supply and demands would create a 20% or greater probability that Lake Mead would drop below elevation 1050 feet in a year prior to or in the year 2050, the Secretary shall determine a Shortage. This strategy is defined in the Bureau of Reclamation's *CRSSez Annual Colorado River System Simulation Model Overview and Users Manual,* revised May 1998. In any year when a shortage is declared, the Secretary shall deliver no more than 4.4 maf for consumptive use in California and no more than 2.3 maf for consumptive use in Arizona. Nevada shall share in shortages as required by law. If reservoir conditions continue to deteriorate, the Secretary may require additional reductions in accordance with the Decree and law.

V. Determination of 602(a) Storage in Lake Powell During the Interim Period

During the Interim Period, 602(a) storage requirements determined in accordance with Article II (1) of the Criteria shall utilize a value of not less than 14.85 maf (elevation 3630 feet) for Lake Powell.

VI. Implementation of Guidelines

During the Interim Period the Secretary shall utilize the currently established process for development of the Annual Operating Plan for the Colorado River System Reservoirs (''AOP'') and use these Guidelines to make determinations regarding Normal, Surplus, and Shortage conditions for the operation of Lake Mead and to allocate apportioned but unused water. The Secretary also shall apply, as appropriate, the provisions of these Guidelines related to reparation and termination. The operation of the other Colorado River System reservoirs and determinations associated with development of the AOP shall be in accordance with the Colorado River Basin Project Act of 1968, the Criteria, and other applicable laws.

In order to allow for better overall water management during the Interim Period, the Secretary shall undertake a ''mid-year review'' allowing for the revision of the current AOP, as appropriate based on actual runoff conditions which are greater than projected, or demands which are lower than projected. The Secretary shall revise the determination for the current year only to allow for additional deliveries. Any revision in the AOP may occur only after a re-initiation of the AOP consultation process as required by law.

As part of the AOP process during the Interim Period, California shall report to the Secretary on its progress in implementing the Plan.

VII. Reparation for Increased Water Supply Shortages

It is possible that the operation of Lake Mead under these Guidelines will result in the Secretary determining a shortage condition more frequently, or for a shortage to be more severe, or for a shortage to be longer in duration than would otherwise have occurred, during the Interim Period or thereafter. During the Interim Period, if the Secretary makes a shortage determination in which deliveries to Arizona would be reduced, and if MWD has diverted water under IV. B.1 and/or IV. B.2 herein, MWD has agreed to forbear the delivery off the River of 500,000 af per year, unless otherwise agreed by MWD and Arizona. The holders of Priorities 6 and 7 under the California Seven-Party Agreement and Nevada have waived any claim to such water. After the Interim Period, if the Secretary makes a shortage determination in which deliveries to Arizona would be reduced and, if MWD has diverted water under IV. B.1 and/or IV. B.2 herein, MWD has agreed to forbear the delivery off the river of an amount of water equal to such reductions to Arizona, unless otherwise agreed by MWD and Arizona. The holders of Priorities 6 and 7 under the California Seven-Party Agreement and Nevada have waived any claim to such water.

The total amount of water forborne by MWD during or after the Interim Period pursuant to these guidelines shall not exceed one maf.

The reparation obligation of MWD shall terminate at such time after the Interim Period that the Secretary determines a Surplus based on the Flood Control strategy or as otherwise agreed by MWD and Arizona.

VIII. Termination of Guidelines

These Guidelines shall terminate:

A. On December 31, 2016, or

B. In the event California has not implemented conservation measures as set forth in the Settlement Agreement, which actually reduce its need for surplus Colorado River water by the following amounts by the date indicated:

Date	Acre feet
January 1, 2006	280,000
January 1, 2011	380,000

In such event, the Bureau of Reclamation shall account for the total volume of Colorado River water diverted into underground storage from the Colorado River Aqueduct by and for the benefit of MWD under any Full Domestic Surplus determination. MWD has agreed to forbear diversions in an amount equal to such volume in the next following Normal or Shortage year(s) in an amount not to exceed 200,000 af per year, and the holders of Priorities 6 and 7 under the California Seven-Party Agreement have waived any claim to such water. Such obligation shall be terminated in the first year that the Secretary determines a Surplus under a 70R strategy or a Flood Control strategy.

Upon termination, Lake Mead operations, for the purpose of determining Surplus, shall immediately revert to 70R. Note: We will prepare a

separate document describing inadvertent overruns and average decree accounting that may be incorporated into the criteria or adopted separately.''

Dated: August 3, 2000.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 00–20033 Filed 8–7–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that nine proposed consent decrees in *United States* v. *Mountain Metal Company, et al.,* Civil Action No. CV–98–C–2562–S, and consolidated action *Exide Corporation and Johnson Controls, Inc.* v. *Aaron Scrap Metals, et al.,* Civil Action No. CV–98–J–2886–S, were lodged on August 1, 2000 with the United States District Court for the Northern District of Alabama, Southern Division.

In these actions, the United States has sought recovery of response costs under section 107 of CERCLA, 42 U.S.C. 9607, and Exide Corporation and Johnson Controls, Inc. have sought recovery of response costs under section 113 of CERCLA, 42 U.S.C. 9613, against over forty defendants with respect to the Interstate Lead Company (''ILCO'') Superfund Site, located in Leeds, Jefferson County, Alabama (''the Site'').

The United States has now agreed to settlement of its claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for existing contamination at the Site with respect to nine defendants: (1) Arch Metals, Inc.; (2) Del's Metals Co., Inc.; (3) Harry Gordon Scrap Materials, Inc.; (4) Kar-Life Battery Company, Inc.; (5) Lead Products Co., Inc.; (6) Mixon, Inc.; (7) Mountain Metal Company, Inc.; (8) T.A. Pollack Co., Inc.; and (9) Wooster Iron & Metal Company f/k/a Metallics Recycling, Inc. Under the consent decrees, the companies will pay the following amounts to the United States: (1) $17,000 for Arch Metals, Inc.; (2) $20,400 for Del's Metals, Inc.; (3) $83,640 for Harry Gordon Scrap Materials, Inc.; (4) $11,560 for Kar-Life Battery Company, Inc.; (5) $90,870 for Lead Products Co., Inc.; (6) $17,820 for Mixon, Inc.; (7) $170,000 for Mountain Metal Company, Inc.; (8) $14,500 for T.A. Pollack Co., Inc. and (9) $63,933 for Wooster Iron & Metal Company f/k/a Metallics Recycling, Inc.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, Department of Justice, Washington, D.C. 20044, and should refer to *United States* v. *Mountain Metal Company, et al.,* Civil Action No. CV–98–C–2562–S, and consolidated action *Exide Corporation and Johnson Controls, Inc.,* v. *Aaron Scrap Metals, et al.,* Civil Action No. CV–98–J–2886–S, and DOJ # 90–11–2–108/2.

Any of the proposed consent decrees may be examined at the Office of the United States Attorney, Northern District of Alabama, 200 Robert S. Vance Federal Building & Courthouse, 1800 5th Ave. N., Room 200, Birmingham, AL 35203–2198, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W. Atlanta, Georgia 30303. A copy of any of the proposed Consent Decrees also may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) per Consent Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–19950 Filed 8–7–00; 8:45 am]

BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08778]

Finding of No Significant Impact Related to Amendment of Source Materials License SMB–1393 Molycorp. Inc., Washington, PA, Facility

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an amendment to Source Materials License No. SMB–1393 issued to Molycorp, Inc. (Molycorp or licensee), to authorize decommissioning of its facility in Washington, Pennsylvania. In preparation for cleanup of the site, Molycorp submitted its initial decommissioning plan (DP) to the NRC in July 1995. The DP has been supplemented twice: (1) First on June 30, 1999, (DP Part 1) to reflect the licensee's intent to decommission a portion of the site using cleanup criteria contained in NRC's ''Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites'' (SDMP Action Plan) (57 **Federal Register** 13389); and (2) on July 14, 2000, (DP part 2) for that portion of the site intended to meet the requirements of the License Termination Rule (LTR) in 10 CFR part 20, Subpart E, ''Radiological Criteria for License Termination,'' published in July 1997 (62 **Federal Register** 39057).

Environmental Assessment Summary

This Environmental Assessment (EA) addresses only the part 1 decommissioning. Part 2 will be the subject of a separate evaluation. Under the Part 1 DP (hereafter, decommissioning plan) Molycorp, Inc., will remediate contaminated soils on the main facility grounds and at a separate location where slag materials have been concentrated by past operations (*i.e.*, slag pile) to unrestricted release levels. The decision to dispose of the materials on site will be addressed in part 2.

This EA reviews the environmental impacts of the decommissioning actions proposed by Molycorp, Inc. in the decommissioning plan (part 1) for its facility located in Washington, Pennsylvania. In connection with the review of plans for the proposed action, NRC staff is preparing a safety evaluation report (SER), that evaluates compliance of the proposed action with NRC regulations. On issuance, the SER will be available in NRC's Electronic Reading Room, on NRC's Web site *http://www.nrc.gov/adams/index.html.*

Proposed Action

The decommissioning activities proposed by Molycorp include:

- Identify the location, depth, and thickness of areas containing greater than 10 picoCuries per gram (0.37 Becquerels per gram) total thorium.
- Mobilize equipment, set up decontamination facilities, and implement erosion control measures in preparation for excavation activities.
- Survey the site area to establish spatial coordinates of contaminated areas identified from site characterization radiological surveys.
- Excavate clean overburden and stockpile onsite.
- Excavate all soil and slag containing average contamination levels in excess of the unrestricted use criteria.
- Stockpile excavated material in preparation for loading onto transports. Stockpiling duration is estimated at two weeks. Excavation and stockpiling of waste will not occur until NRC has approved a disposal location for the waste.

• Sample excavated material to be transported consistent with requirements of the NRC-approved disposal location.
• Transporting the material containing average contamination levels in excess of the unrestricted use criteria to a NRC-approved location.
• Conduct final surveys on excavated areas to demonstrate compliance with the unrestricted use limits.
• Survey the stockpiled clean overburden.
• Backfill excavated areas that meet the unrestricted use criteria with the clean overburden.

Need for Proposed Action

The proposed action is necessary to allow Molycorp to remove radioactive material attributable to licensed operations, to levels that permit unrestricted-use of that portion of the site.

Environmental Impacts of the Proposed Action

NRC staff reviewed the levels of contamination, the proposed remediation and decommissioning methods, and the radiological release criteria that will be used during the remediation. The radiological criteria are specified so that decommissioning activities will meet the 10 CFR Part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed Part 20 requirements and are as low as is reasonably achievable.

Molycorp will perform remediation to achieve the unrestricted release criteria approved by the Commission in the SDMP Action Plan and will transport radioactive waste to a NRC-approved disposal facility.

The EA include: a description of the facility and its operating history; a description of the radiological status of the facility; an evaluation of the proposed methods for decontamination and dismantlement of structures, buildings, and equipment; an evaluation of the proposed methods for decontamination of outdoor areas; a review of the licensee's radiation protection program; and a summary of the radiological release criteria.

The EA assesses radiological impacts to: workers from planned decommissioning activities; members of the public from planned decommissioning activities; and workers and members of the public from transportation of low-level radioactive waste. The EA also includes a radiological accident analysis.

Non-radiological impacts addressed in the EA include: non-radiological releases; economic impact; transportation; air quality; noise; environmental justice; and endangered species.

Alternatives to the Proposed Action

The following alternatives, and the associated impacts and conclusions, are discussed in the EA:

—No action

—Proposed action

—On-site disposal at the Washington, Pennsylvania site

—On-site storage of the excavated soil at the Washington, Pennsylvania, site

Conclusions

Based on the NRC staff evaluation of the Part 1 DP for the Washington, Pennsylvania, facility, as documented in the EA, the staff has determined that the proposed decommissioning can be accomplished in compliance with NRC's public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the approval of the decommissioning plan will not result in a significant adverse impact on the public health and safety or the environment.

Agencies and Individuals Contacted

NRC staff consulted with the Pennsylvania Department of Environmental Protection (PADEP) in the preparation of this EA. PADEP provided comments on the draft EA in a letter dated July 14, 2000. NRC responded to these comments on July 27, 2000. The final EA reflects the staff's resolution as documented in its July 27, 2000, response. In addition, the Pennsylvania Bureau of Wildlife Management of the Pennsylvania Game Commission was consulted and noted that no endangered species have been documented as occurring on or near the site. Similarly, the National Register of Historic Places was consulted and indicated that no historic properties are listed for the Molycorp, Inc., Washington site. Also, the Pennsylvania Historical and Museum Commission indicated there are no archeological sites of significance in the facility area.

Finding of No Significant Impact

Based upon the analysis documented in the EA, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

Additional Information

The EA is available for review at NRC's Electronic Reading Room, on the NRC's Web site at *http://www.nrc.gov/adams/index.html.* The accession [file] number for this document is ML003735909. The NRC Project Manager for this action is Mr. LeRoy Person. Mr. Person can be reached at (301) 415–6701.

Dated at Rockville, Maryland, this 2nd day of August 2000.

For the Nuclear Regulaatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–20013 Filed 8–7–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Payment of Premiums (29 CFR part 4007), including Form 1–ES, Form 1, and Schedule A to Form 1, and related instructions (OMB control number 1212–0009; expires December 31, 2000). The collection of information also includes a certification (on Schedule A) of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR part 4011). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 10, 2000.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same

address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4040). The premium payment regulation can be accessed on the PBGC's home page at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires the Pension Benefit Guaranty Corporation (''PBGC'') to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file certain forms prescribed by the PBGC, and § 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The forms prescribed are PBGC Form 1–ES and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1 and Schedule A are issued, with instructions, in the PBGC's Annual Premium Payment Package.

The premium forms are needed to determine the amount and record the payment of PBGC premiums, and the submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more of the premium payment forms each year. The PBGC uses the information on the premium payment forms to identify the plans paying premiums and to verify whether plans are paying the correct amounts. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with part 4011, plan administrators must indicate on Schedule A to Form 1 that the participant notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212–0009 through December 31, 2000. This collection of information also includes the certification of compliance with the participant notice requirements (but not the participant notices themselves). The PBGC intends to request that OMB extend its approval of this collection of information for another three years. (The participant notices constitute a different collection of information that has been separately approved by OMB.) 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 PBGC estimates that it receives responses annually from about 39,400 plan administrators and that the total annual burden of the collection of information is about 2,482 hours and $9,431,600.

The PBGC is soliciting public comments to:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

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

C. David Gustafson,

Deputy Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 00–20000 Filed 8–7–00; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medicare.

(2) *Form(s) submitted:* AA–6, AA–7, AA–8.

(3) *OMB Number:* 3220–0082.

(4) *Expiration date of current OMB clearance:* 9/30/2000.

(5) *Type of Request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households; Business or other-for-profit; State, Local or Tribal Government.

(7) *Estimated annual number of respondents:* 240.

(8) *Total annual responses:* 240.

(9) *Total annual reporting hours:* 32.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. It obtains information needed to enroll non-retired employees and survivor applicants in the plan; information to pay claims for services under Part B of the program; information providing for review of claims determinations; information needed to determine entitlement to a special enrollment period and information needed to determine entitlement to Supplementary Medical coverage.

Additional Information or Comments

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–

359–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–19958 Filed 8–7–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–34; OMB Control No. 3235–0034]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–2(a) Fingerprinting Requirements for Securities Professionals

Rule 17f–2(a) requires that securities professionals be fingerprinted. This requirement serves to identify security risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of exchanges, broker, dealers, transfer agents, and clearing agencies are included.

It is estimated that approximately 10,000 respondents will submit fingerprint cards. It is also estimated that each respondent will submit 55 fingerprint cards. The staff estimates that the average number of hours necessary to comply with the Rule 17f–2(a) is one-half hour. The total burden is 275,000 hours for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $13,750,000.

Fingerprint cards submitted under Rule 17f–2(a) must be retained for a period of not less than three years after termination of the person's employment relationship with the organization. Submitting fingerprint cards for all securities personnel is mandatory to obtain the benefit of identifying security risk personnel, allowing an employer to make fully informed employment decisions and deterring possible wrongdoers from seeking employment in the securities industry. Fingerprint cards submitted according to Rule 17f–2(a) will not be kept confidential.

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.

Written comments regarding the above information should be directed to the following persons:

(1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and

(ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Comments must be submitted to OMB on or before September 7, 2000.

August 2, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19989 Filed 8–7–00; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–203]

WTO Consultations Regarding Mexico—Measures Affecting Trade in Live Swine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on July 10, 2000, the United States requested consultations with Mexico under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding its 20 October 1999 definitive anti-dumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears to be in contravention of Articles 3 and 12 of the Anti-Dumping Agreement and that actions by Mexico in the conduct of the anti-dumping investigation appear to be inconsistent with Mexico's obligations under Article 6 of the Agreement. In addition, Mexico maintains sanitary restrictions on the importation of live swine weighing 110 kilograms or more that appear to be inconsistent with Mexico's obligations under the WTO Agreements on Agriculture, the Application of Sanitary and Phytosanitary Measures and Technical Barriers to Trade as well as the GATT. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (''DSU''), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Mexico. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 4, 2000 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Live Swine Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide an earlier opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

The United States considers that Mexico made a determination of threat of material injury in contravention of Articles 3 and 12 of the Anti-dumping Agreement, including: by failing to evaluate all relevant economic factors and indices having a bearing on the state of the industry; by failing to perform an objective examination of the consequent impact of imports found to be dumped on domestic producers of the like product; by failing to determine that there was a clearly foreseen and imminent change in circumstances that would create a situation in which dumping of imports of live swine of a weight more than or equal to 50 kilograms and less than 110 kilograms would cause injury; and by failing to determine that material injury would occur unless protective action were taken.

The United States also considers that Mexico has failed to comply with the requirements of Article 6 of the Anti-Dumping Agreement, including: by failing to provide respondent U.S. exporters with timely opportunities to see and prepare presentations on the basis of all information used by the investigating authority that is relevant to the anti-dumping investigation; and by failing to inform respondent U.S. exporters, before the final determination was made, of the essential facts under consideration which form the basis of Mexico's decision to apply definitive measures.

In addition, Mexico appears to be restricting or prohibiting the entry of U.S. live swine through measures, other than anti-dumping duties, in a manner inconsistent with its obligations under other WTO Multilateral Agreements on Trade in Goods. First, Mexico appears to have prohibited the importation of swine weighing 110 kilograms or more. Second, notwithstanding the apparent ban on importation of such swine, Mexico also appears to be maintaining sanitary restrictions on imported swine that constitute arbitrary and unjustified discrimination because no similar measures are applied to swine in Mexico. Furthermore, there does not appear to be a scientific basis for these measures. Finally, the United States understands that Mexico may have adopted technical regulations, not constituting sanitary measures, that are applicable to imported, but not domestic, swine.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice. Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–203, Mexico—Measures Affecting Trade in Live Swine) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–19949 Filed 8–7–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–00–7231 and OST–00–7232]

Applications of Air-Serv., Inc. d/b/a Airserv d/b/a Indigo, L.L.C. d/b/a Newworldair Holdings, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2000–8–1)

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Air-Serv., Inc. d/b/a AirServ, d/b/a Indigo, L.L.C., and d/b/a NewWorldAir Holdings, Inc., fit, willing, and able and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail as a certificated air carrier.

RESPONSES: Objections and answers to objections should be filed in Dockets OST–00–7231 and OST–00–7232 and addressed to the Department of Transportation Dockets, 400 Seventh Street, SW., PL–401, Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: August 1, 2000.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–19984 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Seat Belt Enforcement With State Associations of Chiefs of Police

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of Cooperative Agreements in conjunction with the *Buckle Up America Campaign* to increase seat belt enforcement with the State Associations of Chiefs of Police.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a cooperative agreement program to solicit support for the Buckle Up America (BUA) campaign. NHTSA solicits applications from the State Associations of Chiefs of Police to participate in the BUA campaign, by mobilizing law enforcement agencies to increase the use of seat belts and child safety seats, the most effective safety devices for reducing injuries and fatalities in traffic crashes. Only applications submitted by the State Association of Chiefs of Police will be considered. The State Associations of Chiefs of Police will take a leadership role in involving the law enforcement agencies in their state in increasing enforcement of seat belt and child safety seat laws by participating in the mobilization periods, high visibility enforcement, training officers and public information and education.

DATES: Applications must be received no later than September 7, 2000 at 2 p.m., Eastern Standard Time.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. NTS–01–0–05163.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to, Office of Contracts and Procurement at (202) 366–9557. Programmatic questions should be directed to Sandy Richardson, Traffic Law Enforcement Division, NTS–13, NHTSA, 400 7th Street, SW., Washington DC 20590 by e-mail *srichardson@nhtsa.dot.gov* or by phone (202) 366–4294. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

It's a fact: On America's roads, someone is killed every 13 minutes and someone is injured every nine seconds in traffic crashes. It takes only a few seconds to fasten a seat belt. Yet this simple action, repeated every time you get into a motor vehicle, may be the most significant driving-related behavior change you can make to extend your life. Wearing a seat belt dramatically increases your chance of surviving a crash.

Each year, approximately 42,000 Americans die in traffic crashes and another three million are injured. Sadly, many of these deaths and injuries could have been prevented if the victims had been wearing seat belts or were properly restrained in child safety seats.

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. From 1975 through 1998, an estimated 112,086 lives were saved by seat belts.

But, seat belt use rates and the resulting savings could be much higher. In 1998, the average observed use rate reported by states with secondary enforcement laws was 62 percent, compared to 79 percent in states with primary enforcement laws. States in the U.S. are still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six States and the District of Columbia achieved use rates greater than 80 percent in 1998. A national use rate of 90 percent, among front seat occupants of all passenger vehicles, would result in prevention of an additional 5,500 deaths and 13,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including 356 million for Medicare and Medicaid.

In April 1997, the *Buckle Up America (BUA)* campaign established ambitious national goals: (a) To increase seat belt use to 85 percent and reduce child fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child fatalities by 25 percent by the year 2005. This campaign advocates a four part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; and (4) conducting effective public education. Central to this Campaign's successes is the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays).

Objectives

To help achieve the new national seat belt goals, NHTSA seeks to establish cooperative efforts between NHTSA and State Associations of Chiefs of Police to increase the use of seat belts and child safety seats. Specific objectives for this cooperative agreement program will be to support the Buckle Up America campaign by increasing periodic waves of high visibility enforcement and by promoting participation in Operation ABC's national mobilizations (May and November).

1. Periodic ''Waves'' of High Visibility Enforcement

The history of efforts to increase seat belt use in the U.S. and Canada suggests that highly visible enforcement of seat belt laws must be the core of any successful program to increase seat belt use. No State has ever achieved a high seat belt use rate without such a component.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). By 1985, it became obvious to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 to 1995, centered around highly publicized ''waves'' of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The Canadian successes using periodic, highly visible ''waves'' of enforcement, as well as successes of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement *Operation Buckle Down* (also called the *''70 by ''92'' Program*) in 1991. This two-year program focused on Special Traffic Enforcement Programs (sTEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these ''waves'' of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its *Click-It or Ticket* program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (*i.e.,* checkpoints) were implemented in every county. As a result, seat belt use

increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction.

2. National Mobilizations

National law enforcement mobilizations have also proven effective in increasing seat belt use. The *BUA* campaign supports two national mobilizations each year (Memorial Day and Thanksgiving holidays). During the 1999 mobilizations conducted throughout the week surrounding Memorial Day and the week surrounding Thanksgiving, between 6,000 and 7,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to each mobilization.

Period of Support

Cooperative agreements may be awarded for a period of support for (1) year. The application should address what is proposed and can be accomplished during the funding period (12 months). Subject to the availability of funds, the agency anticipates awarding up to 4 cooperative agreements in the amount of $50,000 each, totaling $200,000. Federal funds should be viewed as seed money to assist the Associations in working with local law enforcement agencies in the development of traffic safety initiatives. NHTSA may choose to extend the period of performance under this agreement for an additional 12 months, subject to the availability of funds. If NHTSA elects to do so, it will notify the recipients within 60 days prior to the expiration of this agreement and the recipients will submit a proposal for an additional 12 months of performance.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a State Association of Chiefs of Police, and must meet the following requirements:

• Have the ability to provide funding to law enforcement agencies in the state.

• Have written support and approval from the applicant's chief executive officer to conduct seat belt enforcement programs to participate in and encourage local law enforcement participation in the Operation ABC Campaign and in other seat belt enforcement programs. (Include copy with proposal.)

• Obtain written support from the Governor's Representative or his/her designee in the State Highway Safety Office (SHSO) demonstrating that the applicant's proposal is consistent with the State's overall plan. (Include copy with proposal.)

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. Only complete application packages received by the due date will be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Program No. NTS–01–0–05163 . The applicant shall specifically identify any information in the application for which confidential treatment is requested, in accordance with the procedures of 49 CFR Part 512, Confidential Business Information.

Only complete packages received on or before September 7, 2000 at 2 p.m. Eastern Standard Time will be considered.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certifications and assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. The budget should be a 1-year plan. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which provides:

a. A detailed explanation of the proposed strategy to support the enforcement efforts, including methods for gaining support (both within the community and law enforcement leadership) for ''waves'' of highly publicized seat belt enforcement and for mobilization efforts. In addition, an explanation of the strategies to fund local law enforcement agencies to participate in the national mobilizations, and to conduct ''waves'' of highly publicized seat belt enforcement. A description of efforts to address training needs (*e.g.,* differential enforcement or diversity sensitivity) of law enforcement jurisdictions and how training will be marketed to these jurisdictions.

b. The goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)

c. Written evidence of approval by the applicant's Chief Executive Officer.

d. An explanation demonstrating the need for assistance.

e. Description of any extraordinary social/community involvement.

f. A discussion of the criteria to be used to evaluate the results (*e.g.* number of citations, number of officers trained, seat belt use surveys, level of earned media coverage, *etc.*).

2. A list of the proposed activities in chronological order to show the schedule of accomplishments and their target dates.

3. Identification of the proposed program coordinator for participation in the proposed project effort.

4. A description of the applicant's previous experience related to this proposed program effort (*i.e.* past participation in highly publicized enforcement or participation in the Operation ABC national seat belt mobilizations).

5. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

Application Review Process and Evaluation Factors

Initially, each application will be reviewed to confirm that the applicant meets the eligibility requirements and that the application contains all of the information required by the Application Contents section of this notice. Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The Potential of the Proposed Project Effort To Increase Seat Belt Use (40%)

The likeliness and feasibility of the applicant's projects to increase enforcement by law enforcement jurisdictions of proper seat belt and child safety set use. The degree to which

the applicant has identified jurisdictions that might benefit from training opportunities concerning proper seat belt and child safety seat use, and effectiveness of the applicant's plan for providing that training. The overall soundness and feasibility of the applicant's approach to participating and successfully seeking law enforcement participation in mobilization efforts, public information campaigns concerning seat belt and child safety seat use, and child safety seat clinics.

2. The Applicant's Proposed Strategy for Participating and Seeking the Participation of Local Law Enforcement Agencies in the Buckle Up America National Seat Belt Mobilizations (40%)

The likeliness and feasibility of the Association's proposal, as described in its innovative project plan, to assist smaller law enforcement agencies in participating in the Buckle Up America national seat belt mobilizations. The degree to which the applicant has demonstrated a complete understanding of the requirements for successful participation in the Operation ABC national seat belt mobilizations. The overall soundness and feasibility of the applicant's proposed strategy and demonstrated ability to involve and coordinate this project with smaller law enforcement agencies.

3. The Applicant's Ability To Demonstrate Support and Coordination With Local Government and the State Highway Safety Office (15%)

The degree to which the proposal describes efforts and commitment to obtain the support from local government officials throughout the State. The likeliness and feasibility of the applicant's proposal for reaching local and state government executives throughout the state, including suggested methods for generating interest, making initial contacts and reasons for taking this approach as opposed to others.

4. The Adequacy of the Organizational Plan for Accomplishing the Proposed Project Effort Through the Experience and Technical Expertise of the Proposed Personnel (5%)

Program management and technical expertise will be estimated by reviewing the qualifications and experience of the proposed personnel, and the relative level of effort of the staff. Consideration will be given to the adequacy of the organizational plan for accomplishing the proposed project effort. Consideration will also be given to the Association's resources and how it will provide the program management capability and personnel expertise to successfully perform the activities in its plan.

NHTSA Involvement

The NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the selected State Associations of Chiefs of Police and NHTSA;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison between the selected State Associations of Chiefs of Police and other government and private agencies as appropriate; and

4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements (7–95).

Reporting Requirements

1. The recipient shall submit brief quarterly reports documenting the project effort to date, which will include information on accomplishments, obstacles and problems encountered, and noteworthy activities. Quarterly reports shall be due 15 days after the end of each quarter, and a final report summarizing the project effort shall be due within 30 days after the completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.

2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

Issued on: August 2, 2000.

Susan Gorcowski,

Director, Office of Communication and Outreach, Traffic Safety Programs.

[FR Doc. 00–19936 Filed 8–7–00; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register

Vol. 65, No. 153

Tuesday, August 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-238-001]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 00–14394 appearing on page 36425 in the issue of Thursday, June 8, 2000, the docket number should read as set forth above.

[FR Doc. C0–14394 Filed 8–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00-95-000]

Dynegy Inc., Illinova Corporation, Dynegy Holdings Inc., and Dynegy Midwest Generation, Inc.; Notice of Filing

Correction

In notice document 00–14131 appearing on page 35912 in the issue of Tuesday, June 6, 2000, the docket number should read as set forth above.

[FR Doc. C0–14131 Filed 8–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–156F]

RIN 1117–AA43

Listed Chemicals; Final Establishment of Thresholds for Iodine and Hydrochloric Gas (Anhydrous Hydrogen Chloride)

Correction

In rule document 00–19289 beginning on page 47309 in the issue of Wednesday, August 2, 2000, make the following corrections:

1. On page 47310, in the first column, in the ninth line, ''in'' should read ''on''.

2. On the same page, in the same column, in the **DATES** section, in the third and fourth lines, ''[insert date of publication]'' should read ''August 2, 2000''.

3. On the same page, in the same column, in the eighth line from the bottom, ''iodide'' should read ''iodine''.

4. On page 47311, in the third column, in the second full paragraph, in the ninth line, ''by'' should read ''to''.

5. On page 47314, in the second column, in the fifth line, after ''anhydrous'' add ''hydrogen''.

[FR Doc. C0–19289 Filed 8–7–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,

August 8, 2000

Part II

Department of Transportation

Coast Guard

33 CFR Parts 151, 155, 157, 158

46 CFR Part 172

Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 155, 157, and 158

46 CFR Part 172

[USCG 2000–7641]

RIN 2115–AF56

Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending U.S. regulations for pollution prevention from ships. To align with international standards, we propose amending the domestic regulations concerning oily-water separators, operational discharges of oil, damage and intact stability of tank vessels, International Oil Pollution Prevention Certificates, garbage recordkeeping requirements, and placards for reception facilities. To provide consistency with industry standards and clarification in U.S. oil regulations, we propose changing oily mixture discharge shore connection requirements for certain vessels and redefining certain terms dealing with oil.

DATES: Comments and related material must reach the Docket Management Facility on or before Ocotber 10, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 10, 2000.

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

(1) By mail to the Docket Management Facility (USCG–2000–7641), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand 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.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

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

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed rule, contact Lieutenant Commander Michael Jendrossek, Vessel and Facility Operating Standards Division, 202–267–1181. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

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–2000–7641), 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, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We currently do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will announce the time and place in a later notice in the **Federal Register**.

Background and Purpose

This proposed rule would amend U.S. regulations for pollution prevention from oceangoing ships and certain vessels in domestic service. Most amendments are ones adopted by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) during several sessions. MEPC adopted amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) during its 32nd session (MEPC 32, March 6, 1992) and 40th session (MEPC 40, September 25, 1997). The MEPC also adopted amendments to Annex V in its 37th session (MEPC 37, September 14, 1995). Additional proposed amendments include allowing certain vessels in domestic service to use quick-connect fittings rather than international-type shore connections, and redefining for clarity certain terms dealing with oil in the domestic regulations.

Aligning Coast Guard regulations with international standards. By aligning the domestic regulations with international standards, compliant U.S. ships would encounter fewer difficulties while engaged in international trade. Under 33 U.S.C. 1902, the Coast Guard is authorized to prescribe or amend regulations necessary to implement any changes to the standards of MARPOL 73/78. Changes to MARPOL 73/78, Annex I, are described in a **Federal Register** notice published on November 12, 1993 (58 FR 60080). They established more stringent criteria for controlling the discharge of oil and oily water from the machinery space bilges and cargo tanks of certain vessels. Changes to MARPOL 73/78, Annex V, added Regulation 9 that requires ships to carry garbage recordkeeping books and reception facilities to post placards. Regulation 9 was effective July 1, 1998. We propose aligning the U.S. regulations with the recent amendments in MARPOL 73/78 Annex I and Annex V, Regulation 9.

Allowing certain ships in domestic service to use quick-connect fittings rather than international-type shore connections. Allowing certain ships to use quick-connect fittings compatible with domestic reception facilities for discharging oily mixtures ensures that these ships are in compliance with U.S. regulations without imposing unnecessary costs to the ship owners and operators.

During voluntary dockside examinations of uninspected towing vessels in the Coast Guard's 5th District,

inspectors found that many of these vessels did not have the required shore connections. Instead, the vessels had quick-connect fittings compatible with the shoreside reception facilities used in U.S. ports. The requirement is intended to standardize the means of transferring oily wastes for ships on international routes. However, ships operating only in domestic service do not need this standardization. We propose revising 33 CFR 155.410 and 155.420 to change the requirements for shore connections on certain ships with domestic routes.

Redefining certain terms dealing with oil. Redefining the terminology dealing with oil throughout the U.S. regulations provides consistency and clarity. We would redefine or clarify terms, such as ''oily mixtures,'' ''oil,'' ''oil cargo residues,'' and ''oil residues,'' throughout 33 CFR parts 151, 155, 157, and 158. We would also remove conflicting and duplicating terms.

Discussion of Proposed Rule

The proposed amendments regarding the alignment of U.S. regulations with MARPOL 73/78 standards are discussed as follows:

1. *Rate of discharge of oil into the sea.* This proposed change would reduce the maximum allowable rate of discharge of oil and oily mixtures. At present, 33 CFR 157.37(a)(3) allows tank vessels of 150 gross tons and above carrying crude oil or products in bulk as cargo to discharge an oily mixture into the sea from a cargo tank, a slop tank, or the bilges of a cargo pump room if the instantaneous rate of oil discharge does not exceed 60 liters per nautical mile. However, the discharge rate under MARPOL 73/78 was reduced from 60 liters per nautical mile to 30 liters per nautical mile. To align with international standards, we propose reducing the allowable rate specified in § 157.37(a)(3) to 30 liters per nautical mile.

2. *Oil content of the effluent discharged.* This proposed change would reduce the allowable oil content in effluent from oil tanker bilges and other ships 400 gross tons and above. This change would affect the requirements regarding the effluent from machinery-space bilges of oil tankers (excluding effluent from cargo pump room bilges unless mixed with oil cargo residue) and from other ships of 400 gross tons and above. MARPOL 73/78 reduced the parts per million (ppm) oil content allowances from 100 ppm to 15 ppm. To meet the international standard, we propose reducing the allowable content to 15 ppm in 33 CFR 151.10(a)(5), 155.360(a), 155.370(a), and 157.39(b)(3) (redesignated as (b)(2)).

3. *Means for automatically stopping a discharge.* This proposed amendment would require certain ships to install a means for automatically stopping oil or oily water discharges when the oil content in the effluent exceeds the required allowance. MARPOL 73/78 requires ships of 10,000 gross tons and above to install a means of automatically stopping oily mixture discharges when the oil content in the effluent exceeds 15 ppm. This requirement also applies to ships of 400 gross tons and above that carry ballast water in their fuel oil tanks. To align with MARPOL 73/78 standards, we propose revising 33 CFR 155.370(a) to require a means of automatically stopping discharges exceeding 15 ppm for ships of 400 gross tons to less than 10,000 gross tons that carry ballast water in their fuel oil tanks and for ships of 10,000 gross tons and above.

4. *Oil filtering equipment, alarms, and automatic stop requirements for ships delivered before July 6, 1993.* This proposed amendment requires all ships delivered before July 6, 1993, to comply with the discharge equipment requirements for oil filtering, alarms, and automatic stops when we publish a final rule. MARPOL 73/78 did not require ships delivered before July 6, 1993, to comply until July 6, 1998, or until the date the ship was fitted with this equipment, whichever was earlier. Until that date, all oil or oily mixture discharges from machinery space bilges were prohibited, unless certain specified conditions were met. Since the international compliance date has passed, we propose revising 33 CFR 155.370(a) to require all ships to comply with the oil filtering equipment, alarms, and automatic stop requirements by the effective date of this rulemaking.

5. *Term of validity for International Oil Pollution Prevention (IOPP) Certificates.* This proposed change would set the maximum term of validity for IOPP Certificates at 5 years. Currently, 33 CFR 151.19(e) states that IOPP Certificates for U.S. inspected ships are valid for a maximum period of 4 years from the date of issuance. For U.S. uninspected ships, IOPP Certificates are valid for a maximum period of 5 years. The International Maritime Organization's (IMO's) Harmonized System of Surveys and Certification and MARPOL 73/78 set the term of validity for IOPP Certificates at a maximum period of 5 years. Until now, the U.S. used a 4-year maximum term of validity because it was compatible with the 2-year cycle for U.S. Certificates of Inspection (COI). On February 2, 2000 we published a final rule (65 FR 6493) introducing a five year Certificate of Inspection cycle in accordance with the Coast Guard Authorization Act of 1996. The change to a five year term of validity on IOPP certificates would reflect this new inspection cycle, help reduce the paperwork burden for vessel owners and operators, and harmonize our IOPP certificate term of validity with the rest of the world's fleet who already have 5-year certificates. To align the U.S. regulations with international standards, we propose setting the term of validity for IOPP Certificates at a maximum of 5 years for both inspected and uninspected vessels. This regulatory change would occur in 33 CFR 151.19(e).

6. *Damage stability of tank vessels.* This proposed amendment would incorporate new damage assumptions to consider when calculating the potential penetration to tank vessel hulls for raking damage. These new damage assumptions should help prevent loss of stability from bottom-raking damage on double-hull tank vessels. Unlike single-hull tank vessels, double-hull tank vessels have large void or ballast spaces surrounding the cargo tanks. Changing the requirement would prevent the loss of stability of double-hull tank vessels when some void spaces are flooded from long, relatively shallow extents of damage characterized by certain types of bottom-raking damage. Though the number of raking damage incidents is relatively low, the possible consequences make raking damage risks significant enough to take preventive measures.

As the U.S. representative at the 1992 IMO meeting of the Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety (SLF), we supported IMO's suggested damage stability standards for double-hull tank vessels. We supported the assertion that double-hull tank vessels should be designed to sustain certain forms of raking damage and still meet the minimum damage stability requirements. Working with the U.S. tank vessel industry, we submitted several studies to IMO demonstrating the need for these proposed standards and the feasibility for new double-hull designs. As a result of these and other studies, IMO adopted these design standards enabling tank vessels to sustain a certain amount of damage without capsizing or sinking. The IMO document adopting these standards is in Resolution MEPC.52(32) adopted on March 6, 1992.

Current U.S. regulations 33 CFR 157.21 and 46 CFR 172.065 require designing all tank vessels to survive certain types of damage without capsizing or sinking. To meet MARPOL

73/78 standards, we propose requiring that oil tankers of 20,000 deadweight tons (DWT) and above be designed to survive potential raking damage caused by grounding of the ship. This change would occur in 33 CFR part 157, appendix B, and 46 CFR 172.065, table 172.065(a), and would become effective on the effective date of this rulemaking.

7. *Intact stability of tankships.* This proposed rule would add new regulations for design-based intact stability. The new regulations would help eliminate incidents of lolling (the uncontrolled heeling of tankships due to loss of initial intact stability) during simultaneous ballast and cargo operations by requiring tankship designs that provide adequate intact stability. We also propose excluding tank barges from the proposed intact stability requirement. Ballast tanks on tank barges are typically used as void spaces. Thus, it is highly unlikely for barges to conduct simultaneous ballast and cargo operations.

Before 1993, there were no mandatory international standards for intact stability for tankships. Single-hull tankships in the intact condition were considered relatively stable, so mandatory intact stability regulations were not necessary. However, certain double-hull tankship designs are considered less stable than single-hull tankships and require intact stability regulations. For example, some double-hull designs develop large free-surfaces during simultaneous cargo and ballast operations that can lead to lolling. In 1993, IMO re-issued intact stability standards for various ship types by issuing the Code on Intact Stability, adopted by IMO Resolution A.749(18), which can be applied to double-hull tankship designs. However, compliance with the Code was not mandatory.

While lolling does not occur often, one 1993 case documented by the Coast Guard demonstrated that lolling could cause damage to property, with the potential for loss of life, personnel injury, and environmental pollution. Based on the potential dangers of lolling and because the IMO Code on Intact Stability was not mandatory, we determined that double-hull tankships should have intact stability requirements.

We determined two regulatory approaches for solving the problem. One approach, the ''design approach,'' would eliminate lolling through tanker designs. The second approach, the ''operations approach,'' would eliminate lolling by restricting operations.

At the 1997 IMO meeting of the Marine Environment Protection Committee, representatives of the United States, other nations, and the Oil Companies International Marine Forum advocated the design approach. Despite advocating the operations approach, other countries and organizations, including Japan and the International Association of Independent Tanker Owners, agreed that the design approach was preferable. After extended debate, IMO adopted the design approach, limiting exceptions to combination carriers. IMO was concerned that a tankship's master and cargo officer would find themselves too preoccupied with the complicated and often time-sensitive loading and unloading process to properly implement the operations approach to prevent lolling. The IMO document adopting the design approach is Resolution MEPC.75(40), adopted on September 25, 1997.

We propose adding the new regulations 33 CFR 157.22 and 46 CFR 172.070 requiring all tankships of 5,000 DWT and above contracted for after the effective date of this rulemaking, to comply with the international intact stability design standards of MARPOL 73/78. The proposed 33 CFR 157.22 and 46 CFR 172.070 specifically address the problem of tankships lolling during loading and unloading. These new sections would require that tankships of 5,000 DWT and above contracted after the effective date of this rulemaking be designed to prevent lolling.

8. *Garbage discharge records.* This proposed amendment would change the requirements regarding which ships are required by law to maintain garbage discharge records. MARPOL 73/78 provides the requirements for every ship of 400 gross tons and above to carry garbage discharge records. To align more closely with MARPOL 73/78, we propose changing 33 CFR 151.55 by removing the requirements for manned oceangoing ships of 12.2 meters (approximately 40 feet) and above in length and engaged in commerce. Instead, we would require every manned oceangoing ship of 400 gross tons and above engaged in commerce to carry garbage discharge records. Additionally, we would require every manned ship engaged in an international voyage that is certified to carry 15 passengers or more to carry garbage discharge records according to MARPOL 73/78, Annex V, regulation 9(3).

9. *Placards for reception facilities.* This proposed amendment would require ports and terminals to display a placard or placards notifying users to report inadequacies to the local U.S. Coast Guard Captain of the Port (COTP). This proposal is a requirement of 33 U.S.C. 1905. Requirements for adequate reception facilities already exist under 33 CFR part 158, however this proposal requires port and terminal users with an avenue to report inadequacies. The placards would instruct port users to report any inadequacy, such as inability to receive medical or hazardous waste or inability to receive waste within 24 hours notice, to the proper authority. Proposed 33 CFR 158.415 specifies the wording for reception facility placards.

10. *Equivalent shore connections for the discharge of oily mixtures.* This proposed amendment would change the shore connection requirement for certain U.S.-flag ships operating only in domestic service. Currently, 33 CFR 155.410 and 155.420 specify the requirements for shore connections on non-oceangoing ships of 100 gross tons and above and oceangoing ships of 100 gross tons to less than 400 gross tons. On these ships, the connections for discharging oily mixtures to shoreside reception facilities are required to meet the international-type standard specified in 33 CFR 155.430. We propose amending 33 CFR 155.410 and 155.420 to allow the specified ships operating only in domestic service to use any shore connection compatible with U.S. reception facilities, rather than an international-type connection.

11. *Definitions of the terms ''fuel oil,'' ''oily mixtures,'' ''oil,'' ''petroleum oil,'' ''oil cargo residue,'' ''oily rags,'' and ''oil residue.''* These proposed amendments would redefine for clarity those words in the regulations dealing with oil. Section 151.10(c) of 33 CFR addresses the control of discharge of ''cargo related oil residue.'' Recently, this term was judged as too vague to criminally charge a person with illegally discharging muck or paraffin from the crude oil cargo tanks of a vessel. To eliminate any future misinterpretations, we propose re-defining ''oil,'' ''petroleum oil,'' and ''oily mixtures.'' We eliminated ''mineral oil'' from the examples in the definition of ''petroleum oil'' because it is a petroleum-based oil component regulated under Annex I of MARPOL. The deletion is not intended to imply that ''mineral oil'' is not a regulated substance but that it does not need to be separately stated as an example in the definition. We also propose adding definitions for ''fuel oil,'' ''oil residue,'' ''oily rags,'' and ''oil cargo residue'' and incorporating industry standard terms into these definitions. The definitions of ''fuel oil'' and ''oil cargo residue'' also list synonyms of the terms (i.e., ''oil fuel'' and ''cargo oil residue,'' respectively). We would use these terms and definitions consistently throughout

33 CFR parts 151, 155, 157, and 158 to eliminate ambiguity.

The following table, Table 1, provides the:

- Proposed amendments for NPRM;
- MARPOL 73/78 cites dictating regulatory changes;
- 33 and 46 CFR cites affected; and
- Brief descriptions of the proposed regulatory changes to the U.S. regulations.

BILLING CODE 4910–15–P

TABLE 1--Reference Guide for Proposed Regulatory Changes.

Proposed Amendments of this NPRM	MARPOL 73/78 Cites Dictating Regulatory Changes	33 and 46 CFR Cites Affected	Regulatory Changes to Align Coast Guard Regulations with International Standards
1. Rate of discharge of oil into the sea.	Regulation 9(1)(a)(iv) of Annex I of MARPOL 73/78	33 CFR 157.37(a)(3)	Changes the rate of discharge of oil to 30 liters per nautical mile for tank vessels 150 gross tons and above carrying crude oil or products in bulk as cargo.
2. Oil content of the effluent discharged.	Regulation 9(1)(b)(iii) of Annex I of MARPOL 73/78	33 CFR 151.10(a)(5) 33 CFR 155.360(a) 33 CFR 155.370(a) & (d) 33 CFR 157.39(b)(3) redesignated as (b)(2)	Changes the allowable oil content in the effluent from machinery space bilges of oil tankers and other ships of 400 gross tons and above to 15ppm. This excludes cargo pump room bilges unless mixed with oil cargo residue.
3. Means for automatically stopping a discharge.	Regulation 16(2) of Annex I of MARPOL 73/78	33 CFR 155.370(a)	Revised to require a means for automatically stopping discharges when the oil content in the effluent exceeds 15ppm. This is a requirement for ships of 10,000 gross tons and above and for those ships 400 gross tons and above that carry ballast water in their fuel oil tanks.
4. Oil filtering equipment, alarms, and automatic stop requirements for ships delivered before July 6, 1993.	Regulation 9(7) of Annex I of MARPOL 73/78	33 CFR 155.360(a) 33 CFR 155.370(a)	Requires all vessels delivered before July 6, 1993, to comply with the discharge equipment requirements for oil filtering, alarms, and automatic stops when a final rule is published.

FILENAME: proposed_table

Proposed Amendments of this NPRM	MARPOL 73/78 Cites Dictating Regulatory Changes	33 and 46 CFR Cites Affected	Regulatory Changes to Align Coast Guard Regulations with International Standards
5. Term of validity for International Oil Pollution Prevention (IOPP) Certificates.	Regulation 8 of Annex I of MARPOL 73/78	33 CFR 151.19(e)	Changes the term of validity for IOPP Certificates to a maximum of 5 years for both inspected and uninspected vessels.
6. Damage stability of tank vessels.	Regulation 13 (F)(6) of Annex I of MARPOL 73/78	33 CFR part 157, Appendix B 46 CFR 172.065, Table 172.065(a)	Changes require oil tankers of 20,000 DWT or more to calculate (during the ship's design phase) the potential raking damage from grounding of the ship.
7. Intact stability of tankships (new builds).	Regulation 25A of Annex I of MARPOL 73/78	33 CFR 157.22 (new) 46 CFR 172.070 (new)	Adds two new CFR regulations to require all U.S. tankships of 5,000 DWT or more contracted before the effective date of this rulemaking, to comply with the intact stability design requirements to prevent lolling during loading and unloading of ships. Excludes tank barges.
8. Garbage discharge records.	Regulation 9(3) of Annex V of MARPOL 73/78	33 CFR 151.55	Removes the requirements for ships 12.2 meters (40 feet) in length to carry garbage discharge records and adds a requirement for ships 400 gross tons and above to carry garbage discharge records.
9. Placards for reception facilities.	Regulation 12 of Annex I of MARPOL 73/78 Regulation 7 of Annex II of MARPOL 73/78 Regulation 10 of Annex IV of MARPOL 73/78 Regulation 7 of Annex V of MARPOL 73/78	33 CFR 158.415 (new)	Specifies the wording for placards in reception facilities. Placard must notify users that the facility is a Coast Guard authorized facility and any facility deficiencies need to be reported to the proper authorities.

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Proposed Amendments of this NPRM	MARPOL 73/78 Cites Dictating Regulatory Changes	33 and 46 CFR Cites Affected	Regulatory Changes to Align Coast Guard Regulations with International Standards
10. Shore connections for the discharge of oily mixtures.	*Changes are not dictated by MARPOL 73/78 amendments.*	33 CFR 155.410 33 CFR 155.420	Amended to allow the use of any shore connection compatible with U.S. reception facilities, rather than the international standard, if the ship is not operating on an international voyage. This allowance is for non-oceangoing ships of 100 gross tons and above. This allowance is also for oceangoing ships of 100 gross tons and above but less than 400 gross tons.
11. Definitions of the terms "fuel oil," "oily mixtures," "oil," "petroleum oil," "oil cargo residue," "oily rags," and "oil residue."	*Changes are not dictated by MARPOL 73/78 amendments.*	33 CFR parts 151, 155, 157, and 158	Adds these terms and definitions to clarify the requirements in the appropriate CFR parts.

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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 has not reviewed this regulatory evaluation under that order. Also, this proposed rulemaking is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be minimal, and a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is not necessary. However, we have prepared a regulatory evaluation to clarify the potential cost and benefit impact from this proposed rule.

a. General Assumptions

1. The cost of this rulemaking is calculated for a 10-year period beginning in 2001 and ending on 2010.

2. In accordance with current Office of Budget and Management (OMB) guidance, program costs and benefits are discounted at 7 percent present value in year 2000 dollars.

3. Annual populations for the cost requirements are based on trend data from 1992 through 1996 contained in the Coast Guard Marine Safety Management System (MSMS) for U.S-flag vessels.

4. Tank vessels are currently practicing the policies established in Navigation and Vessel Inspection Circular (NVIC) No. 6–94, ''Guidance for Issuing International Oil Pollution Prevention (IOPP) Certificates Under Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL 73/78).'' These policies resulted, in part, from amendments to MARPOL 73/78 that required each tanker of 150 gross tons and above and each ship of 400 gross tons and above that engages in a voyage between countries party to MARPOL 73/78 to be surveyed and to have an IOPP Certificate. Also, NVIC No. 6–94 updated and corrected former NVIC No. 9–86 to account for U.S. policy determinations made since NVIC No. 9–86 was issued and for the following actions taken by the International Maritime Organization (IMO):

- Acceptance and entering into force of requirements dealing with the design of new tankers built on or after July 6, 1993.
- Measures for existing tankers.
- New oil discharge criteria for filtering equipment and control systems including instantaneous rate to discharge oily cargo mixtures.

This rulemaking proposes to incorporate these policies into our regulations to ensure that all U.S. vessels subject to these requirements meet the international standards approved by the IMO and required by MARPOL 73/78.

b. Costs

1. Industry Costs. The total present value costs for this proposed rule for the 10-year period would approximate $2,399,960. The costs are distributed as follows:

i. Oily-water or bilge monitors, $3,037.

ii. Implementation and maintenance of placards for reception facilities, $2,396,923.

- *Oily-water or bilge monitors.* Based on the policies established in NVIC No. 6–94, we estimated that at least 90 percent of the 131 tank vessel affected population is currently operating within policy guidelines by automatically or manually setting the oil or oily water discharge rate to not exceed 30 liters per nautical mile. The other 10 percent would simply upgrade their existing monitoring systems with new components that meet the new requirement. The estimated equipment costs to upgrade the components of an existing bilge monitor averages 250 dollars, making the one time cost of this proposed change approximately $3,250. When present valued in 2000 dollars, the cost would be $3,037.
- *Oil filtering equipment.* We estimate that the proposed requirement would affected 650 vessels, all of which are currently practicing the policies established in NVIC No. 6–94 and currently have oil filtering equipment that complies with the 15 ppm oil content of the effluent discharged. Therefore, this proposed requirement would not impose additional costs.
- *Automatic shut-off device/alarm.* We estimate that he proposed requirement would affect 396 ships, all of which already practice the policies established in NVIC No. 6–94. Therefore, this proposed requirement would not impose additional costs.
- *Damage stability for tank vessels.* We estimate that the proposed requirement would affect 650 vessels. Based on trend data from the MSMS database (1992–1996), we estimate that 13 U.S.-flag tank vessels 20,000 DWT and above would be built each year. For every single-hull tank vessel that is phased-out before 2015, a double-hull tank vessel may be built as its replacement. Currently, 54 single-hull tankships and 160 single-hull tank barges will be phased out over the next 16 years. For the 10-year period of costs for this rulemaking, approximately 3 tankships and 10 tank barges will be built annually to meet demand and to replace phased-out tank vessels (130 tank vessels over the 10-year period).

We expect the affected tank vessel fleet to incur minimal costs to comply with the damage stability requirements proposed in this rule. The U.S. international fleet currently complies with the damage stability requirements in MARPOL 73/78. Also, vessels in the U.S. domestic fleet that hold IOPP Certificates currently meet the additional design and engineering calculation requirements for design stability.

Moreover, under section 4115(a) of the Oil Pollution Act of 90 (OPA 90), these single-hull tank vessels are required to be retrofitted with double hulls or phased out of service by the year 2015. For vessels being retrofitted, there would be nominal additional costs during the design process for additional stability analyses. The proposed requirements would entail fitting the vessel with U-shaped ballast tanks, instead of J-shaped (or other) ballast tanks, and relocating cargo tank boundaries.

- *Intact stability for tank vessels.* We assume that all tank vessels of 5,000 DWT and above will be constructed so that they are capable of engaging in international commerce. Therefore, we assume that, in order to participate in international commerce, all currently operating tank vessels affected by this rulemaking already meet the intact stability requirements in MARPOL 73/78. Additionally, we assume that, in order to engage in international commerce, all tank vessels currently under construction and those constructed subsequent to this rulemaking will also be constructed in accordance with the requirements of MARPOL 73/78. Therefore, since all current and future tank vessels affected by this rulemaking must already meet the requirements of MARPOL 73/78 in order to engage in trade with other countries signatory to MARPOL, there are no additional costs incurred by the intact stability requirement.
- *Implementation and maintenance of placards for reception facilities.* There are 11,391 reception facilities that would be affected by the proposed change. We estimate that the average facility would need to post three placards to adequately cover the entrances and place of business that are

clearly visible for port and terminal users. Therefore, each facility would post approximately three placards, which are estimated to cost $50 each. This is a standardized cost for placards or signs approved by the Coast Guard. The onetime cost for implementation of this proposed requirement is approximately $1,708,650. When present valued in 2000 dollars, the cost would be $1,596,869.

The display of placards also implies that the placards be maintained by the ports or terminals. This maintenance constitutes a collection of information and recordkeeping requirement under the Paperwork Reduction Act. The total annual cost (burden) of $113,910 for this information-collection would be added to a revised OMB collection 2115–0543. The affected population and hour burden is explained in the ''Collection of Information'' section. The accumulated present value for the 10-year period of this burden is $800,054. Therefore the total present value cost (burden) of this requirement is $2,396,923.

The definitions of the terms ''ports'' and ''terminals'' under 33 CFR 158.120 include virtually all ports and terminals. It is easier to describe those terminals that are not required to provide reception facilities for garbage. They are recreational boating facilities that can provide wharfage or other services for less than 10 recreational vessels at the same time and locations and facilities containing only an unattended launching ramp. All other waterfront facilities, where vessels can tie up in the navigable waters or waters subject to the jurisdiction of the U.S. out to the Exclusive Economic Zone (EEZ) and where the owner or operator of the facility is conducting business with ships, must be capable of receiving garbage from visiting ships. These facilities include fishing terminals, fixed or floating facilities supplying petroleum products or other services, waterfront facilities servicing the offshore oil industry, recreational boating facilities that are capable of providing wharfage or other services for 10 or more vessels at the same time, waterfront facilities servicing commercial ships, and offshore structures that receive ships such as deepwater ports.

• *Equivalent shore connections.* For the purposes of this proposed rulemaking, we consider any shore connection compatible with U.S. reception facilities as equivalent to each other. All ships that would be subject to this requirement currently have shore connections that are compatible with U.S. reception facility connections.

This proposed rule would allow the specified ships to use any shore connection that is compatible with U.S. reception facilities when operating only on domestic voyages, rather than a connection that meets the international-type standard. Although the ships would not comply with the international-type standard, they would meet the intent of the standard by having a connector that is compatible with discharge facilities in their area of operation. Because these ships currently have connections that are compatible with the facilities used, this requirement would not impose an additional cost (or benefit) on these ships.

2. *Government costs.* We expect that government costs under this rule would be negligible. The information-collection requirements contained in this rule are minor additions to information-collection requirements imposed by other Coast Guard regulations.

c. Benefits

1. *Industry Benefits.* The total present value of industry benefits for this proposed rule for the 10-year period would be approximately $164.1 million. The industry benefits for this proposed rulemaking are distributed as follows:

i. IOPP certificates: $3,715.

ii. Garbage discharge records: $163.5 million.

iii. International oil discharge compliance: $632,122.

• *IOPP Certificates.* This rulemaking proposes to change the term of the IOPP certificate from 4 to 5 years for both inspected and uninspected vessels. The costs for this rulemaking are included under the approved collection OMB 2115–0518. By aligning U.S. regulations with international standards, the annual paperwork burden cost would be reduced by $530. The 10-year accumulated present value of the recurring benefit is approximately $3,715.

• *Refuse discharge.* This proposed regulation would require each oceangoing ship of 400 gross tons and above engaged in commerce and documented under the laws of the United States or numbered by a State, each vessel certified to carry 15 passengers or more on international voyages, and each fixed or floating platform subject to the jurisdiction of the United States to maintain garbage discharge records on board. We use these records to determine how ship-generated waste is handled (*i.e.,* incinerated, discharged at sea, or off-loaded at a shore reception facility). Since all of these vessels currently maintain these records, this proposal would impose no additional information-collection burden. It would create an annual benefit for those vessels no longer required to maintain these records. The total annual cost (burden) for this information-collection is estimated in revised OMB collection 2115–0613 to be a total annual cost (burden) of $2.6 million, and it would apply to 1,296 vessels. The previous requirement imposed a cost (burden) of $25.9 million on 16,878 vessels. The annual impact of the proposed rule would save industry $23.3 million. Therefore, the accumulated present value for the 10-year period of this benefit is $163.5 million.

• *International oil discharge limitations compliance.* Implementing these proposed regulations would ensure that U.S. vessels comply with the international oil discharge limitations, enabling them to engage in international trade with minimal interruption. Vessels that are not in compliance with this rulemaking could be denied entry into ports of countries party to MARPOL 73/78 or could experience detention in these ports. These actions would result in a substantial monetary loss due to the vessel's inability to engage in trade.

Assuming non-compliance with the international oil discharge limitations, and that one U.S. vessel would be detained each year, we estimate the avoided-cost savings of complying with this rulemaking would be $90,000 per year. The accumulated present value for the ten-year period of this benefit would be $632,122.

• *Oily-water separating equipment.* Based on the methodology indicated in the IMO publication and the United States National Academy of Sciences study, ''Petroleum in the Marine Environment'' (adopted in 1981), we identified that the 650 vessels equipped with oily-water separating equipment for oil content allowances at 100 ppm currently discharge approximately 1/10 of their accumulated bilge oil to sea. When applied to all of the vessels subject to this requirement, the Coast Guard estimates indicate a potential reduction in the amount of oily water discharged into the sea by approximately 396 tons (2,485 barrels) annually, if oily-water equipment has a discharge allowance of 15 ppm.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are two proposed requirements that would impose additional costs to the small entities affected by this proposed rulemaking. The proposed placards to be posted by reception facilities would add an estimated cost of $150 per facility. Reception facilities would also be required to maintain the proposed placards, and the annual maintenance burden would be $10 per facility. The 10-year present value of the maintenance cost imposed on each reception facility would be $75. We assume that each facility would need to spend a half-hour maintaining the placards on annual basis at a wage rate of $20 per hour. Combined, the accumulated present value of the cost of placards and their maintenance would be $225 for the analyzed 10-year period ($150 for placards + $75 maintenance). We consider this cost to be minimal and would not pose a substantial economic burden on the reception facilities affected by this proposed requirement.

The proposed oily-water or bilge monitors requirement would impose a $250 cost per tank vessel. This would be a one-time cost, and in our view a very small additional cost to tank vessel owners, considering that the cost of a tank vessel, depending on its size, may be $100,000,000 or more.

In addition, we propose removing the requirement for garbage discharge records for ships of 12.2 meters (40 ft) or more in length and less than 400 gross tons. These ships are most likely to be owned by the small entities in this industry and would no longer be required to keep garbage disposal records. Therefore, the small entities that own these vessels would benefit from the proposed change in the regulation. We estimate that 15,582 oceangoing vessels would no longer need to meet this requirement, and the average annual cost savings to each vessel would be $1,494 ($23.3 million/15,582 vessels). The accumulated present value of these cost savings for the 10-year period of analysis would be $10,491 per vessel (163.5 million/15,582 vessels).

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 impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically 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 effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Michael Jendrossek at 202–267–1181. We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.html that has current information on small entity issues and proposed Coast Guard regulations.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for three collections 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 information-collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The information-collection requirements of this proposed rule are addressed in the OMB collections 2115–0518, 2115–0543, and 2115–0613.

Refuse discharge. This proposed requirement would mandate that every oceangoing ship 400 gross tons and above and all vessels certified to carry 15 or more passengers engaged in international voyages develop and maintain garbage discharge records on board. Oceangoing vessels less than 400 gross tons would no longer be required to carry garbage discharge records with the exception of vessels certified to carry 15 passengers or more on international voyages. The burden for this requirement would be included in a revised OMB collection 2115–0613.

IOPP Certificates. This rulemaking proposes to change the term of the IOPP certificate from 4 to 5 years. This proposed change would decrease the information-collection burden on ship owners. The information-collection burden of the IOPP certificate is included under the previously approved OMB collection 2115–0518.

Placards for reception facilities. The proposal includes a requirement for all U.S. reception facilities to post and maintain placards that notify users that the facility is a waste reception facility and that inadequacies shall be reported to the local Coast Guard COTP. This information is required to comply with the MARPOL Protocol. The information-collection costs associated with this requirement, under OMB (5 CFR part 1320.3(c)(1)), would include only the facilities' cost to keep records to maintain these placards. This information-collection would be added in an amended OMB collection 2115–0543.

1. OMB Collection 2115–0518

Title: Requirements for the Installation and Use of Oil Discharge Monitoring Equipment for Tank Vessels and International Oil Pollution Prevention Certificates.

Summary of the Collection of Information: This collection concerns the issuance of International Oil Pollution Prevention (IOPP) Certificates and would be impacted by the proposed changes in 33 CFR 151.19.

Need for Information: Not applicable. This proposed rule would amend a previously approved collection of information by changing the term of a certificate. The need to collect this information (*i.e.,* to assist the Coast Guard in determining whether or not a ship complies with MARPOL 73/78) is required by MARPOL.

Description of the Respondents: This collection would affect U.S.-flag tank vessels of 150 gross tons and above, and other U.S.-flag ships of 400 gross tons and above, that engage in voyages to ports or offshore terminals under the jurisdiction of other parties to MARPOL 73/78.

Number of Respondents: According to Marine Safety Information System (MSIS) records, the collection of information for approximately 1,062

vessels would be affected by the proposed changes.

Frequency of Response: An IOPP Certificate would be issued every 5 years, instead of every 4 years.

Burden of Response: The burden to respondents is approximately 20 minutes (0.33 hours) per response.

Estimated Total Burden: During a 3-year period, the total reporting and recordkeeping burden would be 784 hours.

2. OMB Collection 2115–0543

New Title: Adequacy Certification, Advance Notice, and Placards for Reception Facilities.

Summary of the Collection of Information: This collection would be amended by the proposed maintenance requirement of placards in 33 CFR 158.415. The proposed requirement would direct the reception facility to maintain placards describing their disposal requirements.

Need for Information: The maintenance of placards can ensure that they are legible and accurate. Section 33 CFR 158.415 requires facilities to maintain placards describing how and where to report inadequacies.

Proposed Use of Information: This information would strengthen enforcement efforts for discharge prohibitions of MARPOL 73/78 Annex I (Oil), Annex II (NLS), and Annex V (Garbage) at reception facilities.

Description of Respondents: Ports or terminals that have reception facilities.

Number of Respondents: 11,391 reception facilities during a 3-year period.

Frequency of Response: Perform maintenance as needed.

Burden of Response: We estimate that it would take 30 minutes (0.5 hours) of management time to comply with the proposed requirement.

Estimated Total Annual Burden: The annual maintenance of placards would be 5,696 hours.

3. OMB Collection 2115–0613

New Title: Waste Management Plans, Recordkeeping of Refuse Discharge, and Letter of Instruction for Persons-in-Charge.

Summary of the Collection of Information: This collection addresses the refuse discharge records as would be affected by the proposed rule in 33 CFR 151.55. As a result, we would amend and incorporate the following approved OMB Collections into one:

- OMB 2115–0120 ''Transfer Procedures and Waste Management Plans.'' Only the Waste Management Plans portion of this collection is being combined into this submission.
- OMB 2115–0613 previously titled ''Recordkeeping of Refuse Discharges from Ships.''
- OMB 2115–0634 previously titled ''Letter of Instruction for Persons-in-Charge (PIC) on Uninspected Vessels.''

Need for Information: The proposed 33 CFR 151.55 would require U.S. ships to maintain records of discharge and disposal operations (incineration, legal discharge at sea, off-loading to a port reception facility, etc.) to determine how ship-generated waste is handled.

Proposed Use of Information: This information would ensure that the designated vessel meets a particular pollution prevention standard that promotes the safety of life, environment, and property in marine transportation.

Description of Respondents: The proposed rule would affect operators of U.S.-flag oceangoing vessels of 400 gross tons and above and all vessels certified to carry 15 passengers or more engaged in international voyages. Vessel operators would maintain documentation on garbage discharge. Current collection requirements on Manned Fixed or MODUs would not be impacted by the proposed changes.

Number of Respondents: The proposed regulation would require 1,296 vessel operators to maintain records.

Frequency of Response: Every time garbage is disposed, it must be documented.

Burden of Response: Each record entry is estimated to take 5 minutes.

Estimated Total Annual Burden: The refusal discharge requirement would pose a burden of 52,569 hours for the affected vessels in this proposed rulemaking. The Office of Management and Budget has already approved the collection requirement. The effect this proposed rule would have on the collection of information is to reduce the affected population as it relates to refuse discharge records.

Public Comment on the Collections of Information: 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.**

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 Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that order.

Section 3(b) of the order allows Federal agencies to take a national action that limits the policymaking discretion of the States if there is constitutional and statutory authority for the action and if the action is appropriate in light of the presence of a problem of national significance. With the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* (number 98–1701) and *Intertanko* v. *Locke* (number 1706) on March 6, 2000, (120 S.Ct. 1135 (1999)) the States are precluded from regulating any of the categories covered by 46 U.S.C. 3703(a): design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tank vessels.

This proposed rule concerns requirements for the construction (damage and intact stability), operation (operational discharges of oil, International Oil Pollution Prevention Certificates, and garbage recordkeeping requirements), and equipping (oily-water separators) for tank vessels or other oceangoing vessels. It also would implement the statutory mandate (33 U.S.C. 1905(f)(2)) for placards at reception facilities under MARPOL 73/7 and allow the use of an optional type of shore connection equipment for domestic vessels discharging oily mixtures at shoreside facilities. This entire proposed rule falls within the preempted categories listed above, which, as we have long held, apply to both inspected vessels as well as tank vessels. For this reason, preemption is not an issue in this rulemaking.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d) and (34)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation.

The proposed rule would align U.S. regulations concerning IOPP Certificates, oily-water separators, operational discharge of oil, and damage and intact stability of tank vessels with the international standards, meeting the recent amendments to MARPOL 73/78. This rulemaking would also require vessels of 20,000 deadweight tons (DWT) and above to comply with the MARPOL 73/78 damage stability provisions and vessels of 5,000 DWT and above to comply with the MARPOL 73/78 intact stability provisions. In addition, this rulemaking would amend requirements regarding the use of domestic shore connections, recordkeeping requirements for the discharge of garbage, and placards telling how to report deficiencies at reception facilities. This rule would only relax the reporting requirements on garbage disposal records. It does not relax the manner in which garbage is treated. Therefore this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

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

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Administrative practice and procedure, Harbors, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 172

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 151, 155, 157, and 158 and 46 CFR part 172 as follows:

33 CFR PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

§ 151.01 [Amended]

2. In § 151.01, remove the note.

3. In § 151.05, revise the definition of the terms ''MARPOL 73/78'', ''oil'', ''oily mixture'' and ''operational waste'' and add, in alphabetical order, the definitions of ''fuel oil'' ''oil cargo residue'' and ''oily rags'' to read as follows:

§ 151.05 Definitions.

* * * * *

Fuel oil means any oil used to fuel the propulsion and auxiliary machinery of the ship carrying the fuel. The term ''fuel oil'' is also known as ''oil fuel.''

* * * * *

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

Oil means petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products, and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78. ''Oil'' does not include animal and vegetable based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

Oil cargo residue means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term ''oil cargo residue'' is also known as ''cargo oil residue.''

Oil residue means—

(1) Oil cargo residue; and

(2) Other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

Oily mixture means a mixture, in any form, with any oil content. ''Oily mixture'' includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks.

Oily rags means rags soaked with oil.

Operational waste means all cargo-associated waste, maintenance waste, and cargo residues other than oil residues and NLS cargo residues. ''Operational wastes'' includes ashes and clinkers (i.e., a mass of incombustible matter fused together by heat) from shipboard incinerators and coal burning boilers but does not include plastic clinkers, which are treated as an Annex V waste, or oily

rags, which are treated as an Annex I waste.

* * * * *

§ 151.08 [Amended]

4. In § 151.08(a), remove the words ''oil or oily residues and mixtures'' and add, in their place, the words ''oil, oil residue, or oily mixtures''.

5. In § 151.10–

a. In paragraph (a)(5), remove the number ''100'' and add, in its place, the number ''15'';

b. In the note at the end of paragraph (f)(2)(iii), remove the words ''the residues and mixtures containing oil'' and add, in their place, the words ''oil residues and oily mixtures''; and

c. Revise paragraph (c), paragraph (f) introductory text, and paragraphs (f)(2)(i) through (f)(2)(iii) to read as follows:

§ 151.10 Control of oil discharges.

* * * * *

(c) The overboard discharge of any oil cargo residues and oily mixtures that include oil cargo residues from an oil tanker is prohibited, unless discharged in compliance with part 157 of this chapter.

* * * * *

(f) The person in charge of an oceangoing ship that cannot discharge oily mixtures into the sea in compliance with paragraphs (a), (b), (c), or (d) of this section must ensure that those oily mixtures are—

* * * * *

(2) * * *

(i) The estimated time of day the ship will discharge oily mixtures;

(ii) The type of oily mixtures to be discharged; and

(iii) The volume of oily mixtures to be discharged.

* * * * *

6. In § 151.13, revise paragraph (b)(3) to read as set forth below and, in paragraph (f), remove the words ''oil residues'' and add, in their place, the words ''oily mixtures'':

§ 151.13 Special areas for Annex I of MARPOL 73/78.

* * * * *

(b) * * *

(3) All ships operating in the Antarctic area must have on board a tank or tanks of sufficient capacity to retain all oily mixtures while operating in the area and arrangements made to discharge oily mixtures at a reception facility outside the Antarctic area.

* * * * *

7. In § 151.19, revise paragraph (e) introductory text to read as follows:

§ 151.19 International Oil Pollution Prevention (IOPP) Certificates.

* * * * *

(e) The IOPP Certificate for each inspected or uninspected ship is valid for a maximum period of 5 years from the date of issue, except as follows:

* * * * *

§ 151.25 [Amended]

8. In § 151.25—

a. In paragraph (d)(2), remove the words ''dirty ballast'' and add, in their place, the words ''ballast containing an oily mixture'';

b. In paragraph (d)(3), remove the words ''oily residues (sludge)'' and add, in their place, the words ''oil residue''; and

c. In paragraph (e)(10), remove the word ''residues'' and add, in its place, the words ''oil residue''.

§ 151.26 [Amended]

9. In § 151.26—

a. In paragraphs (b)(3)(i)(A) and (b)(3)(i)(B), after the words ''A discharge of oil'', add the words ''or oily mixture''; and

b. In paragraph (b)(3)(iii)(B), after the words ''For actual or probable discharges of oil'', add the words ''or oily mixtures''.

10. In § 151.55, revise paragraphs(a)(1) and (a)(2) and add a new paragraph (a)(3) to read as follows:

§ 151.55 Recordkeeping requirements.

(a) * * *

(1) Every manned oceangoing ship (other than a fixed or floating platform) of 400 gross tons and above that is engaged in commerce and that is documented under the laws of the United States or numbered by a State.

(2) Every manned fixed or floating platform subject to the jurisdiction of the United States.

(3) Every manned ship that is certified to carry 15 passengers or more engaged in international voyages.

* * * * *

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

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

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii). Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

§ 155.330 [Amended]

12. In § 155.330, in the section heading, remove the words ''Bilge slops/fuel oil'' and add, in their place, the words ''Oily mixture (bilge slops)/fuel oil'' and, in paragraph (b), remove the words ''oily residue'' and add, in their place, the words ''oil residue''.

13. In § 155.350, revise the section heading and paragraph (a)(2) to read as follows and, in paragraph (b), remove the words ''oily residue'' and add, in their place, the words ''oil residue'':

§ 155.350 Oily mixture (Bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(2) Has approved oily-water separating equipment for processing oily mixtures from bilges or fuel oil tank ballast and discharges into the sea according to § 151.10 of this chapter.

* * * * *

14. In § 155.360—

a. In the section heading, remove the words ''Bilge slops'' and add, in their place, the words ''Oily mixture (Bilge slops)'';

b. In paragraph (a), remove the number ''100'' and add, in its place, the number ''15'' and remove the words ''oily bilge slops or oily'' and add, in their place, the words ''oily mixtures from bilges or'';

c. In paragraph (b), remove the words ''oily residues (sludges)'' and add, in their place, the words ''oil residue'';

d. In paragraph (b)(2), remove the words ''oily wastes'' and add, in their place, the words ''oily mixtures''; and

e. Revise paragraph (e) to read as follows:

§ 155.360 Oily Mixtures (Bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

* * * * *

(e) This section does not apply to a fixed or floating drilling rig or other platform, except as specified in § 155.400(a)(2).

15. In § 155.370—

a. Revise the section heading and paragraph (a) to read as set forth below;

b. In paragraph (b) introductory text, remove the words ''oily residues (sludges)'' and add, in their place, the words ''oil residue'';

c. In paragraph (b)(1), remove the words ''oily residues'' and add, in their place, the words ''oil residue'';

d. In paragraph (b)(2), remove the words ''oily wastes'' and add, in their place, the words ''oily mixtures'';

e. Remove paragraph (d);

f. Redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and

g. Revise new paragraph (e) to read as follows:

§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

(a) No person may operate an oceangoing ship of 10,000 gross tons and above, or any oceangoing ship of 400 gross tons and above, that carries ballast water in its fuel oil tanks, unless it has—

(1) Approved 15 ppm oily-water separating equipment for the processing of oily mixtures from bilges or fuel oil tank ballast;

(2) A bilge alarm; and

(3) A means for automatically stopping any discharge of oily mixture when the oil content in the effluent exceeds 15 ppm.

* * * * *

(e) This section does not apply to a fixed or floating drilling rig or other platform, except as specified in § 155.400(a)(2).

§ 155.380 [Amended]

16. In § 155.380, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

17. In § 155.410, revise paragraph (a)(3) to read as set forth below and, in paragraph (b), remove the words ''oily bilge slops or oily'' and add, in their place, the words ''oily mixtures from bilges or'':

§ 155.410 Pumping, piping, and discharge requirements for non-oceangoing ships of 100 gross tons and above.

(a) * * *

(3) Each outlet required by this section has a shore connection that is compatible with reception facilities in the ship's area of operation; and

* * * * *

18. In § 155.420—

a. In paragraph (a)(3), remove the words ''The outlet'' and add, in their place, the words ''For a ship on an international voyage, the outlet'';

b. Redesignate paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively;

c. Add new paragraph (a)(4) to read as set forth below;

d. In newly designated paragraph (a)(5), remove the word ''wastes'' and add, in its place, the word ''mixtures''; and

e. In paragraph (b), remove the words ''oily bilge slops or oily'' and add, in their place, the words ''oily mixtures from bilges or'':

§ 155.420 Pumping, piping, and discharge requirements for oceangoing ships of 100 gross tons and above but less than 400 gross tons.

(a) * * *

(4) For a ship not on an international voyage, the outlet required by this section has a shore connection that is compatible with reception facilities in the ship's area of operation;

* * * * *

19. In § 155.430, revise paragraph (a) introductory text to read as set forth below and, in paragraph (b), remove the word ''wastes'' and add, in its place, the word ''mixtures'':

§ 155.430 Standard discharge connections for oceangoing ships of 400 gross tons and above.

(a) All oceangoing ships of 400 gross tons and above must have a standard shore connection for reception facilities to discharge oily mixtures from machinery space bilges or ballast water containing an oily mixture from fuel oil tanks. The discharge connection must have the following dimensions:

* * * * *

§ 155.440 [Amended]

20. In § 155.440, in the section heading, remove the words ''water ballast'' and add, in their place, the words ''ballast water''.

21. Revise § 155.810 to read as follows:

§ 155.810 Tank vessel security.

Operators of tank vessels carrying more oil cargo residue than normal in any cargo tank must assign a surveillance person or persons responsible for maintaining standard vessel security.

§ 155.1015 [Amended]

22. In § 155.1015, in paragraphs (a) introductory text and (c)(2), before the words ''cargo residue'', add the word ''oil''.

23. In § 155.1020, revise the definition of ''petroleum oil'' to read as follows:

§ 155.1020 Definitions.

* * * * *

Petroleum oil means petroleum in any form including, but not limited to, crude oil, fuel oil, sludge, oil residue, and refined products.

* * * * *

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

24. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

25. In § 157.03:

a. In the definitions of ''lightweight'', ''oil fuel'', and ''segregated ballast'' remove the words ''oil fuel'' and add, in their place, the words ''fuel oil'';

b. In the definition of ''slop tank'', remove the words ''oil mixtures'' and add, in their place, the words ''oily mixtures'';

c. Add, in alphabetical order, the definitions of the terms ''MARPOL 73/78'', ''oil cargo residue'', and ''oil residue'';

d. Remove the definition of ''MARPOL Protocol''; and

e. Revise the definitions of ''oily mixture'' and ''petroleum oil'' to read as follows:

§ 157.03 Definitions.

* * * * *

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

Oil cargo residue means any residue of oil cargo whether in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term ''oil cargo residue'' is also known as ''cargo oil residue.''

Oil residue means—

(1) Oil cargo residue; and

(2) Other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

Oily mixture means a mixture, in any form, with any oil content. ''Oily mixture'' includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks, including any oil cargo residue.

* * * * *

Petroleum oil means petroleum in any form including, but not limited to, crude

oil, fuel oil, sludge, oil residue, and refined products.

* * * * *

§ 157.04 [Amended]

26. In § 157.04(b), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.07 [Amended]

27. In § 157.07, remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.11 [Amended]

28. In § 157.11(a), remove the words ''cargo residues and other''.

§ 157.12 [Amended]

29. In § 157.12(b)(2), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

30. Revise § 157.15(b) introductory text to read as follows:

§ 157.15 Slop tanks in tank vessels.

* * * * *

(b) *Capacity.* Slop tanks must have the total capacity to retain oily mixtures from cargo tank washings, oil residue, and ballast water containing an oily mixture of 3 percent or more of the oil carrying capacity. Two percent capacity is allowed if there are—

* * * * *

§ 157.17 [Amended]

31. In § 157.17—

a. In the section heading and in paragraphs (b) and (c), remove the words ''oily residue'' and add, in their place, the words ''oil residue (sludge)''; and

b. In paragraph (a), remove the words ''oily residue'' and add, in their place, the words ''oil residue''.

32. Add § 157.22 to read as follows:

§ 157.22 Intact stability requirements.

All tank ships of 5,000 DWT and above contracted after [Insert the effective date of this rulemaking] must comply with the intact stability requirements of Regulation 25A, Annex I MARPOL 73/78.

§ 157.24 [Amended]

33. In § 157.24(c)(2), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.24a [Amended]

34. In § 157.24a(b)(2), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.33 [Amended]

35. In § 157.33, remove the words ''oil fuel'' and add, in their place, the words ''fuel oil''.

36. In § 157.37—

a. In paragraph (a)(3), remove the number ''60'' and add, in its place, the number ''30'';

b. In paragraph (a)(7), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78'';

c. In paragraph (b), remove the word ''residues'' and add, in its place, the words ''oil cargo residues''; and

d. Revise the section heading and paragraph (e) introductory text to read as follows:

§ 157.37 Discharge of oily mixtures from oil cargoes.

* * * * *

(e) Ballast water containing an oily mixture may be discharged below the waterline at sea by gravity if—

* * * * *

§ 157.39 [Amended]

37. In § 157.39—

a. In paragraph (a) and the introductory text of paragraph (b), remove the words ''oil cargo mixture'' and add, in their place, the words ''oil cargo residue'';

b. Remove paragraph (b)(1);

c. Redesignate paragraphs (b)(2), (b)(3), and (b)(4) as paragraphs (b)(1), (b)(2), and (b)(3), respectively;

d. In newly designated paragraph (b)(2), remove the number ''100'' and add, in its place, the number ''15''.

§ 157.43 [Amended]

38. In § 157.43(b) introductory text, remove the words ''oil mixture'' and add, in their place, the words ''oily mixture''.

§ 157.118 [Amended]

39. In § 157.118(a) (1)(ii) and (a)(2)(i), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.138 [Amended]

40. In § 157.138(a)(1), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.140 [Amended]

41. In § 157.140(a)(1), remove the words ''oil clingage or deposits of oil, or both'' and add, in their place, the words ''oil residues''.

§ 157.160 [Amended]

42. In § 157.160 (a)(2) and (b)(3), remove the word ''sludge'' and add, in its place, the words ''oil cargo residue''.

§ 157.216 [Amended]

43. In § 157.216 (a)(1)(ii) and (a)(2)(i), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.224 [Amended]

44. In § 157.224(a), remove the words ''MARPOL Protocol'' and add, in their place, the words ''MARPOL 73/78''.

§ 157.302 [Amended]

45. In § 157.302, paragraphs (b)(3) and (b)(6), remove the words ''cargo residues'' and add, in their place, the words ''oil cargo residues''.

§ 157.304 [Amended]

46. In § 157.304(a), remove the words ''cargo residues'' and add, in their place, the words ''oil cargo residues''.

§ 157.310 [Amended]

47. In § 157.310(c), remove the words ''cargo residues'' and add, in their place, the words ''oil cargo residues''.

§ 157.400 [Amended]

48. In § 157.400(b)(2), remove the words ''cargo residue'' and add, in their place, the words ''oil cargo residue''.

49. In part 157, appendix B, add paragraph 3(f) to read as follows:

Appendix B—Subdivision and Stability Assumptions

* * * * *

3. * * *

(f) For oil tankers of 20,000 tons deadweight and above, the damage assumptions must be supplemented by the following assumed bottom raking damage:

(1) Longitudinal extent:

(i) For ships of 75,000 tons deadweight and above, 0.6L measured from the forward perpendicular.

(ii) For ships of less than 75,000 tons deadweight, 0.4L measured from the forward perpendicular.

(2) Transverse extent: B/3 anywhere in the bottom.

(3) Vertical extent: Breach of the outer hull.

* * * * *

Appendix D—[Amended]

50. In part 157, appendix D, paragraph 2(a)(1), remove the word ''slop'' and add, in its place, the words ''oily mixtures''.

PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

51. The authority citation for part 158 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46.

§ 158.100 [Amended]

52. In § 158.100(b)(1), remove the words ''Residues and mixtures

containing oil'' and add, in their place, the words ''Oily mixtures''.

§ 158.110 [Amended]

53. In § 158.110(a)(1), remove the words ''residues and mixtures containing oil'' and add, in their place, the words ''oily mixtures''.

54. In § 158.120—

a. Revise the section heading;

b. Remove the definition of ''MARPOL Protocol'';

c. Revise the definition of ''oil'';

d. In the definition of ''reception facility'', remove the words ''residues and mixtures containing oil'' and add, in their place, the words ''oily mixtures''; and

e. Add, in alphabetical order, the definitions of the terms ''MARPOL 73/78'', ''oil cargo residue'', ''oil residue'', and ''oily mixtures'' to read as follows:

§ 158.120 Definitions.

* * * * *

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

* * * * *

Oil means petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products, and, without limiting the generality of the foregoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78. ''Oil'' does not include animal and vegetable based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

Oil cargo residue means any residue of oil cargo *whether* in solid, semi-solid, emulsified, or liquid form from cargo tanks and cargo pump room bilges, including but not limited to, drainages, leakages, exhausted oil, muck, clingage, sludge, bottoms, paraffin (wax), and any constituent component of oil. The term ''oil cargo residue'' is also known as ''cargo oil residue.''

Oil residue means—

(1) Oil cargo residue; and

(2) Other residue of oil resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.

Oily mixture means a mixture, in any form, with any oil content. ''Oily mixture'' includes, but is not limited to—

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks.

* * * * *

§ 158.133 [Amended]

55. In § 158.133(a), remove the words ''residues and mixtures containing oil'' and add, in their place, the words ''oily mixtures''.

§ 158.135 [Amended]

56. In § 158.135(a), remove the words ''residues and mixtures containing oil'' and add, in their place, the words ''oily mixtures''.

Subpart B—[Amended]

57. Revise the heading of subpart B to read as follows:

Subpart B—Criteria for Reception Facilities: Oily Mixtures

§ 158.200 [Amended]

58. In § 158.200(a)(2), (a)(3)(i), (a)(3)(iii), and (b), remove the words ''residues and mixtures containing oil'' and add, in their place, the words ''oily mixtures''; and, in (a)(3)(ii), remove the words ''oily ballast'' and add, in their place, the words ''ballast water containing oily mixtures''.

§ 158.210 [Amended]

59. In § 158.210—

a. In paragraph (a), remove the word ''Sludge'' and add, in its place, the words ''Oil residue'';

b. In paragraph (b), remove the words ''Oily bilge water'' and add, in their place, the words ''Bilge water containing oily mixtures''; and

c. In paragraph (c), remove the words ''Oily ballast'' and add, in their place, the words ''Ballast water containing oily mixtures''.

§ 158.220 [Amended]

60. In § 158.220—

a. In paragraph (a), remove the word ''Sludge'' and add, in its place, the words ''Oil residue'';

b. In paragraph (b), remove the words ''Oily bilge water'' and add, in their place, the words ''Bilge water containing oily mixtures'';

c. In paragraph (c), remove the words ''Oily ballast'' and add, in their place, the words ''Ballast water containing oily mixtures''; and

d. In paragraph (d), remove the words ''Cargo residue'' and add, in their place, the words ''Oil cargo residue''.

§ 158.230 [Amended]

61. In § 158.230—

a. In paragraph (a), remove the word ''Sludge'' and add, in its place, the words ''Oil residue''; and

b. In paragraph (b), remove the words ''Oily bilge water'' and add, in their place, the words ''Bilge water containing oily mixtures''.

62. In § 158.240, revise paragraphs (a) and (b) and the introductory text to paragraphs (c) and (d) to read as follows:

§ 158.240 Ship repair yards.

* * * * *

(a) An amount of ballast from bunker tanks, and the wash water and oil residue from the cleaning of bunker tanks and oil residue (sludge) tanks, equal to 8% of the bunker capacity of the largest oceangoing ship serviced;

(b) An amount of solid oil cargo residues from cargo tanks equal to 0.1% of the deadweight tonnage of the largest oceangoing tanker serviced;

(c) An amount of ballast water containing oily mixtures and wash water from in-port tank washing equal to—

* * * * *

(d) An amount of liquid oil cargo residue based on the following percentages of deadweight tonnage of the largest oceangoing tanker serviced:

* * * * *

§ 158.250 [Amended]

63. In § 158.250, remove the words ''oily bilge water'' wherever they appear and add, in their place, the words ''bilge water containing oily mixtures''.

64. Add § 158.415 to read as follows:

§ 158.415 Placards for waste reception facilities.

(a) A person in charge of a port or terminal must post one or more placards in prominent locations and in sufficient numbers so that port and terminal users can read them. The locations of placards may include entranceways, site of reception facility, and along the pier or wharf. If the Captain of the Port determines that the number or location of the placards is insufficient, he or she may require additional placards and specify their locations.

(b) The placard must include at least the following words:

(1) ''Waste Reception Facility—which receives (Insert type of waste) under the requirements of Code of Federal Regulations Title 33, Part 158. Please report any reception facility inadequacy to the local U.S. Coast Guard Captain of the Port at (Insert the local Captain of Port's phone number).''

(2) In paragraph (b)(1) of this section, the words ''Waste Reception Facility'' must appear in at least 1 inch letters and all other words in this paragraph must appear in at least ½ inch letters.

(3) Each placard must be at least 12 inches high and 11 inches wide and made of durable material.

46 CFR PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

65. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

66. Add § 172.048 to read as follows:

§ 172.048 Definitions.

As used in this subpart—

MARPOL 73/38 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention. A copy of MARPOL 73/78 is available from the International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, England.

67. In § 172.065, in table 172.065(a), at the end of the table before note 1, add a new entry to read as follows:

§ 172.065 Damage stability.

* * * * *

TABLE 172.065(A)—EXTENT OF DAMAGE

*	*	*	*	*	*	*
GROUNDING PENETRATION FOR RAKING DAMAGE						
For tank vessels of 20,000 tons deadweight and above, the following assumed bottom raking damage must supplement the damage assumptions:						
Longitudinal extent	For vessels of 75,000 tons deadweight and above, 0.6L measured from the forward perpendicular. For vessels of less than 75,000 tons deadweight, 0.4L measured from the forward perpendicular.					
Transverse extent....	B/3 anywhere in the bottom.					
Vertical extent.....	Breach of the outer hull.					
*	*	*	*	*	*	*

68. Add § 172.070 to Subpart D to read as follows:

§ 172.070 Intact stability.

All tank vessels of 5,000 DWT and above contracted after the effective date of this rulemaking must comply with the intact stability requirements of Regulation 25A, Annex I of MARPOL 73/78.

Dated: July 14, 2000.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Safety Protection.

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Part III

Office of Management and Budget

OMB Circular A–21, Cost Principles for Educational Institutions; Notice

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–21, ''Cost Principles for Educational Institutions''

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final revision.

SUMMARY: The Office of Management and Budget has revised Circular A–21, ''Cost Principles for Educational Institutions,'' to add a standard format for submitting facilities and administrative rate proposals by educational institutions. This form will be shown as Appendix C in the Circular. The standard format will assist institutions in completing their proposals more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. In addition the standard format will help the Federal Government collect important data regarding facilities and administrative costs and rates at educational institutions.

DATES: This revision is effective on September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Financial Standards, Reporting and Management Integrity Branch, Office of Federal Financial Management, Office of Management and Budget, at (202) 395–3993. Non-Federal organizations should contact the organization's cognizant Federal agency.

SUPPLEMENTARY INFORMATION:

A. Background

Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions,'' establishes principles for determining costs applicable to Federal grants, contracts, and other sponsored agreements with educational institutions.

On September 10, 1997, (62 FR 47721) OMB proposed the use of and solicited input on the use of a standard format for submitting facilities and administrative rate proposals by educational institutions. The standard format would assist institutions in completing their proposals more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. In addition the standard format would help the Federal Government collect important data regarding facilities and administrative costs and rates at educational institutions. OMB received 35 comments from Federal agencies, universities and professional organizations in response to the proposal. All commenters were in favor of the development of such a form. OMB, with assistance from Federal agencies and universities, developed the standard form for inclusion in Circular A–21.

On August 12, 1999, (64 FR 44062) OMB proposed to revise Circular A–21 to incorporate the new form. OMB received 40 comments from universities, Federal agencies and professional organizations. All comments were considered and incorporated, where appropriate, in the final revision. On May 9, 2000 (65 FR 26859), OMB published a notice in the **Federal Register** notifying the public it had submitted the information collection form entitled ''Standard Form for Facilities and Administrative Rate Proposals,'' listed as Appendix C on Circular A–21, to the Office of Information and Regulatory Affairs (OIRA), OMB, for review under provisions of the Paperwork Reduction Act of 1995. OMB received three comments in response to this notice. The comments applauded OMB's responsiveness to concerns expressed by the university community, particularly OMB's action in the final revision to eliminate or modify many proposed data items that may present difficulty for universities. The commenters, however, requested further clarifications on some data items in the standard form. The clarifications are provided in the next section.

This Form was approved by the Office of Information and Regulatory Affairs and given OMB Control No. 0348–0058. Consequently, OMB is adopting, without change, the revisions shown to Circular A–21 in the **Federal Register** notice of May 9, 2000 (65 FR 26859).

Circular A–21, as amended by this revision, consists of the Circular published in 1979 (44 FR 12368; February 26, 1979), as amended in 1982 (47 FR 33658; July 23, 1982), in 1986 (51 FR 20908; June 9, 1986), in 1986 (51 FR 43487; December 2, 1986), in 1991 (56 FR 50224; October 1, 1991), in 1993 (58 FR 39996; July 26, 1993), in 1996 (61 FR 20880; May 8, 1996), in 1998 (63 FR 29786; June 1, 1998), in 1998 (63 FR 57332; October 27, 1998), and in this notice. A recompilation of the entire Circular with all its amendments, including this amendment, is available in electronic form on the OMB Home Page at http://www.whitehouse.gov/omb.

B. Comments and Responses

Comment: Should a university provide explanation for significant decreases in an overhead rate component, as well as explanation for significant increases, as required in Part II, General Information, item 4?

Response: No, Part II, General Information, item 4 only requires that the university provide explanations for rate component that exceeds the prior negotiated rate by 10 percent.

Comment: How are cross-allocations of an overhead pool to another overhead pool reported in Part I, Schedule A, item i? If cross-allocations are not included, the percentages will not total to 100%. Can cross-allocations be reported under the ''other'' column?

Response: Based on the comments received previously on the cross-allocation amounts, OMB has deleted this data request in the last proposed standard format. For simplicity, cross-allocation of an overhead pool to another overhead pool is excluded from item i of Schedule A. The Schedule will only report the allocation percentage of overhead pool to major direct functions. Accordingly, the ''other'' column should not be used to report cross-allocations.

Comment: In part I, Schedule B, Composition of Rate Base, the ''research training awards'' category should be combined with the ''other awards (not based on negotiated rates)'' category. In addition, one commenter questions the value for the breakout between awards based on negotiated rates and awards not based on negotiated rates.

Response: In accordance with section B.1.b of Circular A–21, ''Organized research,'' research training activities at universities may either be classified as instruction or organized research. A separate line for the research training awards in the composition of rate base on schedule B serves to identify the university's treatment of the research training activities in the F&A rate proposal. The breakout between the awards based on negotiated rates and awards not based on negotiated rates is useful for the Federal reviewers to estimate the value of Federal dollars associated with each percentage point on the F&A rate.

Comment: The standard format should apply only to F&A rate proposals utilizing base years on or after July 1, 2001.

Response: The standard format requirement is applicable for F&A rate proposals submitted on or after July 1, 2001, for the purpose of establishment of F&A rates.

Issued in Washington, DC, July 21, 2000.

Joshua Gotbaum,

Executive Associate Director and Controller.

Circular A–21 is revised to add the following section G.12 and Appendix C.

1. Add Section G.12 to read as follows:

12. *Standard Format for Submission.* For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions which use the simplified method for calculating F&A rates, as described in Section H.

2. Add Appendix C (shown below):

BILLING CODE 3110–01–P

Appendix C

OMB CIRCULAR A-21 DOCUMENTATION REQUIREMENTS

FOR FACILITIES AND ADMINISTRATIVE (F&A) RATE PROPOSALS

CLAIMING COSTS UNDER THE REGULAR METHOD

The documentation requirements for F&A rate proposals consist of two parts. Part I provides a schedule of summary data on the institution's F&A cost pools and their allocations, and the proposed F&A rates. For illustration, an example of a completed Part I is included. Part II describes the standard documentation to be submitted with the institution's F&A rate proposal.

OMB Approval Number: **0348-0058**

Part I
Summary Data Elements for F&A Rate Proposal - Schedule A

Name of Institution: _____ Organization Number: (Federal Use Only)
Address: _____
_____

a. Cognizant Federal Agency Rate Setting: ___ Audit: ___
b. Type of Institution Private ( ) Public/State ( )
c. Fiscal Year _____
d. Institution Population (FTE) Students: _____ Faculty: _____
Staff: _____
e. Status of Disclosure Statement Required to Submit (Y/N)? __
Due Dates: Initial: _____ Revised: ____
Date Submitted _____
Approved ( )Yes ( ) No Date: ____
f. Most Current F&A Rates (i.e., final, predetermined, fixed) (Last three fiscal years)

Type of Rate	Fiscal Year covered	Date of Rate Agreement	On-Campus Instruction	On-Campus Organized Research	On-Campus OSA*	Off-Campus Instruction	Off-Campus Organized Research	Off-Campus OSA*

(*OSA= Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

	Instruction	Organized Research	OSA
Building Depreciation or Use Allowance	_____	_____	_____
Interest Expense	_____	_____	_____
Operation and Maintenance	_____	_____	_____

h. Dollar amounts by major functions proposed - Base Year (in thousands)

	Instruction	Organized Research	OSA
Salaries &Wages/Fringes	_____	_____	_____
Non-labor Costs	_____	_____	_____
Modified Total Direct Costs	_____	_____	_____

i. Percentage of cost pool dollars allocated to major functions proposed - Base Year

	Instruction	Organized Research	OSA	Other*
Building Depreciation or Use Allowance	_____	_____	_____	____
Equipment Depreciation or Use Allowance	_____	_____	_____	____
Interest Expense	_____	_____	_____	____
Operation and Maintenance	_____	_____	_____	____
Library	_____	_____	_____	____

* "Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs: Standard Method: ____
Special Study: ____

k. Procedure for claiming fringe benefit costs: Specific Identification: ____
Negotiated Rate: ____
Other (see attached): ____

Part I
Summary Data Elements for F&A Rate Proposal - Schedule B

Name of Institution: _____
Historical Base Year: _____

Base Year Rate Calculation Summary by Major Function (dollars in thousands)

	Instruction		Organized Research		OSA	
FACILITIES GROUP						
Depreciation/Use Allowance						
. Buildings	$_____	__%	$_____	__%	$____	__%
. Equipment	$_____	__%	$_____	__%	$____	__%
. Land Improvements	$_____	__%	$_____	__%	$____	__%
Interest Expense	$_____	__%	$_____	__%	$____	__%
Operation & Maintenance	$_____	__%	$_____	__%	$____	__%
Utility Cost Adjustment	$_____	__%	$_____	__%	$____	__%
Library	$_____	__%	$_____	__%	$____	__%
ADMINISTRATIVE GROUP						
General	$_____	__%	$_____	__%	$____	__%
Departmental	$_____	__%	$_____	__%	$____	__%
Sponsored Projects	$_____	__%	$_____	__%	$____	__%
Student Services	$_____	__%	$_____	__%	$____	__%
Adjustment for 26% Limitation		__%		__%		__%
MODIFIED TOTAL DIRECT COST and F&A RATES						
On-Campus	$_____	__%	$_____	__%	$____	__%
Off-Campus	$_____	__%	$_____	__%	$____	__%
Other	$_____	__%	$_____	__%	$____	__%
Total MTDC	$_____		$_____		$_____	
COMPOSITION OF RATE BASE						
Federal Awards						
On-Campus (negotiated rates)	$_____		$_____		$_____	
Off-Campus (negotiated rates)	$_____		$_____		$_____	
Research Training Awards	$_____		$_____		$_____	
Other Awards (not based on negotiated rates)	$_____		$_____		$_____	
Non-Federal Sources	$_____		$_____		$_____	
Total	$_____		$_____		$_____	
MISCELLANEOUS STATISTICS						
Cost Sharing in Rate Base	$_____		$_____		$_____	
Assignable Square Feet (ASF) by Major Function	_____		_____		_____	
Percent of ASF Financed (1)	_____%		_____%		_____%	

Note (1): Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A proposal.

Part I - Example

Summary Data Elements for F&A Rate Proposal - Schedule A

Name of Institution: University of XYZ Organization Number: (Federal Use Only)
Address: 100 Main St.
Somewhere, ST 12345

a. Cognizant Federal Agency Rate Setting: HHS Audit: HHS
b. Type of Institution Private ( ) Public/State (X)
c. Fiscal Year July 1, 1997- June 30, 1998
d. Institution Population (FTE) Students: 12,000 Faculty: 1,759 Staff: 2,798
e. Status of Disclosure Statement Required to Submit (Y/N)? Yes
Due Dates: Initial: 06/30/98 Revised: 12/31/98
Date Submitted: 12/10/98
Approved (X)Yes ( ) No Date: 06/13/ 99
f. Most Current F&A Rates (i.e., final, predetermined, fixed) (Last three fiscal years)

Type of Rate	Fiscal Year covered	Date of Rate Agreement	On-Campus Instruction	On-Campus Organized research	On-Campus OSA*	Off-Campus Instruction	Off-Campus Organized research	Off-Campus OSA*
Pred	1999	09/15/96	78.0%	52.5%	38.3%	26.0%	26.0%	20.0%
Pred	1998	09/15/96	78.0%	52.5%	35.0%	26.0%	26.0%	20.0%
Pred	1997	09/15/96	76.0%	53.0%	35.0%	26.0%	26.0%	20.0%

(*OSA= Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

	Instruction	Organized Research	OSA
Building Depreciation or Use Allowance	729	2,639	0
Interest Expense	0	1,794	0
Operation and Maintenance	1,280	4,632	0

h. Dollar amounts by major functions proposed - Base Year (in thousands)

	Instruction	Organized Research	OSA
Salaries & Wages/Fringes	36,400	63,750	11,050
Non-labor Costs	19,600	21,250	1,950
Modified Total Direct Costs	56,000	85,000	13,000

i. Percentage of cost pool dollars allocated to major functions proposed - Base Year

	Instruction	Organized Research	OSA	Other*
Building Depreciation or Use Allowance	40.0%	44.0%	2.5%	7.0%
Equipment Depreciation or Use Allowance	34.2%	27.7%	2.1%	10.0%
Interest Expense	29.9%	32.4%	1.9%	0.0%
Operation and Maintenance	32.8%	35.6%	2.1%	15.0%
Library	75.3%	10.9%	0.9%	0.0%

* "Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs:	Standard Method:	Yes
	Special Study:	No
k. Procedure for claiming fringe benefit costs:	Specific Identification:	No
	Negotiated Rate:	Yes
	Other (see attached)	___

Part I - Example
Summary Data Elements for F&A Rate Proposal - Schedule B

Name of Institution: University of XYZ
Historical Base Year: 07/01/97 to 06/30/98

Base Year Rate Calculation Summary by Major Function (dollars in thousands)

	Instruction		Organized Research		OSA	
FACILITIES GROUP	($)	(%)	($)	(%)	($)	(%)
Depreciation/Use Allowance						
. Buildings	4,861	9.6%	5,278	6.9%	306	2.6%
. Equipment	3,082	6.1%	2,496	3.3%	194	1.7%
. Land Improvements	1,992	4.0%	133	0.2%	17	0.1%
Interest Expense	1,944	3.9%	2,111	2.8%	122	1.0%
Operation & Maintenance	8,532	16.9%	9,264	12.1%	536	4.6%
Utility Cost Adjustment	0	0.0%	994	1.3%	0	0.0%
Library	7,910	15.7%	1,146	1.5%	96	0.8%
ADMINISTRATIVE GROUP						
General	1,535	2.7%	2,330	2.7%	356	2.7%
Departmental	11,991	21.4%	17,239	20.3%	2,797	21.5%
Sponsored Projects	89	0.2%	2,693	3.2%	412	3.2%
Student Services	4,166	7.4%	0	0.0%	0	0.0%
Adjustment for 26% Limitation		-5.7%		- 0.2%		-1.4%
MODIFIED TOTAL DIRECT COST and F&A RATES						
On-Campus	50,400	82.2%	76,500	54.2%	11,700	36.8%
Off-Campus	5,600	26.0%	8,500	26.0%	1,300	26.0%
Other	0	0.0%	0	0.0%	0	0.0%
Total MTDC	56,000		85,000		13,000	
COMPOSITION OF RATE BASE						
Federal Awards						
On-Campus (negotiated rates)	1,000		46,000		900	
Off-Campus (negotiated rates)	120		5,000		400	
Research Training Awards	0		0		0	
Other Awards (not based on negotiated rates)	1,680		8,500		2,600	
Non-Federal Sources	53,200		25,500		9,100	
Total	56,000		85,000		13,000	
MISCELLANEOUS STATISTICS						
Cost Sharing in Rate Base	(10,000)		10,000		0	
Assignable Square Feet (ASF) by Major Function	83,611 ASF		90,778 ASF		5,256 ASF	
Percent of ASF Financed (1)	7.0%		20.0%		30.0%	

Note (1): Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A rate proposal.

BILLING CODE 3110–01–C

Part II

Introduction

This Part contains the standard documentation requirements that are needed by your cognizant agency to perform a review of your institution's F&A rate proposal. This documentation supports the development of proposed rates shown in Part I and will be submitted with your F&A rate proposal.

This listing contains minimum documentation requirements. Additional documentation may be needed by your cognizant agency before completing a proposal review. If there are any questions about these requirements, please contact your cognizant agency.

Documentation requirements would be cross-referenced to appropriate schedule(s) within the submitted F&A rate proposal.

General Information

Reference:

____1. Copy of audited financial statements including any affiliated organizations. The statements must be reconciled to the F&A base year cost calculation. Copy of most recently issued Circular A–133 audit reports

____2. Copy of relevant data supporting the financial statement, including a reconciliation schedule for each cost pool and rate base in the F&A base year cost calculation. A reconciliation schedule will show each reclassification and adjustment to the financial statements to arrive at the cost pools and rate bases in F&A base year cost calculation. Each reclassification and adjustment must be explained in notes to the reconciliation schedule

____3. Cost step-down schedule showing allocation of each F&A cost pool to the Major Functions and other cost pools

____4. Explanation for each proposed organized research rate component which exceeds the prior negotiated rate component by 10%

____5. Schedules clearly detailing composition and allocation base(s) of each F&A cost pool in base year cost calculation. If the institution has filed a Disclosure Statement (DS–2) submission, specific references (rather than narrative descriptions) from the DS–2 may be used

____6. Narrative description of composition of each F&A cost pool and allocation methodology. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

____7. Narrative description of changes in accounting or cost allocation methods made since the institution's last F&A submission. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

____8. Copy of reports on the conduct and results of special studies performed under Section E.2.d, when applicable

____9. Copy of the following:
(a) The Certificate of F&A Costs
(b) Lobbying Certification
(c) Description of procedures used to ensure that awards issued by the Federal Government do not subsidize the F&A costs allocable to awards made by non-Federal sources (*e.g.,* industry, foreign governments)
(d) Assurance Certification—for those institutions listed on Exhibit A—concerning disposition of Federal reimbursements associated with claims for depreciation/use allowances
(e) Assurance statement that institution is in compliance with Federal awarding agency limitations on compensation (*e.g.,* NIH salary limitation, executive compensation)

____10. If applicable, reconciliation of carry-forward amounts from prior years used in the current proposal

____11. Transmittal letter stipulating the type(s) of rates proposed, the fiscal year(s) covered by the proposal and the base year used

Rate Proposal Summary by Major Function

____1. Summary of F&A base year rates calculated by Major Function and special rates (*e.g.,* vessel rates) if applicable by component. These would be grouped by Administrative Components and Facilities Components. Total base year calculated rates would be disclosed, as well as allowable rates after the 26 percent limitation on Administrative Components

____2. A breakout of Modified Total Direct Cost (MTDC) rate base figures for each major function (and special rates, if applicable) by:
(a) On-Campus and Off-Campus amounts
(b) Federal awards
—Based on Negotiated Rates—On-Campus
—Based on Negotiated Rates—Off-Campus
—Research Training Awards
—Other Awards (not based on negotiated rates)
(c) Non-Federal Sources

____3. Miscellaneous Statistics including:
(a) Cost Sharing in the Rate Base
(b) Assignable Square Feet (ASF) by Major Function
(c) Percentage of ASF which is financed (by Major Function)
(d) A breakout of MTDC by Direct Salaries and Wages/ fringe benefits and non-labor costs by major functions

____4. Future rate adjustments, if necessary, related to material changes since the base year. A clear description of the justification for each of the following:
____(a) Changes by cost pool by year
(b) Changes in MTDC base by year
(c) Changes in F&A rates for future years

____5. Summary of future F&A rates, if necessary, by Major Function and special rates (*e.g.,* vessel rates) which lists each administrative and facilities component by year

Building Use Allowance and/or Depreciation

____1. Reconciliation of building cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements

Note: If an institution's financial statements do not disclose depreciation expense (*e.g.,* those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

____2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

____3. If a method different from the standard allocation method, described in section F.2.b, was used, describe method. Provide justification for its use and a schedule of allocation. If the institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

____4. If depreciation is claimed, describe what useful lives by group and component have been used

Equipment Use Allowance and/or Depreciation

____1. Reconciliation of equipment cost used to compute use allowance

and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements

Note: If an institution's financial statements do not disclose depreciation expense (*e.g.,* those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

____2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

____3. If a method different from the standard allocation method, described in section F.2.b, was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

____4. If depreciation is claimed, describe what useful lives by asset class and component have been used

Interest

____1. Reconciliation of interest cost used in the F&A base year calculation to the financial statements

____2. A schedule showing amount of interest cost assigned to each building and a distribution to all benefitting functions within each building for each proposed ''Major Function''

Space Survey

____1. A summary schedule of square footage by school, department, building and function

____2. The same schedule should then be sorted by school, building, department, and function

____3. Copies of space inventory instructions, forms, and definitions

Operation and Maintenance (O&M)

____1. A summary schedule of each major activity (or subpool) in O&M cost pool. It must show the costs by S&W/fringe benefits and all non-labor cost categories

____2. A schedule showing amount of O&M costs distributed to all functions

General Administration (G&A)

____1. A summary schedule of each activity (or subpool) in the G&A cost pool

____2. A schedule of costs in the modified total costs (MTC) allocation base

____3. If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

Departmental Administration (DA)

____1. Schedules of the DA summary by school, department and allocated to Major Functions by department

____2. Schedule identifying costs by S&W/fringe benefits and non-labor costs by department for the following functions:

(a) Direct (Major Functions)
—Instruction
—Organized Research
—Other Sponsored Activities
—Other
(b) Departmental Administration (excluding Deans)
(c) Dean's office
(d) Other, as appropriate

S&W/fringe benefits shall be further identified as follows:

(a) Faculty and other professional
(b) Administrative (*e.g.,* business officers, accountants, budget analysts, budget officers)
(c) Technicians (*e.g.,* lab technicians, glass washers)
(d) Secretaries and clerical

____3. Complete description of allocation method, bases and allocation sequences (*e.g.,* direct charge equivalent, 3.6 percent allowance). If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

____4. Show a detailed example (*i.e.,* illustration of your Direct Charge Equivalent (DCE) methodology) of the allocation process used for one department which has Instruction and Organized Research functions from each of the following schools: Medicine, Arts & Sciences and Engineering, as applicable

Sponsored Projects Administration (SPA)

____1. A summary schedule for each activity (or subpool) included in SPA cost pool

____2. A schedule of the sponsored projects direct costs in the MTC allocation base

____3. If a method different from the standard sponsored projects MTC allocation method was used, describe method. Provide justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

Library

____1. A summary schedule for each activity included in library cost pool. It would show costs by salaries and wages, books, periodicals, and all other non-labor cost categories

____2. Schedule listing all credits to library costs

____3. A schedule of Full Time Equivalents (FTE) and salaries and wages in the bases used to allocate library costs to users of library services

____4. If the standard allocation methodology was not used, describe the alternative method and provide justification for its use. Provide schedules of allocation statistics by function. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

Student Services

____1. If the proposed allocation base(s) differs from the stipulated standard allocation methodology provide:

(a) Justification for use of a nonstandard allocation methodology;
(b) Description of allocation procedure; and
(c) Statistical data to support proposed distribution process

If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of DS–2

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FEDERAL REGISTER

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Part IV

Department of Education

Office of Special Education and Rehabilitative Services

OMB Circular A–21, Cost Principles for Educational Institutions; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133F]

National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards for Research Fellowships for Fiscal Year 2001

Office of Special Education and Rehabilitative Services

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under this competition.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education (ED) to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulation: Research Fellowships—34 CFR Part 356.

Note: Applicants answering "Yes" to item 12 on form ED 424 whose research activities are nonexempt must complete the six point narrative on protection of human subjects described in the Attachment to form ED 424. If your project does include research activities that are subject to ED's Protection of Human Subjects Regulations, ED cannot make the award until the human subjects requirements for your grant have been met. Helene Deramond, ED Human Subjects Protection Coordinator for "human subjects" clearance can tell you about the requirements and she is available to help you through the process. She can be reached on (202) 260–5353 or at Helene__Deramond@ed.gov Additional information can be found at http://ocfo.ed.gov/humansub.htm. Note: Applicants need to put their Social Security Number in Block #2 on the 424 form in place of the DUNS Number.

Deadline for Transmittal of Applications: October 10, 2000.

Estimated Number of Awards: 10.

Award Amount: Merit: $45,000; Distinguished: $55,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Project Period: 12 months.

Eligible Applicants: Only individuals are eligible to be recipients of Fellowships. Institutions are not eligible to be recipients of Fellowships.

Program Title: Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of the Research Fellowship program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows may address problems encountered by individuals with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships. (1) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications. (2) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

The Fellowship awards are for a period of twelve months. Applicants are not required to submit budget proposals. These are one full FTE; the applicant must work principally on the fellowship during the year. The applicant cannot be on any other government grants. We define one full FTE as equal to 40 hours per week.

Selection Criteria: The Secretary evaluates applications for Fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 24 double spaced pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of the National Institute on Disability and Rehabilitation Research (NIDRR).

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

The application should include an abstract, a project narrative, vitae of the applicant, and letters of support or recommendation. Any letters of recommendation received separately from the application will not be forwarded to the reviewers. If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application. Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

Instructions for Application Narrative

You must include a one-page abstract of the application narrative.

Strict Page Limits

The application narrative of a research proposal for a Fellowship must be limited to the equivalent of no more than 24 pages using the following standards:

(1) Use 8.5 × 11″ pages (on one side only) with one-inch margins (top, bottom, and sides);

(2) Double-space (no more than 3 lines per vertical inch) all sections of text; and

(3) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The application narrative page limit does not apply to: the forms—Application for Federal Education Assistance (ED 424), Assurances—Non-Construction Programs(SF (SF 424B and the Certifications (ED 80–0013); the one-page abstract; resumes; bibliography or letters of support; or the information on the Protection of Human Subjects.

The standards for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

We will reject without consideration or evaluation any application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.133F), Washington, D.C. 20202–4725, or

(2) Hand deliver express mail the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.133F), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C. 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter (84.133F).

Application Forms and Instructions

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 1/12/99)) and instructions.
Part II: Application Narrative.
Part III: Additional Materials Estimated Public Reporting Burden.
Assurances—Non-Construction Programs (Standard Form 424B).
Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

An applicant may submit information on a photostatic copy of the application, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* The applicant fellow is the certifying official.

For Applications Contact: The Grants and Contracts Service completed application form has been received. Team, U.S. Department of Education, 400 Maryland Avenue S.W., room 3317, Switzer Building, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

FOR FURTHER INFORMATION CONTACT: Kym Butler, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–9250. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Kym__Butler@ed.gov or Donna Nangle, either by telephone: (202) 205–5880 or Internet at Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 762.

Dated: August 2, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get An Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used.

3. What Is the Allowable Indirect Cost Rate?

Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

4. Can Individuals Apply for Grants?

Individuals are the only entities eligible to apply for *fellowships.*

5. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

6. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

7. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time

frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

8. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

9. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

City _____ State _____ County _____ ZIP Code + 4 _____ - _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 ➡ Title:_____

5. Project Director:_____

Address:_____

City _____ State _____ ZIP Code + 4 _____ - _____

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address:_____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:_____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—*PreApplication*	—*Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
____/____/____	____/____/____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

OR

b. Assurance of Compliance #:

c. IRB approval date: _____ ☐ Full IRB **or** ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$_____	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address:

e. **Signature of Authorized Representative** Date:____/____/____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

[FR Doc. 00–19959 Filed 8–7–00; 8:45 am]

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Federal Register

Tuesday,

August 8, 2000

Part V

Department of Justice

Office of Justice Programs

28 CFR Part 91

Environmental Impact Review Procedures for the VOI/TIS Grant Program; Interim Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP (OJP)–1277]

RIN 1121–AA52

Environmental Impact Review Procedures for the VOI/TIS Grant Program

AGENCY: Corrections Program Office, Office of Justice Programs, Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Corrections Program Office, Office of Justice Programs, Department of Justice, is issuing this Interim Final Rule to set forth the procedures that OJP and the States awarded federal funds under the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grants Program must follow in order to comply with the environmental impact review procedures mandated by the National Environmental Policy Act, the Council on Environmental Quality's implementing regulations, and other related federal environmental impact review requirements.

DATES: This Interim Final Rule is effective on August 8, 2000. Written comments must be received by 5:00 p.m. ET on October 10, 2000.

ADDRESSES: Send written comments concerning this rule to Jennifer Romeo, Attorney, Office of the General Counsel, Office of Justice Programs, 810 Seventh Street, NW, Room 5411, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Phil Merkle, Special Advisor to the Director, Corrections Program Office, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531; Telephone: 1–(800) 848–6325. Additional program guidance can be found at http://www.ojp.usdoj.gov/cpo/.

SUPPLEMENTARY INFORMATION:

Background

Purpose

The purpose of this interim final rule is to set forth the implementation procedures that the Office of Justice Programs (OJP) and the States awarded funds under the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grants Program (VOI/TIS) must follow in order for OJP to comply with the environmental impact review requirements mandated by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality's implementing regulations (CEQ regulations), 40 CFR Parts 1500–1508, and other related environmental impact review requirements.

Authority

Section 20105 of subtitle A, title II of the Violent Crime Control and Law Enforcement Act of 1994 authorizes the Office of Justice Programs, as the agency charged with administering and enforcing the VOI/TIS grant program, to issue regulations. Moreover, both NEPA and the CEQ's implementing regulations direct agencies to adopt supplemental environmental impact review procedures.

VOI/TIS Grants Program

As part of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 (''1994 Crime Bill''), Congress enacted the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grants Program, 42 U.S.C. 13701 *et seq.*, which offered prison construction grants and other institutional improvement funding to encourage States to adopt tougher sentencing policies for violent offenders.

In the FY 1996 Omnibus Appropriations Act, Public Law 104–134, Congress significantly amended this legislation by changing the formula for distribution of grant funds and limiting the types of construction projects for which State recipients could use the grant money. Currently, the VOI/TIS program provides funds for eligible States to build or expand permanent or temporary correctional facilities in order to increase secure confinement space for violent offenders. Grant funds may also be used to build or expand local jails and juvenile correctional facilities, and for the privatization of facilities.

State applicants for VOI/TIS grants must provide assurances that funds received under the program will be used to supplement, not supplant, other federal, state, and local funds. Awards are made to States and Territories whose correctional policies, programs and truth-in-sentencing statutes meet the VOI/TIS grant eligibility requirements. Eligible states may make sub-awards to State agencies and units of local government.

NEPA Compliance

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370d, establishes the environmental protection policy and requirements governing all federal departments and agencies. Specifically, NEPA requires federal agencies to consider the environmental effects of their proposed actions at the earliest possible time in their decision-making process and to prepare detailed environmental impact statements on proposals for legislation or on other major federal actions that significantly affect the quality of the human environment. Moreover, NEPA seeks to ensure that such environmental information is available to the public for review and comment before federal agencies take such action. In short, NEPA is a policy and procedural statute that makes environmental protection a part of the mandate of every federal agency and department.

The Council on Environmental Quality (CEQ) issued regulations to implement NEPA's procedural provisions at 40 CFR Parts 1500–1508. The CEQ regulations define ''major federal actions,'' which trigger NEPA's requirements, as those actions with effects that may be major and which are subject to Federal control and responsibility. 40 CFR 1508.18. Actions include, among other things, projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies. 40 CFR 1508(a). The CEQ regulations identify four categories of ''federal actions,'' one of which involves the ''[a]pproval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.'' 40 CFR 1508.18(b)(4).

Change in Circumstances

When the VOI/TIS Program was implemented in 1996, the Office of Justice Programs determined that the implementation of this program did not result in a ''major federal action'' because, under the formula grant program, OJP was not involved in the funding decisions and site selection for specific projects.

Over the past several years, however, OJP has been required to make a variety of important policy decisions in response to project-specific questions from grantees, including those regarding allowable and unallowable costs, and match issues. Additionally, OJP has been required to exercise greater authority over funding determinations and to participate more actively in VOI/TIS construction projects. These activities signal the agency's continuing role in, and discretion and control over, VOI/TIS-funded projects.

As a result of this increased federal involvement in the VOI/TIS program, and of the number of newly-established

grant programs involving similar degrees of federal participation, OJP initiated an agency-wide review of the implementation of environmental policies in all its financial assistance programs and determined that the VOI/TIS program is subject to NEPA's environmental impact review requirements. Accordingly, OJP must require compliance with NEPA's provisions as a condition of granting VOI/TIS funds.

Responsibility for NEPA Compliance

OJP, as the federal agency, always remains responsible for compliance with NEPA and must work closely with the State or local agency responsible for implementing the project. Regarding environmental documents, the CEQ regulations allow the grantee agency to play a major role in preparing Environmental Assessments. As to Environmental Impact Statements, the CEQ regulations prohibit the entity preparing the EIS from having a stake in the outcome of the EIS. Consequently, the federal agency or a third party expert under the direction of the federal agency prepares the EIS.

However, as an exception to this latter provision, NEPA was specifically amended to allow a state agency with statewide jurisdiction and responsibility for the action to prepare the EIS as long as the responsible federal agency furnishes guidance, participates in the preparation of and independently evaluates the EIS prior to its approval and adoption. VOI/TIS grantees are either the state agency responsible for its corrections programs or the state agency responsible for its criminal justice programs. In either case, they are agencies with statewide jurisdiction. Sub-grantees, however, do not have state-wide jurisdiction and, therefore their responsibilities are more limited under this rule.

Parties Affected by this Interim Final Rule

This interim final rule applies to all VOI/TIS grant recipients which include the 50 States, the District of Columbia, the territories, and various Indian tribes. Sub-grantees such as state agencies, counties and other units of local government are also affected by the interim final rule's application of NEPA requirements to VOI/TIS-funded construction projects.

OJP's Initial Notice and Guidance Handbook for VOI/TIS Grantees Regarding NEPA Compliance

On March 22, 2000, OJP sent letters to all VOI/TIS grantees to inform them of its decision to apply the NEPA requirements to VOI/TIS construction projects. To facilitate compliance, OJP enclosed copies of its newly published handbook, Program Guidance on Environmental Protection Requirements. OJP also posted this instructive handbook on its website at http://www.ojp.usdoj.gov/cpo/.

OJP's handbook provides detailed guidance to grantees on the environmental impact review process, and on preparing environmental assessments (EA) and environmental impact statements (EIS). The handbook also includes questions and answers related to NEPA's requirements and their applicability to the VOI/TIS construction grant program. Finally, OJP's handbook contains a copy of the CEQ regulations implementing NEPA.

Interim Final Rule Limited to VOI/TIS Grant Program

This interim final rule implementing NEPA's environmental impact review procedures applies only to the VOI/TIS grant program. Accordingly, this rule amends 28 CFR Part 91 pertaining to grants for correctional facilities.

Notably, Justice Department regulations implementing NEPA's procedures and applying them to all organizational elements of the Department already exist in 28 CFR Part 61 and its appendices. Appendix D of 28 CFR Part 61, promulgated by the predecessor agency to OJP, adopted supplemental procedures to ensure NEPA compliance among its three federal financial assistance offices. OJP intends to update and revise Appendix D to correspond to the current OJP Bureaus and Program Offices and to implement environmental impact review procedures for those OJP grant programs subject to NEPA's requirements.

However, until such time as OJP updates and revises Appendix D, OJP finds it necessary to provide immediate guidance to VOI/TIS grantees on these environmental impact review procedures through regulations tailored specifically to the VOI/TIS construction grant program. For that reason, OJP has initially designated this interim final rule as an amendment to Part 91—Grants for Correctional Facilities. At an appropriate time in the future, OJP intends to transfer this subpart to Appendix D of Part 61, which will contain all other OJP environmental regulations.

OJP's Good Cause Determination for Issuing an Interim Final Rule

Pursuant to § 553(b)(B) of the Administrative Procedure Act, the Office of Justice Programs believes that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable and contrary to the public interest.

Several considerations guided OJP's decision to proceed with an interim final rule rather than a notice of proposed rulemaking. First, providing for notice and comment would be impracticable in that the delay would prevent OJP from carrying out its statutory mandate and lawfully administering its VOI/TIS grant program. Consequently, in this case, the interim final rule immediately applies NEPA's requirements to VOI/TIS construction grants and in providing specific procedural information, facilitates the ability of State grantees to take proper environmental impact review actions on proposed projects for which they have already received VOI/TIS funding, as well as to become eligible to apply for and receive VOI/TIS funding for fiscal year 2000.

Second, absent an interim final rule, real harm will result. Such harm arises from the urgent need: (1) To avoid disruption to—if not a complete shut down of—the VOI/TIS grant program; (2) to make clear the rights and responsibilities of States that have already been awarded funding under VOI/TIS; (3) to prevent State grantees from allocating resources towards the construction of new projects or the completion of existing ones during the period between the proposed and final rule; and (4) to prevent an immediate threat of harm to the environment and protected species. In short, OJP's use of expedited rulemaking procedures in this case will further the public interest by ensuring that VOI/TIS-funded correctional facilities are planned, constructed, and operated with the least adverse impact on the environment.

Finally, because this interim rule's requirements are based primarily upon the CEQ regulations which: (1) Have been in effect since 1978, (2) were subject to their own notice and comment procedures, and (3) apply to many other federally-funded activities engaged in by VOI/TIS grantees and subgrantees, VOI/TIS grantees are not being uniquely affected by its requirements. For these reasons, OJP for good cause finds that notice and comment are impracticable and contrary to the public interest.

OJP's Good Cause Determination for Exemption from the 30-day Delay in Effective Date

OJP also believes that good cause exists to forego the 30-day waiting period between publication of the rule

and its effective date. In this case, a 30-day delayed effective date is impracticable, unnecessary and contrary to the public interest. For the reasons stated above, the 30-day delay interferes with OJP's ability to carry out its mission and could result in harm to the environment during the interim.

Additionally, the 30-day delay is unnecessary because in March 2000, OJP issued a letter and guidance book to all eligible State grantees announcing NEPA's application to VOI/TIS construction projects and explaining the requisite environmental impact review procedures. Consequently, the grantees have had prior actual notice and do not need additional time to adjust their behavior before the rule takes effect. Thus, without any further regulatory action by OJP, this interim final rule is fully in effect and binding upon its date of publication in the **Federal Register**.

Consideration of Public Comments

In order to benefit from the experiences, observations or viewpoints that any interested or affected parties may have, OJP is requesting post-promulgation comments on the interim final rule. OJP will carefully consider all written comments received by October 10, 2000.

Additionally, within a reasonable time after the comment period ends, OJP will publish in the **Federal Register** a response to any significant adverse comments received along with any modifications to the interim final rule, where appropriate.

Regulatory Certifications

Executive Order 12866

OJP has drafted and evaluated this interim final rule in accordance with Executive Order 12866, ''Regulatory Planning and Review'' and has determined that the rule is not a significant regulatory action. Specifically, OJP's interim final rule is not expected to have an annual effect on the economy of $100 million or more. Furthermore, OJP's interim final rule is mandated by federal law—NEPA and the CEQ regulations—which requires all federal agencies to implement environmental impact review procedures for their ''major federal actions.'' Congress is not expected to appropriate any additional funds to the VOI/TIS program in response to this rule.

Moreover, OJP, as the federal agency responsible for compliance, will permit the VOI/TIS grantees to use federal grant funds to cover the costs of NEPA procedures and related activities. Similarly, OJP seeks to lessen any perceived burden on the States by categorically excluding activities that are presumed not to have a substantial effect on the human environment. For these reasons, OJP has concluded that this rule is not a ''significant regulatory action'' under Executive Order 12866, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act of 1980

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim final rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This interim final rule applies the National Environmental Policy Act's environmental impact review procedures to VOI/TIS-funded construction projects, and for the most part, is nondiscretionary. Eligible grantees under the VOI/TIS program are the 50 States, the District of Columbia, the territories, and Indian tribes. In general, State agencies with state-wide jurisdiction are responsible for working with federal agencies to carry out NEPA's requirements. However, OJP, as the federal agency, remains ultimately responsible for NEPA compliance.

Regardless, OJP believes that pursuant to 5 U.S.C. § 601(2), the Regulatory Flexibility Act does not apply to rules adopted under the APA's good cause exception. Rather, the statute's requirements are triggered only by rules for which an agency publishes a notice of proposed rulemaking as required by the APA or other law. Consequently, on that basis, OJP's interim final rule is exempt from all Regulatory Flexibility Act analysis requirements.

Unfunded Mandates Act of 1995

This interim final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

Information collection and record keeping requirements associated with this interim final rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). The OMB control number for the information collection is OMB No. 1121–0245.

Administrative Procedure Act

This interim final rule is exempt from the provision of the Administrative Procedure Act (5 U.S.C. 533) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. The Office of Justice Programs believes that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

Executive Order 13132: Federalism

OJP's interim final rule implementing NEPA's environmental impact review requirements for the VOI/TIS grant program 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.

OJP's interim final rule implements federal NEPA compliance procedures which promote environmental protection policies and which do not preempt State law. Rather, OJP's rule provides for coordination between federal and State agencies to ensure that any State or local environmental impact review requirements similar to the federal NEPA procedures will be met concurrently, to the extent possible, to avoid or minimize any duplication of effort. Moreover, the rule permits State grantees to use federal grant funds to pay for the federal environmental impact review activities, and thus, does not impose substantial direct compliance costs on State and local governments. Finally, OJP, as the federal agency administering the VOI/TIS program, remains ultimately responsible for NEPA compliance.

Therefore, in accordance with section 6 of Executive Order 13132, the Office of Justice Programs has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Small Business Regulatory Enforcement Fairness Act of 1996

This Interim Final 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.

Environmental Impact

The Office of Justice Programs has evaluated this interim final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of Office of Justice Programs' actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. The Office of Justice Programs has concluded that the issuance of this interim final rule, which establishes the environmental compliance process for grantees under the VOI/TIS program, does not have a significant impact on the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement.

List of Subjects in 28 CFR part 91

Environmental impact statements; Environmental protection; Grant programs-law.

Interim Final Rule

For the reasons discussed in the preamble, the Corrections Program Office, Office of Justice Programs, amends Part 91 of Title 28 of the Code of Federal Regulations as follows:

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

1. The authority citation for Part 91 is revised to read as follows:

Authority: 42 U.S.C. 13705.

2. Add Subpart D to read as follows:

Subpart D—Environmental Impact Review Procedures for VOI/TIS Grant Program

In General

Sec.
91.50 Purpose.
91.51 Policy.
91.52 Definitions.
91.53 Other guidance.

Application to VOI/TIS Grant Program

91.54 Applicability.
91.55 Categorical exclusions.
91.56 Actions that normally require the preparation of an environmental assessment.
91.57 Actions that normally require the preparation of an environmental impact statement.

Environmental Review Procedures

91.58 Timing of the environmental review process.
91.59 OJP's responsibilities.
91.60 Grantee's responsibilities.
91.61 Subgrantee's responsibilities.
91.62 Preparing an Environmental Assessment.
91.63 Preparing an Environmental Impact Statement.
91.64 Supplemental EA or EIS
91.65 Responsible OJP officials.
91.66 Public participation.

Other State and Federal Law Requirements

91.67 State Environmental Policy Acts.
91.68 Compliance with other federal environmental statutes, regulations and executive orders.

Authority: 42 U.S.C. 13701 *et seq.*, as amended by Pub. L. 104–134; 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

In General

§ 91.50 Purpose.

The purpose of this subpart is to inform grant recipients under the Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Formula Grant Program of OJP's procedures for complying with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et. seq.,* and related environmental impact review requirements.

§ 91.51 Policy.

(a) *NEPA Policy.* NEPA policy requires that Federal agencies, to the fullest extent possible:

(1) Implement procedures to make the NEPA process more useful to decision-makers and the public; reduce paperwork and the accumulation of extraneous background data; and emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(2) Integrate the requirements of NEPA with other planning and environmental review procedures required by law and by agency practice so that all such procedures run concurrently rather than consecutively.

(3) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(4) Use the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(5) Use all practicable means to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of the actions upon the quality of the human environment.

(b) *OJP's policy to minimize harm to the environment.* It is OJP's policy to minimize harm to the environment. Consequently, OJP can reject proposals or prohibit a State from using formula grant funds for a project that would have a substantial adverse impact on the human environment. Additionally, federal law prohibits the implementation of a project that jeopardizes the continued existence of an endangered species or that violates certain regulations related to water quality. Generally, though, where an EA or EIS reveals that a project will have adverse environmental impacts, OJP will work with the State grantee to identify ways to modify the project to mitigate any adverse impacts, or will encourage the State to consider an alternative site.

(c) *Mitigation.* OJP may require the following mitigation measures to reduce or eliminate a project's adverse environmental impacts:

(1) Avoiding the impact altogether by not taking certain action or part of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(d) *Use of grant funds.* In accordance with OJP's general policy of providing the States with the maximum amount of control and flexibility over the use of formula grant funds, the States can use VOI/TIS grant funds to pay for the costs of preparing environmental documents, to implement mitigation measures to reduce adverse environmental impacts, and to cover the costs of construction delays or other project changes resulting from compliance with the NEPA process. However, any funds used for these purposes must be included as a portion of the State's grant which requires a State match.

§ 91.52 Definitions.

The definitions supplied by the Council on Environmental Quality in its *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,* 40 CFR Parts 1500 through 1508, (CEQ Regulations), shall apply to the terms in this subpart.

§ 91.53 Other guidance.

The Department of Justice has also published NEPA procedures that incorporate the CEQ regulations at 28 CFR part 61. Additionally, the Office of Justice Programs' Corrections Program

Office has prepared a handbook for VOI/TIS grantees, *Program Guidance on Environmental Protection Requirements.* This publication and other relevant documents can be found at http://www.ojp.usdoj.gov/cpo.

Application to VOI/TIS Grant Program

§ 91.54 Applicability.

(a) *Major Federal action.* NEPA's requirements apply to any proposal for legislation or other major federal action that might significantly impact the quality of the human environment. The CEQ regulations in 40 CFR 1508.18 define ''major federal actions'' as actions with effects that may be major and which are potentially subject to Federal control and responsibility. The CEQ regulations categorize ''major federal actions'' as, among other things, the ''[a]pproval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and Federally assisted activities.'' (40 CFR 1508.18(b)(4)).

(b) *VOI/TIS construction grants subject to NEPA.* This subpart applies to all proposed, new and partially completed VOI/TIS projects (including projects on tribal lands) initiated by state or local units of government with grant funding from OJP that involve construction, expansion, renovation, facility planning, site selection, site preparation, security or facility upgrades or other activities that may significantly impact the environment.

(c) *Projects.* Although VOI/TIS money cannot be used for a project's operations expenses, the definition of ''project'' or ''proposal'' for NEPA review purposes is defined as both the construction and the long-term operation of correctional facilities and related components such as all off-site projects to accommodate the needs of the correctional facilities project (e.g., road and utility construction or expansion, projects offered to the affected community as an incentive to accept the correctional facility construction or expansion, and other reasonably foreseeable future actions regardless of what agency or third party undertakes such action). Reasonably foreseeable actions include future prison construction phases, especially when either current acreage requirements or design capacities for utilities are based on needs stemming from future phases.

§ 91.55 Categorical exclusions.

Activities undertaken by State, local, or tribal entities using VOI/TIS funds that are consistent with any of the following categories are presumed not to have a significant effect on the human environment and thus, are categorically excluded from the preparation of either an EA or an EIS. Although these activities are excluded from environmental reviews under NEPA, they are not excluded from compliance with other applicable local, State, or Federal environmental laws. Additionally, an otherwise excluded activity loses its exclusion and is subject to environmental review if it either would be located within or potentially affect any of the following: a 100-year flood plain, a wetland, important farmland, a proposed or listed endangered or threatened species, a proposed or listed critical habitat, a property that is listed or eligible for listing on the National Register of Historic Places, an area within an approved State Coastal Zone Management Program, a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, a designated or proposed Wilderness Area, or a sole source aquifer recharge area designated by the Environmental Protection Agency (EPA). The resulting environmental review for those activities that lose their exclusion status shall focus on the factor or factors that caused the loss of the exclusion.

(a) *Minor renovations.* Projects for minor renovations within an existing facility, unless the renovation would impact a structure which is on the National Register of Historic Places, or is eligible for listing on the register.

(b) *Limited expansion.* Projects for the expansion of an existing facility or within an existing correctional complex, which does not add more than 50 beds or increase the capacity of the facility by more than 50 percent whichever is smaller. This exclusion does not apply to either a phased project that exceeds these numerical thresholds or projects to expand facilities that:

(1) Are located in a floodplain;

(2) Will affect a wetland;

(3) Will affect a facility on the National Register of Historic Places or that is eligible for listing on the register;

(4) Will affect a federally proposed or listed endangered or threatened species or its habitat;

(5) Is controversial for environmental reasons; or

(6) Would not be served by adequate sewage treatment, solid waste disposal, or water facilities.

(c) *Expansion of support facilities.* Projects for the expansion of bed space within an existing facility (e.g., double bunking or conversion of non-cell space) which are using grant funds to expand or add support facilities, such as a kitchen, medical facilities, recreational space, or program space, to accommodate the increased number of inmates. This does not include projects to increase capacity for support facilities which might pose a threat to the environment, such as solid waste and waste water management, new roads, new or upgraded utilities coming into the facility, or prison industry programs that involve the use of chemicals and produce hazardous waste or water or air pollution.

(d) *Security upgrades.* Security upgrades of an existing facility which are inside the existing perimeter fence or involve the upgrade of the existing perimeter fence. This exclusion does not include such upgrades as adding lethal fences or increasing height or lighting of a perimeter fence in a residential area or other areas sensitive to the visual impacts resulting from height or lighting changes.

(e) *Privatization.* Projects that involve the leasing of bed space (which may include operational costs) from a facility operated by a private correctional corporation or that contract with a private correctional corporation for the operation of a state facility or program. This exclusion does not apply if the correctional agency has contracted with the private vendor to build the facility, operate the facility, or lease beds to the correctional agency using federal grant funds.

(f) *Drug testing and treatment.* Projects that use grant funds to implement drug treatment, testing, sanctions, or interdiction programs.

§ 91.56 Actions that normally require the preparation of an environmental assessment.

(a) *Renovation or expansion of existing correctional facility.* Renovation or expansion activities not categorically excluded under § 91.55 require an environmental assessment (EA). An environmental assessment is generally prepared when a project is not expected to have a significant impact on the environment. Since projects for the renovation or expansion of an existing facility or the construction of a new facility within an existing correctional complex may have limited impact on the environment, preparing an EA may be sufficient.

(b) *Proposed construction of a new correctional facility.* The proposed construction of a new correctional facility will require the preparation of an environmental assessment unless the proposal will clearly have a significant environmental impact in which case an

environmental impact statement can be initiated immediately without the preparation of an environmental assessment.

§ 91.57 Actions that normally require the preparation of an environmental impact statement.

Significant impact. For the proposed construction of a new correctional facility or the proposed expansion of an existing facility, if the proposal is large or complex and/or controversial because of the nature of possible environmental impacts, and/or if any EA determines that the project will have a significant impact on the environment, an environmental impact statement (EIS) will be required. For those projects that clearly will have significant environmental impact, a grantee can save time and resources by initiating the EIS immediately without going through the EA process.

Environmental Review Procedures

§ 91.58 Timing of the environmental review process.

(a) *Initial planning and site selection phase.* The NEPA procedures must be initiated as part of the planning and site selection phase of all new construction, expansion, and renovation projects and completed before the construction or renovation on the project can begin.

(b) *Early consultation with OJP.* As grantees identify proposed, new projects, the grantees must inform OJP and after consulting OJP's *Program Guidance on Environmental Protection Requirements,* must recommend to OJP whether:

(1) The proposed project meets the criteria of a categorical exclusion;

(2) An environmental assessment should be initiated;

(3) Because of the project size and/or anticipated environmental impacts, an environmental impact statement should be initiated.

(c) *Design phase.* Projects currently in the planning and design phase must complete the NEPA procedures and no further decisions or new commitments of resources can be made on these projects by the State or local entity that would either have an adverse impact on the environment or limit the choice of reasonable alternative sites.

(d) *Prohibited pre-analysis activities.* None of the following actions can be taken until the NEPA analysis is completed for the affected project:

(1) Starting construction;

(2) Accepting construction bids;

(3) Advertising for construction bids;

(4) Initiating the development of or approving final plans and specifications; or

(5) Purchasing property.

(e) *Ongoing or completed construction projects.* For grant-funded projects under construction, OJP will work with the States to determine what environmental analysis has been done, making every effort to limit disruption to projects under construction. For completed grant-funded projects, OJP will work with the States to determine whether those projects may pose continuing environmental problems. For example, NEPA issues may exist due to excessive noise, light pollution, excessive water consumption or draw down on an important stream, or adverse visual impact due to an inappropriate facade color in an environmentally scenic area. Consequently, performing an analysis for those VOI/TIS VOI/TIS projects for which construction is completed may still serve the useful purpose of determining the extent of a project's continuing adverse environmental impacts, and the feasibility of mitigation measures.

(f) *Avoiding duplication of efforts.* If an EA or EIS was completed on an original structure, any environmental research that was conducted at the time the original structure was being planned and is still relevant need not be duplicated in any required environmental impact analysis for proposed modifications or additions to that structure.

§ 91.59 OJP's responsibilities.

(a) *In general.* All NEPA decisions such as determining the adequacy of assessments, the need for environmental impact statements, and their adequacy must, by statute, remain with OJP. Therefore, OJP, as the Federal agency sponsoring the major federal action, shall determine if a proposed project qualifies for a categorical exclusion, if a finding of no significant impact can be issued based on the EA, or if an EIS will be required.

(b) *Specific duties.* As part of its role in the NEPA process, OJP shall:

(1) Issue guidance on the preparation of environmental documents and the NEPA process.

(2) Review all draft documents.

(3) Participate in giving notice to state and federal agencies, as well as to the public, and attend public meetings with the grantee, as appropriate.

(4) Identify and solicit appropriate state, local, and tribal agencies to be a cooperating or joint lead agency, as appropriate.

(5) Prepare a written assessment of any environmental impacts that another state or federal land management or environmental protection agency believes have not been adequately addressed through the NEPA process.

(6) Monitor implementation by the states to ensure the completion of any required mitigation measures.

(7) Develop a sample Statement of Work for preparing an EIS that States employing their own contractor can use to ensure that the services provided meet the requirements.

§ 91.60 Grantee's responsibilities.

Specific duties. As part of its role in the NEPA process, the grantee agency must:

(a) Work closely with OJP on the development and review of the environmental documents, and follow the NEPA process, with the full participation of OJP.

(b) Issue the documents for public comment jointly with OJP.

(c) Solicit comment from other state and federal agencies, interested organizations, and the public.

(d) Refrain from purchasing land, beginning bidding process, or starting construction on any project until all environmental work has been completed.

(e) Complete a project Status Report form for all projects under construction or completed prior to the effective date of this subpart.

(f) Ensure that appropriate environmental analysis, as determined by OJP, is completed for all projects and that appropriate alternatives are considered and mitigation measures are implemented to reduce the impact of identified environmental impacts, if any.

(g) Identify and inform OJP of all applicable state and local environmental impact review requirements.

(h) Notify all subgrantees of the requirements of this subpart in the initial planning and site selection phase.

§ 91.61 Subgrantee's responsibilities.

If delegated by the grantee, the subgrantee shall:

(a) Prepare (if the required expertise exists) or contract for the preparation of an environmental assessment (EA); and

(b) Submit all environmental assessments through the grantee to OJP for review and the issuance of a draft finding of no significant impact (FONSI) or a determination that an environmental impact statement (EIS) is required. If OJP issues a draft FONSI, the grantee agency shall make the draft FONSI and the underlying EA available for public comment.

§ 91.62 Preparing an Environmental Assessment.

(a) *In general.* An Environmental Assessment (EA) is a concise public

document that provides sufficient evidence and analysis for determining whether OJP should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Completing an EA requires considering all potential impacts associated with the construction of the correctional facility project, its operation and maintenance, any related projects including those off-site, and the attainment of the project's major objectives. The latter requires an analysis of the environmental impacts of any training and vocational activities to be conducted by the inmates.

(b) *Project planning and site selection.* During the planning phase of the project, OJP and the grantee jointly define the project, explore the various alternatives and identify a proposed site for the construction or renovation project. In order to identify possible environmental concerns and reduce the likelihood of later opposition to the project, the grantee should involve other interested parties at this stage through public meetings which allow affected or interested parties to learn about the need for the action, the scope of the proposed action, and any alternatives being considered. These public meetings should also provide interested parties an opportunity to express comments or concerns about potential consequences of the action. Additionally, minority and low-income populations as well as Indian tribes that may be affected by the proposal should be consulted at this early stage. The grantee should obtain their views on proposed sites and mitigation measures as an important step in meeting the environmental justice goals of Executive Order 12898.

(c) *Draft environmental assessment.* The grantee should prepare an EA after identifying the proposed site, but before reaching a final decision to proceed with the effort at that location. The grantee may prepare the EA or contract for the preparation of all or parts of the EA. In order to adequately assess all of the potential environmental impacts, a multi-disciplinary team must be used to perform the environmental analysis. Any state or local environmental impact review requirements should also be incorporated into the EA process. The amount of analysis and detail provided must be commensurate with the magnitude of the expected impact. At a minimum, an EA should include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and alternatives considered, and a list of agencies and persons consulted. VOI/TIS grant funds may be used to pay the costs of preparing the environmental assessment.

(d) *OJP's Review of the Draft EA.* The Office of Justice Programs will review the EA for the following:

(1) Has the need for the proposed action been established?

(2) Have the relevant areas of environmental concern been identified?

(3) Have other agencies with an interest been consulted?

(4) Has the grantee provided opportunities for public involvement?

(5) Have reasonable alternatives and mitigation measures been considered and implemented where possible, including the costs and resources to operate the facility?

(6) Has a convincing case been made that the project as presently conceived will have only insignificant impacts on each of the identified areas of environmental concern?

(7) Has the grantee adequately documented compliance with other related federal environmental laws and regulations as well as similar state and local environmental impact review requirements.

(e) *Draft Finding of No Significant Impact (FONSI) or determination that EIS is required.* If the EA satisfies all the factors in OJP's seven-part review set forth in the previous paragraph, OJP will issue a draft FONSI. If OJP's review of the EA results in a response of ''no'' to any of the questions, except question 6, then the EA is incomplete and will be returned for further work. If the only ''no'' is in response to question 6, then OJP will issue a determination requiring an EIS for that particular project at that site. Given the cost and time required to complete an EIS, the grantee may wish to explore another alternative site at this point.

(f) *Circulate EA and draft FONSI for public comment.* The grantee must provide public notice of availability of a Finding of No Significant Impact. The notice must be timed so that interested agencies and the public have 30 days for review and comment on the draft EA.

(g) *Review comments and modify plans, as appropriate.* The grantee must review any public or agency comments received as a result of review of the EA and draft FONSI, and should modify its plans, if appropriate. Modification may include modifying the project to mitigate the environmental impact of the proposed project, or abandoning the proposed site and selecting an alternative that will have a less significant impact on the environment. The grantee must submit the comments, responses to these comments, and any revisions to the proposed plan to OJP for review. If the grantee recommends proceeding with the project in light of adverse comments on the environmental impact, the grantee must include the rationale for its recommendation.

(h) *Final action on EA.* Unless a significant environmental impact surfaces through the public comments or other means, OJP will issue the FONSI and authorize the grantee to begin the purchase of land, the bidding process, the development of final plans and specifications, and the construction work.

§ 91.63 Preparing an Environmental Impact Statement

(a) *Initial determination.* OJP will determine whether a proposed project may have a significant impact on the quality of the human environment, thereby requiring the preparation of an environmental impact statement (EIS). This determination will be made either:

(1) On the basis of an environmental assessment (EA) prepared for the proposed project or

(2) Without the preparation of an EA, but based on the extensive size of the proposed facility and the resulting variety of environmental impacts, the sensitive environmental nature of the proposed site, and/or the existence of highly controversial environmental impacts.

(b) *CEQ regulations.* The CEQ regulations in 40 CFR parts 1500 through 1508 govern the preparation of the EIS. The Corrections Program Office's Handbook on *Environmental Protection Requirements* offers further guidance.

(c) *EIS preparation team.* (1) Once OJP determines that an EIS is needed, the grantee shall notify OJP in writing about the contracting method that the grantee will use to complete the EIS. The grantee shall establish an EIS preparation team or entity that meets the requirements for an interdisciplinary approach. The team must not have any interest, financial or otherwise, in the outcome of the proposed projected or any related projects.

(2) If the grantee decides to use an alternate method to contracting out for preparation of the EIS (such as using a team of experts from various state agencies or a university), the grantee must submit a written proposal to OJP demonstrating that the team has the necessary interdisciplinary skills and

experience in preparing EISs for similar projects. The proposal must include a completion schedule demonstrating that the alternate method will not result in significant delay. The proposal must also document that all members of the team, other than the grantee's employees, do not have any interest, financial or otherwise, in the outcome of the proposed project or any related projects.

(3) The grantee must use an OJP-approved statement of work (SOW) in conducting the EIS.

(4) Any consultant or contractor hired by OJP or the grantee to prepare an EIS must execute a disclosure statement specifying that it has no financial or other interest in the outcome of the project or any related projects.

(d) *Notice of intent.* OJP will publish a notice in the **Federal Register** to announce its intent to prepare the EIS. The grantee shall be responsible for drafting this notice. This notice must state the date, time and place of the scoping meeting and briefly describe the purpose of the meeting. The grantee should schedule the meeting at least 30 days from the date that the grantee submits the draft **Federal Register** notice to OJP.

(e) *Scoping.* The scoping process shall be conducted in accordance with 40 CFR 1501.7 of the CEQ regulations. The purpose of scoping is to identify and consult with affected federal, state and local agencies, Indian tribes, interested organizations and persons, including minority and low-income populations. The grantee and OPD shall conduct two distinct scoping meetings to assist in identifying both major and less important issues for the draft EIS. At the end of the scoping process, a brief report will be prepared summarizing the results, listing the participants, and attaching the meeting minutes.

(f) *Draft EIS.* The grantee and OJP will prepare the draft EIS in accordance with the requirements of the CEQ regulations in 40 CFR parts 1500 through 1508. The draft EIS must represent the best analysis reasonably possible. The grantee must submit the draft EIS to OJP and any cooperating agencies for internal review and comment. The revised draft must be submitted to OJP and any cooperating agency for approval.

(g) *Public comment.* The grantee, with OJP approval, must establish a distribution list and must mail the draft EIS to those parties. OJP will then submit the approved draft EIS to the Environmental Protection Agency (EPA) and will request EPA to publish a notice of the availability of the draft in the **Federal Register**. The grantee must publish a similar notice in a newspaper of general circulation in the area of the proposed action. Additionally, the grantee and OJP shall conduct a public information meeting to answer questions and receive comments on the draft EIS.

(h) *Final EIS.* The grantee and OJP will prepare the final EIS, including a copy of all comments on the draft and a summary of the public information meeting. The grantee shall submit the final EIS to OJP and any cooperating agencies for internal review. The grantee and OJP will circulate the final EIS to all parties on the distribution list, to any agency or person that requests a copy, and to EPA for publication in the **Federal Register**. The grantee must also announce the availability of the final EIS locally.

(i) *Record of decision.* When the waiting period for circulation of the final EIS expires, OJP shall prepare the record of decision in accordance with 40 CFR 1505.2 of the CEQ regulations and in consultation with the grantee. This record of decision shall determine the allowable uses of the grantee's VOI/TIS fund with respect to the proposed action or its alternatives.

(j) *Final action on EIS.* In proceeding with the proposed action, the grantee must implement any mitigation measures or other conditions established in the Record of Decision. As part of any mitigation, the grantee must report back to OJP on the status of implementing the mitigation.

§ 91.64 Supplemental EA or EIS.

(a) *OJP's duty to supplement.* OJP shall prepare supplements to either completed environmental assessments or draft or final environmental impact statements if the grantee proposes to make substantial changes in the proposed action that are relevant to previously assessed environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Additionally, OJP shall include the supplement in its formal administrative record.

(b) *Grantee's duty to supplement.* A grantee has a duty to inform OJP if it plans to make substantial changes in the proposed action that are relevant to environmental concerns; or if it learns of significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

§ 91.65 Responsible OJP officials.

(a) *Corrections Program Office Director.* The Director of the Corrections Program Office is primarily responsible for ensuring the completion of these procedures and for working with grantees to ensure that grantees and subgrantees meet their responsibilities under this subpart. The Director also has the authority to execute on behalf of OJP all FONSIs required under this subpart.

(b) *Assistant Attorney General.* The Assistant Attorney General of OJP is responsible for executing all records of decisions resulting from the completion of environmental impact statements on projects subject to this subpart.

§ 91.66 Public participation.

Environmental impact documents are public documents and the public should be provided an opportunity to review and comment on them.

(a) *Early project planning stages.* During the early planning stages of a project, the grantee should make reasonable efforts to meet with the affected public and other interested parties in order to obtain their views and any concerns regarding the potential environmental impacts of the proposed project.

(b) *Environmental assessment process.* (1) *Newspaper notice.* At a minimum, the grantee must provide public notice of the availability of the draft EA and draft Finding of No Significant Impact (FONSI) for review and comment. The grantee must publish this notice in the non-legal section of at least two consecutive editions of the newspaper of general circulation in the affected community or area. The notice must:

(i) Explain how and where a copy of the assessment can be accessed or obtained for review;

(ii) Include a request for comments; and

(iii) Provide at least a thirty-day comment period that begins from the date of the last published notice.

(2) *Post Office notice.* If the project area is not served by a regularly published local or area-wide newspaper, the notice described in paragraph (b)(1) of this section must be prominently displayed at the local post office.

(3) *Site notice.* The grantee must send a copy of the notice to owners and occupants of properties that are nearby or directly affected by the proposed project. Additionally, the grantee must place or post the notice on the site of the proposed project.

(4) *Distribution of the draft EA.* At the same time that the grantee provides the public notice of the availability of the EA for review and comment, the grantee must mail a copy of the draft EA and FONSI to any individuals and groups

that have expressed an interest in the planned project to either the grantee or OJP and also to appropriate local, state, and Federal agencies. OJP will advise the grantee of the identities of any parties who have directly requested project information from OJP.

(5) *Public information meeting.* A public information meeting is not required for each environmental assessment. Rather, OJP will decide if a public meeting would be helpful in those cases in which the public comments either reflect a serious misunderstanding of the proposed project and its potential environmental impacts or raise substantial questions or issues concerning the content of the draft EA. If OJP determines that a meeting is necessary, the grantee must schedule and hold a public meeting. An OJP representative will attend.

(c) *EIS process.* (1) *Scoping meeting.* As one of the first steps in the preparation of a draft EIS, OJP and the grantee will sponsor a public meeting in the area(s) that would be affected by the proposed project and the alternative sites under consideration. This meeting is referred to as a scoping meeting and is intended to identify the proposed project's environmental impacts that are:

(i) Of most concern to the affected public and local, state, and federal agencies and

(ii) Of least concern to the affected public and agencies.

(2) *Review and comment process for draft EIS.* OJP's procedures require the grantee to obtain the public's comments on the draft EIS by:

(i) Publishing a notice of availability of the draft EIS in the newspaper(s) serving the area(s) that would be impacted by the proposed project and the alternatives sites;

(ii) Distributing copies of the draft EIS to all interested agencies, organizations, and individuals for their review and comment;

(iii) Holding near the site of the proposed project a public information meeting in order to obtain the comments of the attendees; and

(iv) Allowing, at a minimum, a forty-five day review and comment period for the draft EIS. Grantees should refer to OJP's Guidance Handbook for further information on how to conduct these public review and comment procedures.

(3) *Distribution of final EIS.* Any interested person or group can request a copy of the final EIS and will be provided a copy.

Other State and Federal Law Requirements § 91.67 State Environmental Policy Acts

(a) *Coordination.* OJP will coordinate with grantees to ensure that any state, local, or tribal environmental impact review requirements similar to the Federal NEPA procedures will be met concurrently, to the extent possible, through requesting the appropriate non-federal agency(ies) to be a joint lead agency(ies). This effort would involve joint analyses, public involvement and documentation. Grantees are responsible for identifying the application of and informing OJP of these state and local requirements.

(b) *Completed analysis.* For projects that had state or local environmental impact analysis completed prior the implementation of these procedures, OJP will review the documents prepared to meet the state and local requirements. In order to minimize any duplication of analysis, OJP will advise the State on whether additional environmental impact review is required.

§ 91.68 Compliance with other Federal environmental statutes, regulations and executive orders.

(a) *Other Federal environmental laws.* All projects initiated by State or local units of government with VOI/TIS grant funding are also subject, where applicable, to the environmental impact analysis requirements of the following statutes, their implementing regulations, and the relevant executive orders:

(1) Archeological and Historical Preservation Act,

(2) Coastal Zone Management Act,

(3) Coastal Barrier Resources Act,

(4) Clean Air Act,

(5) Safe Drinking Water Act,

(6) Federal Water Pollution Control Act,

(7) Endangered Species Act,

(8) Wild and Scenic Rivers Act,

(9) National Historic Preservation Act,

(10) Wilderness Act,

(11) Farmland Protection Policy Act,

(12) Flood Disaster Protection Act

(13) Executive Order on Floodplain Management,

(14) Executive Order on Wetland Protection,

(15) Executive Order on Environmental Justice, and

(16) Executive Order on Protection and Enhancement of the Cultural Environment.

(b) *Combined requirements.* Documenting compliance with the environmental requirements in paragraph (a) of this section does not normally require separate documents or separate processes. Rather, documenting compliance with all of these requirements is generally accomplished by incorporating them into the NEPA documents. For example, one category of environmental impacts that must be addressed in a NEPA analysis is potential impacts to historic properties. The National Historic Preservation Act, as well as the Advisory Council on Historic Preservation's regulations at 36 CFR part 800, also contain Federal requirements for addressing the impacts on historic properties from Federal actions. In order to avoid duplicate compliance procedures, the NEPA document traditionally becomes the process for meeting the requirements of both laws.

Dated: August 3, 2000.

Alexa Verveer,

Acting Assistant Attorney General, Office of Justice Programs.

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- Phaffia yeast; published 7-6-00

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Animal and Plant Health Inspection Service

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- Pine shoot beetle; comments due by 8-18-00; published 6-19-00

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Federal Crop Insurance Corporation

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Endangered Species Act:
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- Interim hold-harmless provision phasedown; comment request; comments due by 8-14-00; published 7-18-00

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- Southwestern Washington/ Columbia River coastal cutthroat trout; take prohibitions clarification; comments due by 8-14-00; published 7-14-00

Endangered Species Act:
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H.R. 1791/P.L. 106–254
Federal Law Enforcement Animal Protection Act of 2000 (Aug. 2, 2000; 114 Stat. 638)

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