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WHERE: Office of the Federal Register
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Rules and Regulations

Federal Register

Vol. 65, No. 160

Thursday, August 17, 2000

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ22

Prevailing Rate Systems; Abolishment of the Philadelphia, PA, Special Wage Schedule for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to abolish the Philadelphia, Pennsylvania, Federal Wage System (FWS) special wage schedule for printing positions. Printing and lithographic employees in the Philadelphia wage area will now be paid from the regular Philadelphia appropriated fund FWS wage area schedule. This change is necessary because there are no longer enough printing and lithographic employees in the wage area to conduct the local special wage survey successfully.

DATES: *Effective Date:* This regulation is effective on September 18, 2000. *Applicability Date:* This regulation applies on the first day of the first applicable pay period beginning on or after September 18, 2000. Comments must be received by September 18, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848; by FAX at (202) 606–0824; or by email at *jdhopkin@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is abolishing the Philadelphia, PA, Federal Wage System (FWS) special wage schedule for printing positions. The Department of Defense (DOD) recommended that we abolish this special wage schedule because it has become extremely difficult for DOD to release adequate numbers of employees to conduct the local special wage survey successfully.

The number of printing and lithographic employees in the wage area has declined from 117 employees in 1995 to 5 employees currently. These five employees are located at the Defense Logistics Agency in the Philadelphia wage area. The decline in employees is expected to continue until there are no longer any printing and lithographic employees in the wage area. DOD found it increasingly difficult to comply with the requirement that employees paid from the special printing schedule participate in the local special wage survey process. The 1998 full-scale special wage survey required contacting 102 establishments in 5 counties in Pennsylvania and 3 counties in New Jersey.

Printing and lithographic employees will convert to the Philadelphia FWS regular wage schedule. Each employee's new rate of pay will be set at the step rate for the applicable grade of the regular wage schedule that equals the employee's existing rate of pay. If an employee's existing pay rate falls between two steps on the regular schedule, the new rate will be set at the higher of the two steps.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, remove paragraph (j)(3).

[FR Doc. 00–20898 Filed 8–16–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584–AC23; 0584–AC06

Summer Food Service Program: Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations published in the **Federal Register** on Tuesday, December 28, 1999 (64 FR 72474–72488), and Wednesday, December 29, 1999 (64 FR 72889–72898). The Agency incorrectly designated certain paragraphs of section 225.14(d) at 64 FR 72486 (December 28, 1999) and 64 FR 72898 (December 29, 1999). This amendment corrects those errors. For the convenience of the reader, we have revised paragraph (d) of section 225.14 in its entirety.

DATES: This correcting amendment is effective January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Section Chief, Child and Adult Care and Summer Programs, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, VA 22302–1594.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR 225 is corrected by the following correcting amendment:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. Revise § 225.14(d) to read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(d) *Requirements specific to sponsor types.* (1) If the sponsor is a camp, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(2) If the sponsor administers the Program at sites that provide summer school sessions, it must ensure that these sites are open to children enrolled in summer school and to all children residing in the area served by the site.

(3) Sponsors which are units of local, municipal, county or State government, and sponsors which are private nonprofit organizations, will only be approved to administer the Program at sites where they have direct operational control. Operational control means that the sponsor shall be responsible for:

(i) Managing site staff, including the hiring, terminating, and determining conditions of employment for site staff; and

(ii) Exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in § 225.15.

(4) If the sponsor administers homeless feeding sites, it must:

(i) Document that the site is not a residential child-care institution as defined in paragraph (c) of the definition of 'School' contained in § 210.2 of this chapter;

(ii) Document that the primary purpose of the homeless feeding site is to provide shelter and meals to homeless families; and

(iii) Certify that these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.

(5) If the sponsor administers NYSP sites, it must ensure that all children at these sites are enrolled participants in the NYSP.

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Administers the Program:

(A) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site, or

(B) With a waiver granted by the State agency in accordance with § 225.6(b)(6)(ii), not more than 500 children being served at any approved meal service at any one site;

(ii) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(iii) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(iv) Provides ongoing year-round activities for children or families;

(v) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(vi) Meets applicable State and local health, safety, and sanitation standards.

Dated: August 10, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–20953 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–2]

Export Certification; Heat Treatment of Solid Wood Packing Materials Exported to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the regulations by establishing a program under which softwood (coniferous) packing materials used with goods exported from the United States to China may be certified as having been heat treated. This program is necessary because the Government of the People's Republic of China has established a requirement that coniferous packing materials exported to China must be accompanied by such certification. The one change in this final rule clarifies that the required heat treatment must be performed in the United States, rather than in other countries. This rule affects persons who use coniferous packing materials to export goods from the United States to the People's Republic of China.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Russell T. Caplen, Lead Program Analyst, PPQ, Policy, Planning and Critical Issues, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–7601.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted.

Since 1975, APHIS has participated with State governments in the Cooperative Phytosanitary Export Certification Program, which allows certain State and county officials, as well as APHIS officials, to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. Because the number of Federal inspectors is limited, the use of State and county inspectors is a considerable service to exporters of plants and plant products in terms of both time and convenience.

The Government of the People's Republic of China has established requirements concerning importation of softwood (coniferous) packing materials from the United States in order to prevent the introduction into China of plant pests, specifically the pinewood nematode. This nematode is indigenous to North America and has caused significant damage to conifer forests in Asia.

Since January 1, 2000, the Government of the People's Republic of China has required goods from the

United States to be accompanied either by a statement from the exporter that the shipment does not contain any coniferous packing material or by a certificate issued by a representative of the United States Department of Agriculture (USDA) in which the exporter attests that the coniferous packing materials in the shipment have been heat treated by being subjected to a minimum core temperature of 56 °C for 30 minutes.

In an interim rule effective and published in the **Federal Register** on December 27, 1999 (64 FR 72262–72265, Docket No. 99–100–1), we amended the regulations to create a new certificate of heat treatment and to establish procedures for issuing it to exporters who have treated their solid wood packing materials (SWPM) in order to ship goods to China. This new certificate of heat treatment, PPQ Form 553, is divided into two parts and serves as both a certification by the exporter that the required heat treatment was performed and USDA endorsement of industry compliance with the certification requirements.

We solicited comments concerning the interim rule for 60 days ending February 25, 2000. We received four comments by that date. They were from a State government, a wood products producer, a wooden container and pallet association, and a manufacturer and exporter of heavy machinery. We have carefully considered all of the comments we received. They are discussed below by topic.

Use of Markings on SWPM to Certify Treatment

Two commenters made similar suggestions to reduce paperwork associated with shipments to China. They suggested that SWPM should be accepted by China without a certificate of heat treatment (PPQ Form 553) if it is marked with the brand KD, KD19, or HT (for *kiln dried*, *kiln dried < 19 percent moisture*, or *heat treated*). These brands are currently applied to wood that is heated in U.S. kilns to specified internal temperatures in accordance with procedures that are monitored by private grading agencies supervised by the U.S. Government. The commenters noted that wood eligible for these brands would also meet the treatment requirements for SWPM established by China. The commenters also noted that APHIS could, if necessary, evaluate the kiln drying and heat treatment standards that private grading agencies apply when authorizing kilns to apply the KD, KD19, or HT brands to ensure that they fully meet the Chinese time/temperature requirements, and that APHIS could issue the grading agencies a ''certification of adequacy'' to further document that their brands signify compliance with the Chinese requirements. Exporters could then attach to their shipments an informational statement for Chinese authorities, stating that only SWPM bearing such a brand was used in their shipment.

While APHIS agrees that the suggested procedure could simplify procedures and reduce the procedural and paperwork burden on exporters, this procedure would not satisfy the requirements currently imposed by China. The announcement of that requirement stated that SWPM in shipments must be certified to meet the heat treatment requirements ''by the official quarantine organization(s) from the United States.'' This is a requirement for APHIS certification. Based on discussions between APHIS and Chinese authorities to date, China is not willing to accept a combination of grading brands and exporter statements as a substitute for APHIS certification. APHIS will continue to discuss less burdensome alternatives for exporters with China, but at this time we cannot make any change in response to this comment.

Exporter Obligation to Document Heat Treatment

One commenter suggested changes to § 353.7(e)(4), which requires that the exporter or his or her representative must keep on file ''documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate.'' The commenter suggested that, as an alternative to this, the exporter could keep invoices and purchase orders indicating that the lumber ordered by the exporter to fabricate the SWPM was sold to him as lumber that was grade marked kiln dried, according to lumber grade rules certified as conforming to the American Softwood Lumber Standard PS20 established by the Board of Review of the American Lumber Standards Committee. This comment addressed the difficulty some exporters face with obtaining what they call ''supplementary certifications from upstream suppliers in the SWPM supply chain.'' The comment explained that since the exporter or his agent must sign the PPQ Form 553, attesting that the SWPM has been heat treated for the proper time at the proper temperature, the exporter faces a problem if the treatment was performed on the SWPM material at a stage of commerce before he obtained the material. The comment suggests that the exporter has met his responsibility if he keeps on file invoices and purchase orders from the seller of the SWPM material that assert that the material was properly heat treated.

We are not making any change in response to this comment. APHIS faces the same problem exporters do when dealing with SWPM; the chain of commerce has many stages, including tree harvest operations, lumber mills, wood product manufacturers, resellers, and others. However, we cannot establish rules that would require us to investigate this chain for the violator each time an enforcement action is necessary. Our rules focus on the immediate action that is being regulated, which is exportation of SWPM in this case, and therefore make the exporter the party responsible for the accuracy of exporter declarations in PPQ Form 553. However, even without making the requested change, we believe that as long as the exporter has confidence in the integrity of his supplier, then exporter records consisting of invoices and purchase orders for properly treated SWPM materials would satisfy the requirement of § 353.7(e)(4) that the exporter keep ''documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate.'' But having such documentation does not absolve the exporter from responsibility if the documentation is inaccurate. If an investigation reveals that an exporter shipped SWPM that was not properly treated, that exporter would have falsely stated in the PPQ Form 553 that the SWPM was properly treated and could be subject to penalties.

Using the Heat Treatment Certificate Currently Used for SWPM Exports to Europe

One commenter suggested that we comply with the Chinese requirement in the same fashion as we responded to European countries' demands in 1993 for assurance that shipments of softwood SWPM from the United States were free from pinewood nematode. The solution in that case was an industry-issued heat treatment certificate (HTC) that was issued by kilns conducting heat treatment under supervision of private grading agencies. This certificate now accompanies softwood SWPM shipments to Europe and satisfies the concerns of the receiving countries.

As discussed above, China currently requires certification by APHIS, not by private agencies or industries. Therefore, we are making no change based on this comment.

Heat Treatment Facilities Operating Under Compliance Agreements

One commenter noted that, under various APHIS regulations, APHIS establishes compliance agreements with commercial facilities when materials must be processed in a certain way to remove plant pest risks. The commenter suggested that APHIS set up compliance agreements with kilns or other wood heat treatment facilities and certify that SWPM made with wood from these facilities meets the requirements for export to China. This would reduce the procedural and paperwork burden on exporters who use only SWPM from such facilities.

APHIS is exploring this suggestion. However, there are many unsettled issues with such an arrangement, and establishing it would take time and require additional rulemaking. We are not taking any action with regard to this suggestion in this final rule, but may return to this suggestion in future rulemaking on the subject of SWPM.

Heat Treatments Performed Outside the United States

One commenter noted that the regulations do not specifically state that the SWPM exported from the United States must have been heat treated in the United States, rather than in some other country, and suggested that this requirement be made explicit.

We agree, and are changing the definition of certificate of heat treatment in § 353.1, and the language in PPQ Form 553, to state that the SWPM must be ''heat treated in the United States by being subjected to a minimum core temperature of 56 °C for 30 minutes.'' That requirement was always our intent, because there are a wide range of heat treatments employed in different countries and many of them would not meet the requirements of the Government of the People's Republic of China. It also becomes extremely difficult for U.S. exporters to document that a heat treatment has been properly performed when it was performed in a foreign country.

Miscellaneous Comments

Several comments raised issues outside the scope of the current rulemaking, including questions about how APHIS would react if other countries impose requirements similar to China's with regard to exports of SWPM from the United States, and questions about future APHIS plans for dealing with plant pest risks associated with imports of SWPM into the United States. APHIS has a long-term rulemaking action underway to address SWPM imports on a global basis. This action is described in the 1999 Regulatory Program of the United States. The first step of this action was an advance notice of proposed rulemaking published on January 20, 1999 (Docket No. 98–057–1; 64 FR 3049–3052). The alternatives discussed in the advance notice were to apply restrictions on the importation of SWPM based on risk assessment of regions, apply restrictions on a general basis regardless of origin, and prohibit importation of any SWPM. We also accepted comments on other alternatives to consider. These alternatives will be considered in analyses prepared in connection with further rulemaking. Persons interested in long-term APHIS plans concerning SWPM should refer to the advance notice and the Regulatory Program entry.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in the interim rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0147.

Regulatory Flexibility Act

This final rule follows an interim rule that amended the regulations by establishing a program under which softwood (coniferous) packing materials used with goods exported from the United States to China may be certified as having been heat treated.

In the interim rule, we stated that the emergency situation made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We also stated that if we determined that this rule would have a significant economic impact on a substantial number of small entities, then we would discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis. That analysis follows.

At the current time there are no APHIS fees or other direct costs for exporters who must obtain the new certificate in order to ship goods to China. There will be minor administrative costs incurred by each exporter to obtain each certificate, associated with items such as courier or express mail costs and long distance telephone inquiries. The amounts of these costs will vary depending on how each exporter arranges to obtain each certificate, but they should not be large for a single certificate.

The cost to exporters of obtaining and using only heat treated SWPM for shipments to China is not a cost associated with this final rule; it is a cost associated with the requirements imposed by China.

This rule affects U.S. exporters, primarily U.S. manufacturers and freight forwarders who act on their behalf, who ship goods to China using coniferous SWPM. It is estimated that there are about 125,000 such shipments per year, spread among approximately 5,000 exporters. A wide variety of products are shipped to China using coniferous SWPM, such as pharmaceuticals, auto parts, diapers, and fruits and vegetables.

This final rule sets forth the administrative procedures that U.S. exporters must follow in order to obtain an export certificate from APHIS. For affected exporters, the principal burden is the completion of part of a 1-page APHIS form (PPQ Form 553) for each shipment, a task which is estimated to take no more than 1 minute and cost no more than about $0.40 per form.[1] Based on the per exporter average of 25 shipments per year, this rule would add only about $10 in labor costs and an unpredictable but small amount in postal or courier costs to each affected exporter's annual operating costs.[2] This represents a very minor economic effect on affected U.S. exporters.

The Regulatory Flexibility Act requires that agencies consider the economic effect of rules on small entities (i.e., businesses, organizations, and governmental jurisdictions). For the reasons discussed above, this rule will have an insignificant economic effect on each of the approximately 5,000 U.S. exporters expected to be affected. The affected exporters represent a broad cross section of American industry, including producers of pharmaceuticals, auto parts, diapers, and fruits and vegetables.

The typical size of the affected exporters is unknown. Although the overwhelming majority of U.S. businesses in general are small by the standards of the Small Business Administration (SBA), it is possible that many of the affected manufacturers

[1] The cost of $0.40 per form assumes a labor rate of $24 per hour, based on industry averages.

[2] The $10 cost is derived as follows: 125,000/5,000 x $0.40. Even if the labor rate were double (i.e., $48 per hour or $0.80 per minute), the annual cost would only be $20.

could be large in size, since large manufacturers are more likely than small manufacturers to export their products to China or anywhere else. Most freight forwarders in the United States are small. In 1996, there were 12,022 U.S. firms in SIC 4731, a classification comprised of firms primarily engaged in arranging transportation for freight and cargo, including freight forwarders. Of the 12,022 firms, 97 percent had sales of less than $7.5 million each in 1996. The SBA's small entity threshold for firms in SIC 4731 is annual sales of $18.5 million.[3]

APHIS and the cooperating State agencies will also be affected by this rule, but they are not ''small entities'' under the Regulatory Flexibility Act.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on December 27, 1999. This rule clarifies that heat treatments conducted in accordance with the regulations must be conducted in the United States. Immediate action is necessary to provide a means for U.S. exporters to obtain certificates that the Government of the People's Republic of China has required to accompany certain shipments of U.S. goods to China since January 1, 2000. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 353 which was published at 64 FR 72262–72265 on December 27, 1999, is adopted as a final rule with the following changes:

PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 is revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 353.1 [Amended]

2. In § 353.1, the definition of *Certificate of heat treatment* is amended by adding the phrase ''in the United States'' immediately after the phrase ''have been heat treated''.

Done in Washington, DC, this 12th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–20978 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–34–P

[3] Source: SBA.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–90–AD; Amendment 39–11857; AD 2000–16–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7–100, and DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–7–100, and DHC–8–100, –200, and –300 series airplanes, that requires a one-time inspection of maintenance records to determine the method used during the most recent weight and balance check of the airplane and, if necessary, accomplishment of a weight and balance check. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent unusual handling characteristics and consequent reduced controllability during ground operations due to incorrect methods of weighing and balancing the airplane.

DATES: Effective September 21, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Centre-ville, Montreal, Quebec H3C 3G9, Canada. 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, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

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 all Bombardier Model DHC–7–100, and DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on April 28, 2000 (65 FR 24887). That action proposed to require a one-time inspection of the maintenance records to determine the method used during the most recent weight and balance check of the airplane and, if necessary, accomplishment of a weight and balance check.

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

Request To Revise the Compliance Time

A single commenter requests that the weight and balance check of the airplane required by paragraph (a)(2) of the proposal be revised from ''prior to further flight'' to ''within 60 days after the effective date of the proposed AD.'' The commenter states that the intent of the rule should be that the operator would have 60 days to review the records and reweigh any airplane that was last weighed on wing jacks. The commenter objects to the proposed requirement to perform the weight and balance prior to further flight, after the records inspection. The commenter explains that paragraph (a)(2) of the proposal could result in an airplane being grounded.

The FAA concurs with the commenter's request and has revised paragraph (a)(2) of the final rule accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any

operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 207 series airplanes of U.S. registry will be affected by this AD, and that it will take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,420, or $60 per airplane.

The cost impact figure discussed above is 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. 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 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, 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:

2000–16–03 Bombardier Inc. (Formerly de Havilland, Inc.): Amendment 39–11857. Docket 2000–NM–90–AD.

Applicability: All Model DHC–7–100 series airplanes and all Model DHC–8–100, –200, and –300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 unusual handling characteristics and consequent reduced controllability during ground operations due to incorrect methods of weighing and balancing the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection of maintenance records to determine the method used during the most recent weight and balance check of the airplane.

(1) If the maintenance records indicate that platform scales or bottle jacks at the undercarriage jacking points were used during the most recent weight and balance check, no further action is required by this AD.

(2) If the maintenance records indicate that wing jacks were used during the most recent weight and balance check, or if the maintenance records do not verify the use of platform scales or bottle jacks at the undercarriage jacking points, within 60 days after the effective date of this AD, accomplish a weight and balance check of the airplane in accordance with the applicable de Havilland Weight and Balance Manual procedures specified in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), or (a)(2)(vii), of this AD.

(i) For Model DHC–7–100 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–7–8, Issue 1, dated November 1978.

(ii) For Model DHC–7–101 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–7C–8, Issue 1, dated November 1978.

(iii) For Model DHC–7–102 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–71–8, Issue 2, dated February 1982.

(iv) For Model DHC–7–103 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–71C–8, Issue 1, dated November 1979.

(v) For Model DHC–8–100 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–8–8, Issue 3, dated March 1996.

(vi) For Model DHC–8–200 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–82–8, Issue 2, dated March 1996.

(vii) For Model DHC–8–300 series airplanes: Accomplish the actions in accordance with de Havilland Weight and Balance Manual PSM 1–83–8, Issue 3, dated March 1996.

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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–32R1, dated March 11, 1999.

(d) This amendment becomes effective on September 21, 2000.

Issued in Renton, Washington, on August 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20649 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 73

[Airspace Docket No. 00–AGL–20]

RIN 2120–AA66

Realignment to Restricted Area R–6901A Fort McCoy; WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Restricted Area R–6901A Fort McCoy, WI. Specifically, this action realigns the southwestern boundary of R–6901A. The boundaries of R–6901B remain unchanged. The FAA is taking this action at the request of the United States Army (USA).

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

R–6901A was established to support training in the firing of long and short range weapons, and aircraft/helicopter training operations. Recently, the FAA conducted a review of non-precision standard instrument approach procedures (SIAP's) within the United States. This review revealed that a portion of the existing R–6901A infringes upon protected airspace for the SIAP serving the Sparta/Fort McCoy Airport, WI. Current air traffic control procedures require that non-participating aircraft be separated from the boundary of an active restricted area containing aircraft operations by a minimum of three nautical miles. In addition, coordination with the using agency for R–6901A found that the firing points formerly located in the southwest portion of R–6901A are closed permanently. Therefore, the using agency no longer has the requirement for restricted airspace in the southwest portion of R–6901A. As a result, it is necessary to realign the boundary of R–6901A to the northeast to release airspace no longer required for military purposes, and to more efficiency manage air traffic serving the Sparta/Fort McCoy Airport.

The Rule

This amendment to 14 CFR part 73 realigns R–6901A Fort McCoy, WI. Specifically, this action realigns the southwestern boundary of R–6901A. This action is being taken to limit the incursion of R–6901A on the protected airspace area of the published SIAP into Fort McCoy. The boundaries of R–6901B remain unchanged. A side benefit of this action returns airspace to the users of the navigable airspace in the vicinity northeast of Angelo, WI. The FAA is taking this action at the request of the USA. Because this action reduces restricted airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.69 of 14 CFR part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

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

Environmental Review

This action reduces restricted airspace. The rule contains no changes to air traffic control procedures or routes. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects on 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.69 [Amended]

2. § 73.69 is amended as follows:

* * * * *

R–6901A Fort McCoy, WI [Amended]

By removing the present boundaries and substituting the following:

Boundaries: Beginning at lat. 44°08′40″N., long. 90°44′20″W.; to lat. 44°08′40″N., long. 90°40′22″W.; to lat. 44°09′36″N., long. 90°40′22″W.; to lat. 44°09′36″N., long. 90°36′50″W.; to lat. 44°00′10″N., long. 90°36′41″W., then West along Wisconsin State Highway 21; to lat. 44°00′10″N., long. 90°37′32″W.; to lat. 44°01′45″N., long. 90°44′31″W.; to the point of the beginning.

* * * * *

Issued in Washington, DC, on August 9, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–20942 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Diclazuril, Bacitracin Methylene Disalicylate, Bambermycins, and Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three new animal drug applications (NADA's) filed by Schering-Plough Animal Health Corp. The NADA's provide for use of the approved, single-ingredient diclazuril Type A medicated article together with approved, single-ingredient Type A medicated articles for either bacitracin methylene disalicylate (BMD), virginiamycin, or bambermycins to make two-way combination Type C medicated feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency in broiler chickens.

DATES: This rule is effective August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed three NADA's that provide for use of Clinacox™ (0.91 grams per pound (g/lb) diclazuril activity) Type A medicated article together with other approved, single-ingredient Type A medicated articles to make two-way combination Type C medicated broiler chicken feeds used for the prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mitis* (*mivati*), and *E. maxima*. Because diclazuril is effective against *E. maxima* later in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesion scores and improve performance and health of birds challenged with *E. maxima*. The combination Type C medicated feeds are also used for increased rate of weight gain and for improved feed efficiency.

NADA 141–153 provides for use of Clinacox™ and BMD® (10, 25, 30, 50, 60, or 75 g/lb bacitracin activity as BMD) Type A medicated articles to make combination Type C medicated broiler chicken feed containing 0.91 g/ton diclazuril and 4 to 50 g/ton BMD® and is approved as of January 13, 2000.

NADA 141–158 provides for use of Clinacox™ and Flavomycin ® (2, 4, or 10 g/lb of bambermycins activity) Type A medicated articles to make combination Type C medicated broiler chicken feed containing 0.91 g/ton diclazuril and 1 to 2 g/ton bambermycins and is approved as of July 3, 2000.

NADA 141–090 provides for use of Clinacox™ and Stafac® (5, 10, 20, 50, or 227 g/lb virginiamycin activity) Type A medicated articles to make combination Type C medicated broiler chicken feed containing 0.91 g/ton diclazuril and 5 or 5 to 15 g/ton virginiamycin and is approved as of January 13, 2000. The combination Type C medicated feed containing 5 g/ton virginiamycin is used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency. The combination Type C medicated feed containing 5 to 15 g/ton virginiamycin is used for prevention of coccidiosis and increased rate of weight gain only.

The regulations are amended in 21 CFR 558.76, §§ 558.95, 558.198 and 558.635 (21 CFR 558.95, 558.198 and 558.635) to reflect these approvals. The basis of approval for each application is discussed in separate freedom of information summaries.

Sections 558.95 and 558.635 are also amended editorially to consolidate the cross-references for approved combinations in paragraph (d) and to list them in alphabetical order.

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

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by redesignating paragraphs (d)(3)(v) through (d)(3)(xvii) as (d)(3)(vi) through (d)(3)(xviii) and by adding new paragraph (d)(3)(v) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(v) Diclazuril as in § 558.198.

* * * * *

3. Section 558.95 is amended by revising paragraphs (d)(5)(i) through (d)(5)(iv) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) Bambermycins may be used in combination with:

(i) Diclazuril as in § 558.198.

(ii) Halofuginone as in § 558.265.

(iii) Narasin alone or with roxarsone as in § 558.363.

(iv) Nicarbazine as in § 558.366.

4. Section 558.198 is amended by revising paragraph (d) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) *Conditions of use.* (1) It is used in Type C feed as follows:

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
(i) 0.91 (1 part per million (ppm))		Broiler chickens: For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mitis* (*mivati*), and *E. maxima*. Because diclazuril is effective against *E. maxima* later in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesion scores and improve performance and health of birds challenged with *E. maxima*.	Feed continuously. Not for use in hens producing eggs for human food.	000061
(ii) 0.91 (1 ppm)	Bacitracin methylene disalicylate 4 to 50	Broiler chickens: As in item (i) of this table; for increased rate of weight gain and improved feed efficiency.	As in item (i) of this table. Bacitracin methylene disalicylate provided by 046573.	000061

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
(iii) 0.91 (1 ppm)	Bambermycins 1 to 2	Broiler chickens: As in item (i) of this table); for increased rate of weight gain and improved feed efficiency.	As in item (i) of this table. Bambermycins provided by 012799.	000061
(iv) 0.91 (1 ppm)	Virginiamycin 5	Broiler chickens: As in item (i) of this table; for increased rate of weight gain and improved feed efficiency.	As in item (i) of this table; Virginiamycin provided by 000069.	000061
(v) 0.91 (1 ppm)	Virginiamycin 5 to 15	Broiler chickens: As in item (i) of this table; for increased rate of weight gain.	As in item (i) of this table. Virginiamycin provided by 000069.	000061

(2) [Reserved]

5. Section 558.635 is amended by revising paragraphs (d)(4)(i) through (d)(4)(vii) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(d) * * *

(4) Virginiamycin may be used in combination with:

(i) Amprolium and ethopabate as in § 558.58.

(ii) Diclazuril as in § 558.198.

(iii) Halofuginone as in § 558.265.

(iv) Lasalocid as in § 558.311.

(v) Monensin alone or with roxarsone as in § 558.355.

(vi) Salinomycin alone or with roxarsone as in § 558.550.

(vii) Semduramicin as in § 558.555.

Dated: July 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–20936 Filed 8–16–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–194]

Drawbridge Operation Regulations: Elizabeth River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the South Front Street Bridge, mile 0.0, across the Elizabeth River at Elizabeth, New Jersey. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position for four days: August 29, 2000; September 19, 2000; September 21, 2000; and September 27, 2000, from 7 a.m. through 4 p.m. This action is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective August 29, 2000 through September 27, 2000.

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The South Front Street Bridge, mile 0.0, across the Elizabeth River has a vertical clearance of 3 feet at mean high water, and 8 feet at mean low water in the closed position. The bridge owner, the Union County Division of Engineering, requested a temporary deviation from the operating regulations to facilitate structural repairs at the bridge. The existing operating regulations at 33 CFR 117.719(a) require the bridge to open on signal; except that, from 12 midnight to 7 a.m., the draw shall open on signal if at least three-hours advance notice is given.

This deviation to the operating regulations allows the owner of the South Front Street Bridge to keep the bridge in the closed position for four days: August 29, 2000; September 19, 2000; September 21, 2000, and September 27, 2000, from 7 a.m. through 4 p.m., to facilitate structural repairs at the bridge. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 8, 2000.

G.N. Naccara,

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

[FR Doc. 00–20949 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–017]

Drawbridge Operating Regulation; Bayou Boeuf, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117 governing the operation of the Burlington Northern Santa Fe Railway, swing span bridge across Bayou Boeuf, mile 10.2, near Amelia, Louisiana. This deviation allows the Burlington Northern Railroad to close the bridge to navigation from 8 a.m. until 5 p.m. and from 7 p.m. until 6 a.m. from August 21, 2000 through August 23, 2000. Presently, the draw is required to open on signal. This temporary deviation is issued to allow for replacement of the bevel gear and shaft, which are part of the locking wedge drive mechanism.

DATES: This deviation is effective from 8 a.m. on Monday, August 21, 2000 through 5 p.m. on Wednesday, August 23, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Bayou Boeuf swing span bridge across Bayou Boeuf, mile 10.2, near Amelia, St. Mary and Assumption Parishes, Louisiana, has a vertical clearance of 6 feet above

high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of small tugs with tows, fishing vessels, and recreational craft. The Burlington Northern Santa Fe Railway Company requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the bevel gear and shaft, components of the locking wedge drive mechanism. This maintenance is necessary for the continued operation of the bridge.

This deviation allows the draw of the Bayou Boeuf swing span drawbridge across Bayou Boeuf, mile 10.2, to remain closed to navigation from 8 a.m. until 5 p.m. and from 7 p.m. until 6 a.m. from August 21, 2000 through August 23, 2000.

Dated: August 7, 2000.

Paul J. Pluta,

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

[FR Doc. 00–20948 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6846–8]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

EFFECTIVE DATE: This final rule is effective August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Jim Maysilles, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919–541–3265, facsimile number 919–541–5600, electronic mail address *maysilles.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants, which appeared in the **Federal Register** on June 22, 1999, 64 FR 33218. The affected regulations are codified at 40 CFR part 63, subpart CCC. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 13084 (63 FR 27655 (May 10, 1998) or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). The requirements of Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) do not apply to this rule because State and local governments will not have any direct compliance costs resulting from the rule. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 22, 1999 **Federal Register** document.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 17, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 15, 2000.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection, Office of Environmental Information.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended by adding a new entry in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.1155–63.1174	2060–0419
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

[FR Doc. 00–20538 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6851–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the General Electric (GE) Wiring Devices Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II office, announces the deletion of the GE Wiring Devices Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Puerto Rico Environmental Quality Board (EQB) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by the responsible party is appropriate. Moreover, EPA and the Puerto Rico EQB have determined that the Site poses no significant threat to public health and the environment.

DATES: This ''direct final'' action will be effective October 16, 2000 unless EPA receives significant adverse or critical comments by September 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Comments should be submitted to: Caroline Kwan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9 AM to 5 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repository locations: The Press Office at the Mayor's Office, Casa Alcaldia de Juana Diaz, Calle Degetau, (787) 837–2185, Hours: 8 AM to Noon; 1 PM to 4:30 PM, Monday through Friday.

U.S. Environmental Protection Agency, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 207, Santurce, Puerto Rico 00907, (787) 729–6951 Ext. 263, Hours: 7 AM to 4 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Kwan may be contacted at the above address, by telephone at (212) 637–4275, by FAX at (212) 637–4284 or via e-mail at *kwan.caroline@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

I. Introduction

EPA Region II announces the deletion of the GE Wiring Devices Superfund Site (Site), located in the municipality of Juana Diaz, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for future Fund-financed remedial actions in the unlikely event that conditions at the Site warrant such action.

EPA will accept comments, concerning this action, for thirty days after publication of this action in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the GE Wiring Devices Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e) of the NCP, sites may be deleted from the NPL when no further response is appropriate. In making this determination, EPA shall consider whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or,

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if future Site conditions warrant such actions. 40 CFR 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

The following procedures are being used for the intended deletion of this Site:

(1) EPA Region II issued a Record of Decision (ROD) in September 1988, which described the selected remedy at the Site. Thereafter, following excavation and physical separation of wastes, EPA Region II issued a ROD Amendment in July 1999, which allowed for off-site waste disposal in place of the treatment method specified in the 1988 ROD.

(2) A Remedial Action (RA) contractor hired by the Potentially Responsible Party (PRP) conducted waste excavation and physical separation activities for the Phase I RA at the Site. The PRP also hired contractors to complete excavation of remaining waste materials as well as off-site waste transportation and disposal activities for the Phase II RA. EPA and the Commonwealth of Puerto Rico oversaw the Phase I and Phase II RA activities. EPA prepared a Final Closeout Report, which documents that the remedy was implemented in accordance with the 1988 ROD and 1999 ROD Amendment.

(3) The results obtained from confirmatory soil samples and post-RA groundwater samples support that the ROD cleanup requirements have been achieved. The remedy is protective of human health and the environment, and achieves long-term effectiveness and permanence.

(4) EPA Region II issued a Final Closeout Report, dated June 20, 2000, which found that the responsible party implemented all appropriate response actions.

(5) EPA Region II recommends deletion and has made all the relevant documents available in the regional office and local information repository locations.

(6) The Puerto Rico EQB has concurred with the deletion decision in a letter dated July 10, 2000.

(7) A notice has been published in a local newspaper and has been distributed to appropriate Federal, state and local officials and other interested parties, announcing a thirty (30) day public comment period on EPA's Direct Final Action to Delete.

EPA is requesting public comments on the Direct Final Action to Delete. The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

EPA Region II will accept and evaluate public comments before making a final decision to delete. If necessary, EPA Region II will prepare a Responsiveness Summary to address any significant comments received during the public comment period.

If EPA does not receive significant adverse or critical comments and/or significant new data submitted during the comment period, the Site will be deleted from the NPL effective October 16, 2000.

IV. Basis for Intended Site Deletion

The GE Wiring Devices Superfund Site (Site) is located in the south central part of the island of Puerto Rico on Calle Carrion Maduro Final (Carr. 149, Km. 67) in the municipality of Juana Diaz. The Site is located northeast of Ponce, close to the intersection of Routes 14 and 149. The General Electric Company (GE) operated a wiring devices plant at the Site that manufactured various residential, institutional, and commercial electrical devices. The plant occupies approximately six acres of property, which included a 1.1-acre fill area where mercury-contaminated materials were historically disposed.

The fill area or West Field, was located west of the GE plant and extended onto the adjacent property to the west, which is owned by the Puerto Rico Industrial Development Corporation (PRIDCO). The West Field is bounded to the north and east by GE's manufacturing and storage buildings, and several residences are located approximately 400 feet south. The groundwater underlying the Site is used as a source of potable water with the nearest public supply well located approximately 1,500 feet to the west.

From 1957 until 1969, GE used the West Field to dispose of defective electrical components, including parts from silent mercury switches. GE discontinued the use of mercury in its manufacturing processes at the Juana Diaz plant in 1970.

In 1979, GE initiated remedial investigation activities. Early sample data revealed the presence of waste fill materials containing up to 60,000 parts per million (ppm; equivalent to milligrams per kilogram) of mercury in the West Field. An unspecified amount of waste material was also removed and sent to Bethlehem, Pennsylvania for reclamation.

The Site was included on the National Priorities List of hazardous sites in December 1982.

On January 16, 1984, GE entered into an Administrative Consent Order with EPA to conduct a Remedial Investigation/Feasibility Study (RI/FS) and to remediate the Site.

On September 30, 1988, EPA issued a Record of Decision (ROD). The selected remedy included: (1) Further treatability studies to insure the implementability of hydrometallurgical processes; (2) on-site hydrometallurgical treatment of the waste fill, perched water, and contaminated near-surface soils; (3) treatment of the material to below the health-based levels, backfilling the waste fill area with the treated materials, and covering it with 2 feet of clean soil; (4) additional investigation of the groundwater; (5) limited groundwater monitoring; and (6) confirmatory air monitoring and re-sampling of soil in residential yards.

From 1994 to 1997, GE patented a mercury removal process called the GE Mercury Extraction Process (GEMEP) treatment system with oversight by EPA. GE contracted Metcalf & Eddy, Inc. (M&E) to design, fabricate, and operate the system. In June 1997, M&E completed construction of the physical treatment system; waste excavation and physical separation of wastes were performed concurrently. The quantity of material requiring excavation and physical separation was more than double the amount originally expected (11,700 tons versus 5,005 tons), and (2) the actual clay content of the material that underwent treatment was much higher than expected (63 percent versus 18 percent). This resulted in the physical separation step requiring 34 weeks, instead of the design estimate of 4 weeks. Consequently, after completing most of the excavation, GE suspended Site activities as a result of the changes in material encountered.

In March 1999, GE completed a Supplemental Focused Feasibility Study (FFS), which recommended off-site landfilling of excavated waste to a RCRA, Subtitle C (hazardous waste) facility on the mainland United States. On July 1, 1999, EPA signed a ROD Amendment, which modified the remedy.

From June to early-July, 1999, stockpiled waste materials were loaded into waste shipment containers and disposed off-site.

From November 1999 to January 2000, excavation of remaining waste materials from the cold storage building and the transformer areas was completed and was also disposed off-site.

The final Remedial Action Report was approved by EPA on May 25, 2000. The Final Closeout Report, dated June 20, 2000 was signed by EPA.

The Site cleanup was based on the most conservative exposure scenario (future residential development and site use). Results obtained from confirmatory soil samples and post-RA groundwater samples indicate that the ROD cleanup requirements have been achieved so that the Site has no restrictions on Site use or the exposure of persons at the Site. Therefore, a subsequent five-year review of the remedy for this Site by EPA is not required.

V. Action

GE has completed all appropriate response actions at this Site which are protective of human health and the environment, and achieve a permanent cleanup without the need for further remedial action.

The Commonwealth of Puerto Rico concurs with EPA that the criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective October 16, 2000. However, if EPA receives dissenting comments by September 18, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: July 28, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

Part 300, title 40 of chapter I of the Code of the Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O.12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[AMENDED]

2. Table 1 of Appendix B to Part 300 is amended by removing the site for the ''GE Wiring Devices, Juana Diaz, Puerto Rico''.

[FR Doc. 00–20725 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children and Families

45 CFR Part 1351

RIN 0970–AC04

Runaway and Homeless Youth Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending the Runaway and Homeless Youth Program regulation requirement that grant project periods ''will not exceed three years'', to provide that grant project periods ''may be up to five years.''

EFFECTIVE DATE: This rule is effective October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Stan Chappell (202) 205–8496

SUPPLEMENTARY INFORMATION:

I. Justification for Dispensing With Notice of Proposed Rulemaking

These regulations are being published in final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so. The Department finds that there is good cause to dispense with proposed rulemaking procedures for the following reasons:

(1) The regulatory change is non-controversial and purely technical. The change from three-year to five-year project periods would also be consistent with the Department's Grants Policy Directive that permits five-year project periods.

(2) Significant public comment, primarily from the grantee community which delivers the program services funded by the grants, has already been recently received on the change and overwhelmingly supported the five-year option.

(3) Publication of a final rule will enable grants in the upcoming series to be awarded under the new five-year option. This should result in a simpler administrative burden for both FYSB and the grantees involved, enabling both to focus more effectively on program quality and results.

For these reasons, we have concluded that a notice of proposed rulemaking is unnecessary.

II. Program Purpose

The mission of the Family and Youth Services Bureau (FYSB) is to provide national leadership on youth issues and to assist individuals and organizations in providing effective, comprehensive services for youth in at-risk situations and their families. A primary goal of FYSB programs is to provide positive alternatives for youth, ensure their safety, and maximize their potential to take advantage of available opportunities to develop into healthy, productive adults.

The Bureau's authorizing legislation provides authority to administer a discretionary grant program for Runaway and Homeless Youth (RHY) consistent with the provisions of the RHY Act (42 USC 5701 *et seq.*). Grants are awarded to public and private entities to support shelter services for runaway and homeless youth; outreach services to help protect young people on the streets from sexual abuse and exploitation; transitional living programs to help homeless youth become self-sufficient; and various research, demonstration, technical assistance and information dissemination activities relating to runaway youth and the promotion of positive youth development.

For twenty-five years, FYSB and the youth service field have created a strong continuum of care for youth growing up in difficult circumstances. More important, the Bureau and the field designed and promoted a youth development approach to working with all young people that remains the cornerstone of FYSB's work today.

The Bureau has experienced relatively stable appropriation support from Congress for the RHY Act grant programs every year since the enactment of the original legislation. Congress recently reauthorized the RHY Act in Pub. L. 106–71, and increased the level of funding over the previous year.

The major grant programs that support RHY services are:

Basic Center Program (BCP): Grants are awarded to youth shelters that provide emergency shelter, food, clothing, outreach services, and crisis intervention for runaway and homeless youth. The shelters also offer services to help reunite youth with their families, whenever appropriate.

Transitional Living Program (TLP): Grants are awarded to organizations to address the longer term housing needs

of youths and assist them in developing skills that promote independence and prevent future dependency on social services. Housing and a range of services are provided for up to18 months for youth ages 16–21 who are unable to return to their homes.

Street Outreach Program (SOP): Grants are awarded to organizations to provide education and prevention services to runaway, homeless, and street youth who have been subjected to or are at risk of sexual exploitation or abuse.

State Youth Development Collaboration Projects (SYDCP): Grants are awarded to states to enable them to develop and support innovative youth development strategies.

FYSB also funds the following systems to support its grantees' efforts:

National Runaway Switchboard (NRS): The National Runaway Switchboard provides vital communication links and information to youth who are considering running away, who have run away, or who are experiencing other events or situations which might lead to a runaway episode.

National Clearinghouse on Families & Youth (NCFY): The National Clearinghouse on Families and Youth is the Family and Youth Services Bureau's (FYSB's) central information dissemination resource on youth and family policy and practice.

Training and Technical Assistance Services (T/TA): Ten regionally based organizations are funded to provide training and technical assistance (T/TA) to local youth services agencies.

III. Discussion of Final Rule

The regulations that govern the administration of the Runaway Youth Program grants are codified in Part 1351 of Title 45. The regulations were published in 1978. They have not been revised since the original publication date. Subpart B, subsection 1351.14 (a) of the regulations limits the duration of the project period of a grant to three years before requiring a grantee to recompete for funds.

The Family Youth and Services Bureau (FYSB) is proposing a final rule changing the three-year project period to a five-year project period at the discretion of the awarding agency.

The original Runaway and Homeless Youth Act legislation and the recent reauthorization legislation (Pub. L. 106–71) are silent on the duration of the project period. The Department's Grants Policy Directive (GPD) permits five-year project periods. The historical background of the regulations provides the reason why a three-year instead of a longer project period was adopted previously.

On April 22, 1975, notice of proposed rulemaking for the Runaway and Homeless Youth Programs, including a requirement that grant project periods would not exceed three years, was published in the **Federal Register** requesting public comments. Comments received expressed concern that the three-year time frame for grant project periods was limiting. In 1978, final rules governing RHY programs were published in the **Federal Register**. This rule addressed the comments received regarding the duration of grant project periods. It stated that the three-year time frames for the duration of grant project periods reflected the standard Federal budget period and the three-year duration of the RHY Act. No revisions have been made to the regulations since they were originally published. Our experience over the past 22 years, however, has shown that a 5 year project period would be more appropriate.

The Family Youth Services Bureau's decision to publish a final rule to extend the agency's discretion in awarding grants for five years is supported by a number of favorable comments from the public.

In our fiscal year 1999 Runaway and Homeless Youth (RHY) Program Priorities, published in the **Federal Register** on February 4, 1999, we informed the public that the Family and Youth Services Bureau (FYSB) was considering extending grant project periods to a maximum of five years. We received a considerable number of comments opining that this change would have a positive impact on the stability and planning of programs serving youth.

Commenters stated that longer term financial stability strengthens services to youth and families; enables youth and families in need of services to be able to count on a more stable resource; enables more youth and families to receive services; and enables newer agencies to establish a track record of performance. This can enhance their ability to gather further funds from other sources, where available. It also encourages innovative programming, by allowing the time to try new approaches, evaluate their effects, revise the approaches and re-evaluate them. It also enables agencies to attract and retain more high-quality staff (which results in more high quality programming for youth and their families). Similar considerations would apply to demonstration projects, such as State collaboration grants.

Several commenters questioned whether the government would have appropriate flexibility in dealing with poor performing grantees under the extended grant period. However, our grants are funded in one year increments regardless of the length of the project period. Continuation of funding is based on satisfactory performance of the previous grant year. The government may utilize various action options in dealing with poor performing grantees.

Over the years much has been learned from community based agencies about the impact of the duration of project periods on the implementation and operation of community-based programs servicing runaway, homeless and street youth. For example, community-based agencies have indicated that longer project periods enable them to devote a greater proportion of time and effort to working with youth and their families, and a smaller proportion of time and effort to writing grant applications and planning for program start-up and/or loss of funding.

The final rule will grant flexibility to the Department to simplify the grant application burden in appropriate cases. Grantees who receive five-year grant cycles will thus be able to devote more energy to service delivery and gain the financial stability of longer grant periods, thereby benefiting the populations and communities they serve. Less frequent grant reviews and awards will also enable the Department to devote resources to program quality and oversight instead of administrative procedures.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with those priorities and principles. This rule implements the statutory authority for the Department of Health and Human Services to award grants for Runaway and Homeless Youth (RHY) programs for periods up to five years. Originally, the RHY regulations set forth a maximum of three years. As explained in the Summary of this final rule, the proposed revision would grant flexibility to the Department to simplify the grant application burden of those grantees which had demonstrated an ability to deliver quality services and achieve desired results in compliance with program rules, as well as having other characteristics conducive to

effective and efficient program operation. Grantees whom the Department deemed appropriate for five-year grant cycles would thus be able to devote more energy to service delivery and gain the financial stability of longer grant periods, thereby benefiting the populations and communities they serve.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small entities. For each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While these regulations would affect small entities, namely, the approximately 400 organizations that are recipients of various RHY grants, only those among the 400 deemed appropriate for the longer cycle would be affected, while the remaining grantees would continue to operate under the three-year period, at the Department's discretion. In any case, whatever the number of grantees evaluated as suitable for the longer periods, these would experience a reduced regulatory and paperwork burden by having to submit less frequent applications for new grants. For these reasons, the Secretary certifies that this rule will not have a significant economic impact on substantial numbers of small entities other than to permit the more efficient operation of a subset.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This final rule may indirectly affect record keeping and reporting.

Comments were solicited in the **Federal Register** on June 19, 2000. ACF will publish a notice in the **Federal Register** stating the currently valid OMB control number when approval is granted. An agency may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the least costly, most-effective or least burdensome alternative that achieves the objective of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this rule will not impose a mandate that will result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review of Rulemaking

This rule is not a ''major'' rule as defined in Chapter 8 of 5 U.S.C.

The Family Impact Requirement

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires a family impact assessment affecting family well being.

We have determined that this action will not affect the family. Therefore, no analysis or certification of the impact of this action was developed.

Federalism Impact

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications as defined in the Executive Order.

List of Subjects in 45 CFR Part 1351

Administrative practice and procedure, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program Number 93.623, Runaway Youth)

Dated: July 18, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: August 8, 2000.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR Part 1351 is amended as follows:

1. The authority citation for Part 1351 continues to read as follows:

Authority: 42 U.S.C. 5701 *et seq.*

2. Section 1351.14 (a) is revised to read as follows:

§ 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed five years.

* * * * *

[FR Doc. 00–20799 Filed 8–16–00; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1674; MM Docket No. 99–144; RM–9538, RM–9747 & RM–9748]

Radio Broadcasting Services; Arcadia, Gibsland & Hodge, LA & Wake Village, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Houston Christian Broadcasters, Inc. (''HCBI'') proposed the substitution of Channel 223C3 for Channel 223A at Wake Village, and modification of the license for Station KHTA and substitution of Channel 231C3 for Channel 223A at Arcadia, LA. *See* 64 FR 26720, May 17, 1999. On June 28, 2000, HCBI withdrew its interest in Channel 223C3 at Wake Village and Channel 231C3 at Arcadia. Therefore, the petition has been dismissed, as requested, with no action taken with regard to HCBI's proposed substitutions at Wake Village and Arcadia. In response to counterproposals filed for Gibsland, LA, Hodge, LA and expressions of interest for the use of Channel 231C3 at Arcadia, LA, we have

compared the proposals and allotted Channel 231C2 to Hodge, LA as a first local service. The coordinates for Channel 231C2 at Hodge, LA are 32–08–20 and 92–59–04. A filing window for Channel 231C2 at Hodge will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 11, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–144, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Hodge, Channel 231C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–20879 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1688; MM Docket No. 98–87; RM–9278, RM–9608]

Radio Broadcasting Services; Kaycee and Basin, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 222C1 to Kaycee, Wyoming as the community's first local aural service and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 277C2 to Basin, Wyoming as the community's first local aural service. *See* 63 FR 34619 (June 25, 1998). Channel 222C1 can be allotted at Kaycee in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 38.9 kilometers (24.2 miles) southwest of the community at coordinates 43–27–55 and 106–58–40. Channel 277C2 can be allotted at Basin in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments without a site restriction at coordinates 44–22–42 and 108–02–12. Filing windows for Channels 222C1 at Kaycee and 277C2 at Basin will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order.*

DATES: Effective September 11, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–87, adopted July 26, 2000 and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Kaycee, Channel 222C1 and Basin, Channel 277C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–20937 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1675; MM Docket No. 99–241; RM–9480]

Radio Broadcasting Services; Stamps and Fouke, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a request on behalf of In Phase Broadcasting, Inc., permittee of Station KLMZ, Channel 282A, Stamps, Arkansas, this document reallots Channel 282A to Fouke, Arkansas, and modifies the authorization for Station KLMZ accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 64 FR 37924, July 14, 1999. Coordinates used for Channel 282A at Fouke are 33–15–42 NL and 93–53–06 WL.

DATES: Effective September 11, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–241, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 282A at Stamps.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Fouke, Channel 282A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–20878 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 242, 247, and 252

[DFARS Case 99–D009]

Defense Federal Acquisition Regulation Supplement; Transportation Acquisition Policy

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise policy pertaining to the acquisition of transportation, transportation-related services, and transportation in supply contracts. The rule provides for the use of evaluation factors that address support for DoD readiness programs such as the Civil Reserve Air Fleet and the Voluntary Intermodal Sealift Agreement.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062; telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D009.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the DFARS to revise policy pertaining to the acquisition of transportation, transportation-related services, and transportation in supply contracts. For contracts for transportation or transportation-related services, the rule specifies that contracting officers should consider using, as evaluation factors or subfactors, the offeror's record of claims involving loss or damage, provider availability, and support for DoD readiness programs such as the Civil Reserve Air Fleet and the Voluntary Intermodal Sealift Agreement. For contracts that will include a significant requirement for transportation of items outside the continental United States, the rule contains a requirement for use of an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs.

The rule implements a policy memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on January 15, 1998, Subject: Transportation Acquisition Policy. The January 15, 1998, memorandum is available via the Internet at http://www.acq.osd.mil/log/tp/trans__programs/defense__trans__library/tp__library.html. The rule also updates references and organizational names and addresses, and makes other editorial changes.

DoD published a proposed rule at 65 FR 2104 on January 13, 2000. Seven sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most small entities that are eligible to transport DoD cargo or passengers already participate in DoD readiness programs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 212, 242, 247, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 242, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 242, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Subpart 212.6 is added to read as follows:

Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

Sec.
212.602 Streamlined evaluation of offers.

212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the continental United States, also evaluate offers in accordance with the criterion at 247.301–71.

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criterion at 247.572–2(c)(2).

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.1401 [Removed]

3. Section 242.1401 is removed.

4. Section 242.1402 is amended in paragraph (a)(2)(A)(*1*) by revising the last sentence; and in paragraph (a)(2)(C) by removing the word ''foreign'' the first time it appears and adding in its place the word ''freight''. The revised text reads as follows:

242.1402 Volume movements within the continental United States.

(a)(2) * * *

(A) * * *

(*1*) * * * If a volume movement appears likely, the transportation office reports a planned volume movement in accordance with DoD 4500.9–R, Defense

Transportation Regulation, Part II, Chapter 201.

* * * * *

5. Section 242.1403 is amended by revising paragraph (a)(ii) to read as follows:

242.1403 Shipping documents covering f.o.b. origin shipments.

(a) * * *

(ii) The term ''commercial bills of lading'' includes the use of any commercial form or procedure.

6. Section 242.1405 is revised to read as follows:

242.1405 Discrepancies incident to shipment of supplies.

(a) See also DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 210, for discrepancy procedures.

242.1470 [Amended]

7. Section 242.1470 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

PART 247—TRANSPORTATION

8. Section 247.001 is added preceding Subpart 247.1 to read as follows:

247.001 Definitions.

For definitions of ''Civil Reserve Air Fleet'' and ''Voluntary Intermodal Sealift Agreement,'' see Joint Pub. 1–02, DoD Dictionary of Military and Associated Terms.

247.103 [Removed]

9. Section 247.103 is removed.

247.104–3 [Removed]

10. Section 247.104–3 is removed.

11. Section 247.104–5 is revised to read as follows:

247.104–5 Citation of Government rate tenders.

(a) See DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 206, for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

12. Section 247.105 is amended by redesignating paragraph (a) as paragraph (b); and by revising newly designated paragraphs (b)(i)(A), (b)(ii), and (b)(iii)(D) to read as follows:

247.105 Transportation assistance.

(b)(i) * * *

(A) Rates and prices (for evaluation of bids or routing purposes);

* * * * *

(ii) Within CONUS, the Military Traffic Management Command (MTMC) is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services.

(iii) * * *

(D) Of supplies between points outside CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, ATTN: DALO–TSP, Washington, DC 20310–0500

Navy: Naval Supply Systems Command, Code 4D, 5450 Carlisle Pike, PO Box 2050, Mechanicsburg, PA 17055–0791

Air Force: Applicable Overseas Air Force Command:

HQ PACAF/LGT, 25 East Street, Suite I–305, Hickam AFB, HI 96853–5427

HQ USAFE/LGT, Unit 305, Box 105, APO AE 09094–0105

HQ AFSPACECOM/LGT, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914–4540

Marine Corps: HQ, U.S. Marine Corps, Traffic Management Branch (LFT1), 2 Navy Annex, Washington, DC 20380–1775

* * * * *

13. Sections 247.200 and 247.206 are added to read as follows:

247.200 Scope of subpart.

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government.

247.206 Preparation of solicitations and contracts.

(1) Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

(i) Record of claims involving loss or damage;

(ii) Provider availability; and

(iii) Commitment of transportation assets to readiness support (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

(2) To the maximum extent practicable, structure contracts and agreements to allow for their use by DoD contractors.

247.270–1 [Amended]

14. Section 247.270–1 is amended in the first sentence by removing the word ''peculiar'' and adding in its place the word ''unique''.

247.270–2 [Amended]

15. Section 247.270–2 is amended in the definition of ''Commodity rate'' as follows:

a. In paragraph (1) by removing the period and adding ''; and'' in its place; and

b. In paragraph (2), by removing the word ''which'' and adding in its place the word ''that''.

16. Sections 247.270–3 through 247.270–6 are revised to read as follows:

247.270–3 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

247.270–4 Evaluation of bids and proposals.

As a minimum, require that offers include—

(a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

247.270–5 Award of contract.

Make the award to the offeror submitting the offer most advantageous to the Government, considering cost or price and other factors specified in the solicitation. Evaluation will include, but is not limited to—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

247.270–6 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated:

(a) 252.247–7000, Hardship Conditions, in all solicitations and contracts.

(b) 252.247–7001, Price Adjustment, when using sealed bidding.

(c) 252.247–7002, Revision of Prices, when using negotiation.

(d) 252.247–7004, Indefinite Quantities—Fixed Charges, when the contract is an indefinite-quantity type and will provide for the payment of fixed charges.

(e) 252.247–7005, Indefinite Quantities—No Fixed Charges, when the contract is an indefinite-quantity type and will not provide for the payment of fixed charges.

(f) 252.247–7006, Removal of Contractor's Employees, in all solicitations and contracts.

(g) 252.247–7007, Liability and Insurance, in all solicitations and contracts.

247.270–7 [Removed]

17. Section 247.270–7 is removed.

247.271–1 [Amended]

18. Section 247.271–1 is amended in the first sentence by removing the word ''peculiar'' and adding in its place the word ''unique''.

19. Section 247.271–2 is amended by revising paragraph (a)(1) introductory text, paragraph (c) introductory text, and paragraphs (c)(1) and (c)(2)(ii) to read as follows;

247.271–2 Policy.

(a) * * *

(1) Use requirements contracts to acquire services for the—

* * * * *

(c) *Maximum requirements-minimum capability.* The contracting officer must—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.9–R, Defense Transportation Regulation, Part IV;

(2) * * *

(ii) Will encourage maximum participation of small business concerns as offerors.

20. Section 247.271–3 is amended as follows:

a. In paragraph (a)(1) in the first and last sentence by removing the word ''shall'' and adding in its place the word ''must'';

b. By revising paragraph (a)(2);

c. In paragraphs (b)(2)(iii) by removing the word ''shall'' and adding in its place the word ''must'';

d. In paragraph (c) introductory text by removing the dash and adding a colon in its place; and

e. In paragraphs (c)(1), (c)(2), and (c)(3) by removing the word ''shall'' and adding in its place the word ''must''. The revised text reads as follows:

247.271–3 Procedures.

(a) * * *

(2) The Commander, Military Traffic Management Command (MTMC), must designate the contracting activity when local commanders are unable to reach agreement.

21. Section 247.271–4 is amended as follows:

a. By revising paragraph (c) introductory text;

b. In paragraph (c)(4) and in the last sentence of paragraph (c)(5) by removing the word ''shall'' and adding in its place the word ''must'';

c. By revising paragraph (c)(6);

d. In paragraph (e) in the last sentence by removing the world ''shall'' and adding in its place the world ''must'';

e. In paragraph (f) by revising the last sentence; and

f. By revising paragraphs (j) and (p). The revised text reads as follows:

247.271–4 Solicitation provisions, schedule formats, and contract clauses.

* * * * *

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.9–R, Defense Transportation Regulation, Part IV, as provided by the installation personal property shipping office.

* * * * *

(6) Process any modification of schedule format, other than those authorized in paragraphs (c)(1) through (5) of this subsection, as a request for deviation to the Commander, MTMC.

* * * * *

(f) * * * When provisions are made for placing oral orders in accordance with FAR 16.505(a)(4), document the oral orders in accordance with department or agency instructions.

* * * * *

(j) When using the clause at FAR 52.216–21, Requirements, see 216.506(d), which prescribes an alternate to the clause.

* * * * *

(p) The clauses at FAR 52.247–8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247–13, Accessorial Services—Moving Contracts.

22. Sections 247.301, 247.301–70, and 247.301–71 are added to read as follows;

247.301 General.

247.301–70 Definition.

''Integrated logistics managers'' or ''third-party logistics providers'' means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

247.301–71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside CONUS, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve Air Force Fleet and Voluntary Intermodal Sealift Agreement).

23. Section 247.350–10 is revised to read as follows:

247.305–10 Packing, marking, and consignment instructions.

(b) Consignment instructions must include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows:

(A) Consignee code and clear text identification of consignee and destination as published in—

(*1*) DoD 4000.25–6–M, Department of Defense Activity Address Directory (DODAAD);

(*2*) DoD 4000.25–8–M, Military Assistance Program Address Directory (MAPAD) System; or

(*3*) Transportation Control and Movement Document. Reporting procedures and instructions must comply with DoD 4500.32–R, Military Standard Transportation and Movement Procedures (MILSTAMP).

(B) Project code, when applicable.

(C) Transportation priority.

(D) Required delivery date.

(ii) Non-MILSTRIP shipments must include data similar to that described in paragraphs (b)(i)(A) through (D) of this subsection.

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (D) of this subsection, the following, when appropriate:

(A) Name of the activity originally designated, from which the stated quantities are to be deducted.

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) When assigning contract administration responsibility in accordance with FAR 42.202, include in instructions the—

(A) Modification serial number; and

(B) If a new line item is created by the issuance of shipping instructions—

(*1*) New line item number; and

(*2*) Existing line item number, if affected.

(v) For petroleum, oil, and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone or electronic media.

24. Section 247.370 is amended by revising the introductory text and paragraph (b)(3) to read as follows:

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone or electronic media.

* * * * *

(b) * * *

(3) for other contracts—

(i) Telephone—within 5 working days; and

(ii) Electronic media—consolidate on a monthly basis.

25. Section 247.570 and 247.571 are revised to read as follows:

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904 (''the 1904 Act''), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(b) Does not specifically implement the Cargo Preference Act of 1954 (''the 1954 Act''), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act's requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

247.571 Policy.

(a) DoD contractors must transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and the procedures at 247.572–1(d)(1) or 247.572–2(d)(1) are followed;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, and the procedures at 247.572–1(d)(2) or 247.572–2(d)(2) are followed; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges are excessive or unreasonable in accordance with 247.572–1(d)(3) or 247.572–2(d)(3).

(b) Contracts must provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section must have any reflagging or repair work, as defined in the clause at 252.247–7025, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

26. Sections 247.572–1 and 247.572–2 are revised to read as follows:

247.572–1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(b) The contracting officer must obtain assistance from the congnizant transportation activity (see 247.105) in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government; and

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer must ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.73(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the 1904 Act will apply to the contract, and the contractor must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer must request confirmation of the nonavailability from—

(i) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC; or

(ii) The Commander, Military Traffic Management Command (MTMC), through the Principal Assistant Responsible for Contracting, MTMC.

(2) The proposed freight charges to the Government, the contractor, or any subcontractor are higher than charges for transportation of like goods to private persons, the contracting officer may approve a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting an exception, the contracting officer must request advice, oral or written, from the Commander, MSC, or the Commander, MTMC.

(ii) In advising the contracting officer whether to grant the exception, the Commander, MSC, or the Commander, MTMC, must consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(i) The contracting officer must prepare a report in determination and finding format, and must—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review;

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(*1*) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(*2*) A comparison of U.S.-flag rates charged on comparable routes;

(*3*) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(*4*) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

247.572–2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts for charter vessel services;

(4) Dedicated contractor contracts for charter vessel services;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—

(1) A preference for U.S.-flag vessels in accordance with the 1904 Act; and

(2) An evaluation factor or subfactor for offeror participation in the Voluntary Intermodal Sealift Agreement.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The Commander, MSC, or the Commander, MTMC, determines that no U.S.-flag vessels are available.

(i) The Commander, MSC, and the Commander, MTMC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(ii) The contracting officer must request such determinations—

(A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and

(B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by MTMC, including contracts for shipment of military household goods, through the Chiefs of the MTMC Ocean Cargo Clearance Authority.

(iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under MTMC solicitations or rate requests, the Commander, MTMC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s);

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, MTMC; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) After considering the factors in 247.572–1(d)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404–4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.572–1(d)(3)(i)(C).

(ii) The contracting officer must forward the report to—

(A) The commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

27. Section 252.247–7000 is revised to read as follows:

252.247–7000 Hardship Conditions.

As prescribed in 247.270–6(a), use the following clause:

Hardship Conditions (AUG 2000)

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall—

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of Clause)

252.247–7001 [Amended]

28. Section 252.247–7001 is amended in the introductory text by revising the reference ''247.270–7(b)'' to read ''247.270–6(b)''.

252.247–7002 [Amended]

29. Section 252.247–7002 is amended in the introductory text by revising the reference ''247.270–7(c)'' to read ''247.270–6(c)''.

252.247–7003 [Removed and Reserved]

30. Section 252.247–7003 is removed and reserved.

252.247–7004 [Amended]

31. Section 252.247–7004 is amended in the introductory text by revising the reference ''247.270–7(e)'' to read ''247.270–6(d)''.

252.247–7005 [Amended]

32. Section 252.247–7005 is amended in the introductory text by revising the reference ''247.270–7(f)'' to read ''247.270–6(e)''.

252.247–7006 [Amended]

33. Section 252.247–7006 is amended in the introductory text by revising the reference ''247.270–7(g)'' to read ''247.270–6(f)''.

252.247–7007 [Amended]

34. Section 252.247–7007 is amended in the introductory text by revising the reference ''247.270–7(h)'' to read ''247.270–6(g)''.

35. Section 252.247–7020 is revised to read as follows:

252.247–7020 Additional Services.

As prescribed in 247.271–4(o), use the following clause:

Additional Services (AUG 2000)

The Contractor shall provide additional services not included in the Schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Military Traffic Management Command in effect at time of order.

(End of clause)

[FR Doc. 00–20960 Filed 8–16–00; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 217, 219, 236, and Appendix I to Chapter 2

[DFARS Case 2000–D015]

Defense Federal Acquisition Regulation Supplement; North American Industry Classification System

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to convert programs based on the Standard Industrial Classification system to the North American Industry Classification System, in accordance with the final rule issued by the Small Business Administration on May 15, 2000.

DATES: *Effective date:* October 1, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 16, 2000 to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062; telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D015 in all correspondence related to this rule. E-mail comments should cite DFARS Case 2000–D015 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to convert programs based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). The Small Business Administration (SBA) issued a final rule at 65 FR 30836 on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published at 65 FR 46055 on July 26, 2000, with an effective date of October 1, 2000, to establish policy for use of the new size standards in Government acquisitions. This rule makes corresponding changes to the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule implements the final rule issued by SBA on May 15, 2000, and SBA has certified that the impact of the change from SIC to NAICS on each business will not be substantial. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D015.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. The SBA issued a final rule on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published on July 26, 2000, with an effective date of October 1, 2000, to establish policy for use of the new size standards in Government acquisitions. Corresponding changes to the DFARS are now needed. The required implementation date of October 1, 2000, does not permit time for issuance of a proposed rule and evaluation of public comments. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 217, 219, and 236

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 217, 219, 236 and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 217, 219, 236, and Appendix I to Subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

217.401 [Amended]

2. Section 217.401 is amended as follows:

a. In paragraph (1)(i) by removing ''Standard Industrial Classification (SIC) Major Group'' and adding in its place ''North American Industry Classification System (NAICS) Industry Subsector''; and

b. In paragraph (1)(ii) by removing ''SIC Major Group'' and adding in its place ''NAICS Industry Subsector''.

PART 219—SMALL BUSINESS PROGRAMS

219.201 [Amended]

3. Section 219.201 is amended in paragraph (f) in the first sentence by removing ''Standard Industrial Classification Major Group'' and adding in its place ''North American Industry Classification System Industry Subsector''.

4. Section 219.502–3 is revised to read as follows:

219.502–3 Partial set-asides.

(c)(1) If the North American Industry Classification System Industry Subsector of the acquisition is one in which use of a price evaluation adjustment for small disadvantaged business concerns is currently authorized (*see* FAR 19.201(b)), apply the adjustment to the non-set-aside portion.

5. Section 219.1005 is amended by revising paragraph (b) to read as follows:

219.1005 Applicability.

* * * * *

(b) The targeted industry categories for DoD are:

North American Industry Classification System (NAICS) Description	NAICS Code
(1) Pharmaceutical Preparation Manufacturing	325412
(2) Ammunition (except Small Arms) Manufacturing	332993
(3) Other Ordnance and Accessories Manufacturing	332995
(4) Turbine and Turbine Generator Set Unit Manufacturing	333611
(5)(i) Aircraft Engine and Engine Parts Manufacturing	336412
(ii) Research and Development in the Physical, Engineering, and Life Sciences (Aircraft Engines and Engine Parts only)	54171
(6)(i) Guided Missile and Space Vehicle Manufacturing	336414
(ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missiles and Space Vehicles only)	54171
(7)(i) Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	336419
(ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missile and Space Vehicle Parts and Auxiliary Equipment only)	54171
(8) Military Armored Vehicle, Tank and Tank Component Manufacturing	336992
(9) Search and Navigation System and Instrument Manufacturing	334511
(10)(i) Cellular and Other Wireless Telecommunications	513322
(ii) Satellite Telecommunications	51334
(iii) Other Telecommunications	51339

219.1203 [Amended]

6. Section 219.1203 is amended in the first sentence by removing ''SIC Major Groups'' and adding in its place ''North American Industry Classification System Industry Subsectors''.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.602–1 [Amended]

7. Section 236.602–1 is amended as follows:

a. In paragraph (a)(i)(6)(A) introductory text in the last sentence by removing ''Standard Industrial Classification Major Group'' and adding in its place ''North American Industry Classification System (NAICS) Industry Subsector''; and

b. In paragraph (a)(i)(6)(C) by removing ''Standard Industrial Classification Major Group'' and adding in its place ''NAICS Industry Subsector'', and by revising the second parenthetical to read ''(see FAR 19.201(b))''.

Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program

I–104 [Amended]

8. Section I–104 is amended in paragraph (a)(1)(ii) by removing ''Standard Industrial Classification (SIC)'' and adding in its place ''North American Industry Classification System (NAICS)''.

I–106 [Amended]

9. Section I–106 is amended in paragraph (c)(2)(ii) by removing ''SIC'' and adding in its place ''NAICS''.

I–107 [Amended]

10. Section I–107 is amended in paragraph (b)(2) by removing ''SIC'' both places it appears and adding in its place ''NAICS''.

[FR Doc. 00–20956 Filed 8–16–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 99–D307]

Defense Federal Acquisition Regulation Supplement; Mentor-Protege Program Improvements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2000. Section 811 amends statutory provisions pertaining to the DoD Pilot Mentor-Protege Program.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 99–D307.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 65 FR 6554 on February 10, 2000. The rule amended policy on the Mentor-Protege Program in DFARS Subpart 219.71 and Appendix I to implement Section 811 of The National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). This final rule contains additional clarifying amendments, to include clarification that progress reports required from protege firms may be submitted as part of the mentor firm's annual report.

Three sources submitted comments on the interim rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule changes procedures for administering and monitoring the Mentor-Protege Program, but maintains the primary objective of providing incentives for major DoD contractors to assist small disadvantaged business concerns and qualified organizations employing the severely disabled in enhancing their capabilities to satisfy Government and commercial contract requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule, for use through July 31, 2003, under OMB Clearance Number 0704–0412.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Part 219 and Appendix I to Chapter 2, which was published at 65 FR 6554 on February 10, 2000, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Part 219 and Appendix I to Subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 38 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.7103–2 is amended as follows:

a. In paragraph (e) introductory text by adding the word ''only'' before the word ''if'';

b. By revising paragraph (f); and

c. In paragraph (h) by removing the word ''Command'' and adding in its place the word ''Agency''. The revised text reads as follows:

219.7103–2 Contracting officer responsibilities.

* * * * *

(f) Not authorize reimbursement for costs of assistance furnished to a protege firm in excess of $1,000,000 in a fiscal year unless a written determination from the Director, SADBU, OUSD (AT&L), is obtained.

* * * * *

3. Section 219.7106 is revised to read as follows:

219.7106 Performance reviews.

The Defense Contract Management Agency will conduct annual performance reviews of all mentor-protege agreements as indicated in Appendix I, Section I–112. The determinations made in these reviews should be a major factor in determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the Program participation term under the agreement.

Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program

I–100 [Amended]

4. Section I–100 is amended in paragraph (c)(1) by removing the word ''protege'' and adding in its place the abbreviation ''SDB''.

5. Section I–106 is amended as follows:

a. By removing paragraph (c)(4);

b. In paragraph (d) introductory text by revising the last sentence;

c. In paragraph (d)(1) by removing the semicolon and adding a period in its place; and

d. In paragraph (d)(2) by removing '';or'' and adding a period in its place. The revised text reads as follows:

I–106 Approval process for companies to participate in the Program as mentor firms.

* * * * *

(d) * * * The company must submit a justification and endorsement from the cognizant Director, SADBU, when requesting any of the following unusual actions:

* * * * *

6. Section I–107 is amended as follows:

a. By redesignating paragraphs (b)(4) through (b)(8) as paragraphs (b)(5) through (b)(9), respectively;

b. By adding a new paragraph (b)(4); and

c. By revising paragraph (c). The added and revised text reads as follows:

I–107 Mentor-protege agreements.

* * * * *

(b) * * *

(4) A statement from the protege firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 2 years thereafter;

* * * * *

(c) Mentor firms must send a copy of any termination notices to the Director, SADBU, OUSD (AT&L), the cognizant Director, SADBU, and the Defense Contract Management Agency administrative contracting officer responsible for conducting the annual performance review, and, where funding is made available through a DoD program manager, must provide a copy to the program manager and to the contracting officer.

* * * * *

7. Section I–111 is amended as follows:

a. By revising paragraph (b);

b. In paragraph (c)(1) by removing ''Command (DCMC)'' and adding in its place ''Agency (DCMA)''; and

c. In paragraph (c)(2) by removing ''DCMC'' and adding in its place ''DCMA'', and by removing ''program office'' and adding in its place ''program manager''. The revised text reads as follows:

I–111 Reporting requirements.

* * * * *

(b) The mentor firm and the protege firm—

(1) Must provide data on the progress made by the protege firm in employment, revenues, and participation in DoD contracts during—

(i) Each fiscal year of the Program participation term; and

(ii) Each of the 2 fiscal years following the expiration of the Program participation term;

(2) Must provide the data by October 31st of each year to address the prior fiscal year; and

(3) During the Program participation term, may provide the data as part of the mentor report required by paragraph (a) of this section for the period ending September 30th.

* * * * *

I–112 [Amended]

8. Section I–112 is amended as follows:

a. In the first sentence of the introductory text by removing the word ''Command'' and adding in its place the word ''Agency'';

b. In paragraph (a) by adding the word ''and'' after the semicolon;

c. In paragraph (b) by removing ''agreement; and'' adding in its place ''Program participation term.''; and

d. By removing paragraph (c).

[FR Doc. 00–20957 Filed 8–16–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

[DFARS Case 99–D308]

Defense Federal Acquisition Regulation Supplement; Construction and Service Contracts in Noncontiguous States

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act. Section 8071 provides that DoD contracts for construction or services performed in a noncontiguous State, that has an unemploymemt rate in excess of the national average, must include a clause requiring the contractor to employ individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D308.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 65 FR 14402 on March 16, 2000. The interim rule revised DFARS Subpart 222.70 and the clause at 252.222–7000, pertaining to restrictions on the employment of personnel in noncontiguous States, to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act (Pub. L. 106–79). The final rule contains additional revisions to further clarify the definition of ''noncontiguous State'' and to delegate authority for waiver of the employment restrictions to the head of the agency.

One source submitted comments on the interim rule. DoD considered those comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, prior to this rule, a similar requirement existed for the noncontiguous States of Alaska and Hawaii. DoD knows of no economic impact on small entities that resulted from the implementation of this requirement in those States.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 222 and 252, which was published at 65 FR 14402 on March 16, 2000, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 222.7001 is revised to read as follows:

222.7001 Definition.

''Noncontiguous State,'' as used in this subpart, means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

3. Section 222.7003 is revised to read as follows:

222.7003 Waivers.

The head of the agency may waive the requirements of 222.7002 on a case-by-case basis in the interest of national security.

[FR Doc. 00–20958 Filed 8–16–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 236

[DFARS Case 2000–D010]

Defense Federal Acquisition Regulation Supplement; Special Procedures for Negotiation of Construction Contracts

AGENCY: Department of Defense (DoD)

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete text pertaining to special procedures for fee negotiation under cost-reimbursement contracts for construction.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 2000–D010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS Subpart 236.4, section 236.403, which contained special procedures for fee negotiation under cost-reimbursement contracts for construction. This DFARS text previously supplemented Federal Acquisition Regulation (FAR) text that ids now located at FAR 36.215. DoD has determined that this supplemental DFARS text is no longer necessary.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D010.

C. Paperwork Reduction Act

The paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 236

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 236 is amended as follows:

1. The authority citation for 48 CFR Part 236 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 236.4—[Removed]

2. Subpart 236.4 is removed.

[FR Doc. 00–20961 Filed 8–16–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 99–D025]

Defense Federal Acquisition Regulation Supplement; Contract Drawings, Maps, and Specifications

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause used in construction contracts. The revised clause explicitly allows the Government to furnish drawings and specifications to construction contractors in electronic form and requires construction contractors to reproduce and print contract drawings and specifications as needed.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the clause at DFARS 252.236–7001, Contract Drawings, Maps, and Specifications, in fixed-price construction contracts. The clause previously stated that the Government will provide five sets (unless another quantity is specified) of large-scale drawings and specifications to the contractor without charge; or, at the Government's option, may furnish the contractor with one set of reproducibles, or half-size drawings. This rule revises the clause to specify that the Government will provide one set of drawings and specifications to the contractor in electronic or paper media, as chosen by the contracting officer, and that the contractor will reproduce and print contract drawings and specifications as needed. In addition, the rule removes the term ''maps'' from the clause title, since the text of the clause does not contain this term.

DoD published a proposed rule at 65 FR 6574 on February 10, 2000. Three sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because reproducing and printing contract drawings and specifications normally does not constitute a significant expense, and the contractor can pass this expense along to the Government as part of the contract price.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.236–7001 is revised to read as follows:

252.236–7001 Contract Drawings and Specifications.

As prescribed in 236.570(a), use the following clause:

Contract Drawings and Specifications (Aug 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File Drawing No.

(End of Clause)

[FR Doc. 00–20959 Filed 8–16–00; 8:45 am]

BILLING CODE 5000–04–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1812 and 1852

Central Contractor Registration (CCR)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to include a requirement for vendors and contractors to register through the DoD Central Contractor Registration (CCR) System.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Cephas, (202) 358–0465, or *bcephas@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA is in the process of converting to a new Agency-wide accounting software system. To assist with data conversion to the new system, NASA has selected the DoD CCR system for its data conversion baseline. When a vendor registers in CCR, they are assigned a Commercial and Government Entity Code (CAGE) Code, which is the tool NASA has chosen for data conversion to its new accounting

software system. This CAGE code number can only be obtained when a vendor registers in the DoD CCR System.

A proposed rule was published in the **Federal Register** on October 6, 1999 (64 FR 54270–72). NASA received no public comments on the proposed rule. This final rule adopts the proposed rule with a change to establish an implementation date.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because an estimated two thirds of NASA vendors are already registered in the Defense Logistics Agency/Defense Logistics Information Service (DLA/DLIS) CCR System.

C. Paperwork Reduction Act

An Office of Management and Budget (OMB) approval for data collection has been approved under OMB Control Number 2700–0097.

List of Subjects in 48 CFR Parts 1804, 1812, 1852

Government Procurement.

James A. Balinskas,
Acting Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1804, 1812, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1804, 1812, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Subpart 1804.74 is added to read as follows:

Subpart 1804.74—Central Contractor Registration

1804.7400 Scope.
1804.7401 Definitions.
1804.7402 Policy.
1804.7403 Procedures.
1804.7404 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1804.74—Central Contractor Registration

1804.7400 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database.

1804.7401 Definitions.

''Central Contractor Registration (CCR) database,'' ''Data Universal Numbering System (DUNS) number,'' ''Data Universal Numbering System+4 (DUNS+4) number,'' ''Commercial and Government Entity (CAGE) Code,'' and ''Registered in the CCR database'' are defined in the clause at 1852.204–74, Central Contractor Registration.

1804.7402 Policy.

Prospective contractors must be registered in the CCR database, prior to any award of a contract, purchase order, basic agreement, basic ordering agreement, or blanket purchase agreement after March 31, 2001. This policy applies to all types of awards except the following:

(a) Purchases made with a Government-wide commercial purchase card.

(b) Awards made to foreign vendors for work performed outside of the United States.

(c) Purchases under FAR 6.302–2, Unusual and Compelling Urgency.

1804.7403 Procedures.

(a)(1) The contracting officer must verify that the prospective awardee is registered in the CCR database using either the Cage Code, DUNS number or, if applicable, the DUNS+4 number, via the Internet at http://www.ccr2000.com or by calling toll free: 888–CCR–2423 (888–227–2423), commercial: 616–961–5757.

(2) Verification of registration is not required for orders or calls placed under contracts, basic agreements, basic ordering agreements, or blanket purchase agreements in which vendor registration was verified at the time of award of the contract or agreement.

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database after March 31, 2001, the contracting officer must—

(1) If delaying the acquisition would not be to the detriment of the Government, proceed to award after the contractor is registered;

(2) If delaying the acquisition would be to the detriment of the Government, proceed to award to the next otherwise successful registered offeror, with the written approval of the Procurement Officer; or

(3) If the offer results from an invitation for bids, determine the offer to be non-responsive and proceed to award to the next otherwise successful registered offeror.

(c) The contracting officer must protect against improper disclosure of contractor CCR information.

1804.7404 Solicitation provisions and contract clauses.

Except as provided in 1804.7402, the contracting officer must use the clause at 1852.204–74, Central Contractor Registration, in all solicitations and contracts, including those for commercial items.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

3. In section 1812.301, paragraphs (f)(i)(A) through (M) are redesignated as (f)(i)(B) through (N) and a new paragraph ((f)(i)(A) is added to read as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(A) 1852.204–74, Central Contractor Registration.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.204–74 is added to read as follows:

1852.204–74 Central Contractor Registration.

As prescribed in 1804.7404, insert the following clause:

Central Contractor Registration

August 2000

(a) *Definitions.* As used in this clause—

(1) ''Central Contractor Registration (CCR) database'' means the primary DoD repository for contractor information required for the conduct of business with NASA.

(2) ''Data Universal Number System (DUNS) number'' means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) ''Data Universal Numbering System +4 (DUNS+4) number'' means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying sub-units or affiliates of the parent business concern.

(4) ''Commercial Government and Entity Code (CAGE Code)'' means—

(i) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(ii) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that is recorded and maintained by DLIS in the CAGE master file.

(5) ''Registered in the CCR database'' means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding CAGE code, is in the CCR database; the

DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors performing work outside of the United States.

(2) The Contracting Officer will verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award after March 31, 2001.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements via the Internet at http://www.ccr2000.com or by calling 888-CCR–2423 (888–227–2423).

(End of clause)

[FR Doc. 00–20989 Filed 8–16–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–99–5843]

RIN 2105–AC80

Relocation of Standard Time Zone Boundary in the State of Kentucky

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is moving Wayne County, Kentucky from the Central Time Zone to the Eastern Time Zone. This action is taken in response to a petition filed by the Wayne County, Kentucky, Fiscal Court and based on extensive comments filed in response.

DATES: The effective date of this rule is 2 a.m. CDT Sunday, October 29, 2000.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315.

SUPPLEMENTARY INFORMATION:

Background

Legal Requirements

Under the Uniform Time Act of 1918, as amended (15 USC §§ 260–264), either the Secretary of Transportation or Congress may move a time zone boundary in the United States. The current boundaries are set forth in regulations that are found in 49 CFR part 71.

Generally, in order to begin a rulemaking proceeding to change a time zone boundary, the highest governmental body representing the area petitions DOT to make the change. Depending on the area in question, the highest governmental body is usually elected county representatives, or the Governor or State legislature. We presume that this group represents the views of the community. We do not require that the community conduct a vote or referendum on the issue. We solicit the views of all interested parties, not just individuals who live or businesses that are located in the affected area.

15 USC 261 states that the standard for making a time zone boundary change is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.'' In order to determine what decision would support ''the convenience of commerce,'' the Department looks at a wide variety of factors about how the potential change would affect the community and surrounding areas. These factors include, but are not limited to the following:

1. From where do businesses in the community get their supplies and to where do they ship their goods or products?

2. From where does the community receive television and radio broadcasts?

3. Where are the newspapers published that serve the community?

4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community, to where must residents go to obtain these services?

5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?

6. What percentage of residents of the community work outside the community; where do these residents work?

7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State, or local plans, if any, are there for economic development in the community?

8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

History of This Proceeding

On April 22, 1999, the Wayne County, Kentucky Fiscal Court, by Resolution, formally petitioned the Department of Transportation to change the County's time zone from central to eastern. The Resolution addressed each of the factors discussed above and made a *prima facie* case that changing the time zone would suit ''the convenience of commerce.''

On June 21, 1999, the DOT published a notice of proposed rulemaking in the **Federal Register** (64 FR 33035) that proposed to move the county to eastern time.

A DOT representative conducted a hearing in Monticello, Kentucky, on June 24, 1999. The hearing was attended by approximately 80 people and lasted several hours. The DOT representative tried to gauge the position of the attendees by an informal show of hands at two times during the hearing (a number of people arrived late and others needed to leave early.) By show of hands, 44 were in favor and 26 opposed the first time, and 44 were in favor and 32 opposed the second time.

The NPRM also invited the public to submit written comments to the docket. There were over three hundred different submissions to the docket. The submissions included a number of petitions, detailed letters, and postcards or other short messages expressing a preference for either the Central or Eastern Time Zone. One petition favoring eastern time was signed by 1779 individuals. Another petition favoring central time was signed by 225 individuals. There were a number of other petitions with fewer signatures both favoring and opposing the proposed change. Overall, nearly 2,500 named individuals expressed an opinion either for or against the proposal in the written comments. About 1800 comments favored changing Wayne County's time zone to eastern.

In addition, twelve people called in to express their views. Most did not provide their names. Seven of the callers favored retaining central time observance and five supported the proposed change.

Originally, DOT hoped to issue a decision at the beginning of October 1999. Under that scenario, if a change were adopted, it would have been effective on October 31, 1999, which was the ending date for daylight saving time. Because this was a very controversial proceeding, on October 8, 1999, we issued a notice to alert the community that we would not meet our planned timetable, and that the earliest date that the proposed change might take effect would be October 29, 2000.

The Facts in the Case

The Resolution of the Fiscal Court provided detailed information to support its request. The Resolution stated:

I. Supplies for businesses are shipped into Wayne County mostly from the Eastern Time Zone. (Somerset, Lexington, Knoxville) United Parcel Service, FedEx and other carrier deliveries come from terminals in the Eastern Time Zone.

II. The major television stations that consider Wayne County as part of their coverage area are all located in the Eastern Time Zone. (Lexington, Knoxville) The local cable that serves Wayne County has no major local affiliates which are located in the Central Time Zone.

III. All daily newspapers that serve Wayne County are located in the Eastern Time Zone. Those being the Louisville Courier-Journal, Lexington Herald-Leader and the Commonwealth Journal which comes from Somerset, Ky.

IV. The citizens of Wayne County obtain bus transportation in Corbin, Ky., which is located in the Eastern Time Zone. The closest rail service for public transportation is also located in the Eastern Time Zone.

V. The closest commercial airport is Lexington, Ky., located in the Eastern Time Zone.

VI. Approximately 950 of the local workforce works outside Wayne County. It is estimated that 700 of those work in the Eastern Time Zone. This represents manufacturing jobs and is based on the 1996 manufacturing statistics.

VII. Approximately 90% +/-of Wayne County residents that attend educational institutions outside Wayne County attend schools that are located in the Eastern Time Zone. If you look at only the students that commute for education purposes, the figure would be higher. Wayne County needs desperately to improve our educational obtainment level of our residents. Moving to the Eastern Time Zone would align us with the resources to make this improvement more feasible.

VIII. Most interscholastic activities (90% or more) are with schools from the Eastern Time Zone. Most all district and regional competitions are held in areas that are in the Eastern Time Zone.

IX. Tourism plays an important role in our economy and the major portion of that comes from people located in the Eastern Time Zone. Lake Cumberland is a major tourism drawing card for our county. A very large portion (80%) of the tourists that come to this area come from the Eastern Time Zone.

X. Major hospitals that serve Wayne County are located in the Eastern Time Zone. It is estimated that 99% of all Wayne County citizens that are referred to obtain other medical services, that are not available locally, are referred to the Eastern Time Zone. (Somerset, Lexington, Louisville)

XI. The State Police Headquarters that serves our area is located in the Eastern Time Zone.

XII. Wayne County is the only county in the Fifth Congressional District that is in the Central Time Zone.

XIII. Looking at two long term factors that could significantly impact Wayne County in the future (the development of the Big South Fork National River and Recreation Area and the construction of I–66) would require Wayne County to be in the Eastern Time Zone to fully align with these two developments.

XIV. Most all of our industry, if not all, that is not headquartered locally has their main company headquarters in the Eastern Time Zone.

XV. Wayne County residents that go outside the county for ''shopping'' purposes, go to the Eastern Time Zone. (Somerset/Lexington)

XVI. The closest major gateway to our area is I–75. This attaches Wayne County, Kentucky, significantly to the Eastern Time Zone.

Virtually none of the comments opposing the change challenged the factual validity of any of the points included in the Fiscal Court Resolution. Some commenters did, however, question whether these particular factors were the appropriate ones to consider in making a final decision.

One of the main concerns in any time zone proceeding is the impact on young children and schools. At the public hearing, Mr. John Dalton, the Superintendent of Schools in Wayne County stated that if the proposal were adopted, school opening times would be delayed between 45 minutes to one hour to ensure the safety of the students. Other accommodations would be made, as appropriate, to other school activities.

Comments Opposing the Proposal

Opponents of the proposed change made strong, and often passionate, arguments in favor of retaining central time. Most of the commenters were very concerned about the safety and well-being of the children in the community. Most focused on the danger of waiting for early morning buses in the dark. Others noted logistical concerns with the availability (and cost) of childcare, and the fear that young children would be left unsupervised in the morning before school. Some were worried about the difficulty of getting children to bed before dark during the summertime. Others anticipated higher school absenteeism because the children would be tired. Several comments talked about the difficulty of coordinating parents' work schedules with the school schedule. A number of comments discussed the intangible, but very important, impacts of time observance on family life. For example, one commenter enjoyed the additional afternoon family time provided by central time observance and another commenter was concerned about the impact a change would have on Wednesday evening church services.

There were a number of comments making the argument that, ''if it ain't broke, don't fix it.'' Some of these commenters questioned whether the benefits from a change could possibly outweigh the effort and expense in making the adjustment.

Others were surprised, and skeptical, about proponents' claims of inconvenience and confusion from working with two time zones. Generally, they stated that they were clear about time zone differences and personally had never missed an appointment or been confused. In addition, a number of commenters denied that there would be any impact on economic growth or development from a change and, instead, focused on the economic growth in the county during the last decade.

There were a number of comments stating that the proposed change would have a negative impact on farmers and farming. These comments noted that Wayne County was, and still is to a large degree, a farming community. Changing to eastern time would result in later sunrises and sunsets compared to central time. This would adversely impact the scheduling of farm operations, such as the cutting of hay and tending of livestock. In addition, a number of commenters were concerned that farmers would be unable to obtain parts and supplies later in the day when they were working but the stores were closed. A few commenters were concerned that a change would disrupt Wednesday evening church services because, unless the services started later in the evening, farmers would be unable to attend.

A common thread in many of the comments was that the pace of life is slower, and more enjoyable, on central time. For example, one commenter stated, ''I do not want to live in a fast paced, heavily populated area. I * * * like the slower, laid back, low crime, small town, peaceful, friendly, and scenic Wayne County we have now.'' Another noted that central time suits the ''early to bed, early to rise'' character of the county. Others noted that the county

had always been on central time and that, geographically, it should remain on central time.

Many of the commenters focused on the advantages of central time. One of the most commonly noted advantages was being able to minimize time off work or out of school when traveling to the Eastern Time Zone for appointments. Others who work in the Eastern Time Zone enjoy getting home an hour earlier. A number of people enjoyed watching prime time television shows and the evening news an hour earlier than those on eastern time. Some enjoyed receiving mail and other deliveries earlier than they would if on eastern time. Others explained how, in their particular circumstances, most of their business, religious, medical, and social contacts were with people and organizations located in central time. A few commenters stated that the current observance benefits businesses that have very early work hours, especially to the extent that their employees come from other counties in the Central Time Zone.

Many of those opposing the proposal were offended by the process. Uniformly, they stated that there should be a vote on the issue before any action is taken.

Comments Supporting the Proposal

The comments supporting the proposal were equally passionate and deeply felt. These commenters vigorously supported the factual assertions made in the Fiscal Court Resolution. In general, it seemed obvious to virtually all of these commenters, that based on the facts presented by the Fiscal Court, the change should be made. Nevertheless, the proponents made a number of additional arguments in support of the change.

The most often repeated argument was practicality and convenience. These commenters defined their community broadly. They viewed themselves as aligned with cities and counties in the Eastern Time Zone, primarily to the north and east. In particular, they focused on the close ties Wayne County residents have with Somerset, Lexington, and, to a lesser degree, Richmond, London, Corbin, Frankfort, Louisville, and Knoxville, all of which are on eastern time. In their view, to the extent some thing or service was not available in the county, they must travel to the Eastern Time Zone to obtain it. They reiterated the points made by the Fiscal Court that virtually all government services; courts and administrative tribunals; hospitals and specialized medical treatment; entertainment and dining options; air, rail and bus service; television and radio transmissions; major newspapers; and community colleges, universities and technical schools were located in the Eastern Time Zone.

A number of businesses and professional offices expressed frustration at losing between two and four hours a day communication with those in the Eastern Time Zone because of different starting, lunch, and quitting hours. Others found it difficult and inconvenient to schedule appointments, court appearances, and interact with State and federal officials because of the time difference. A number of commenters stated that they had lost customers and business as a result of the time difference. In consequence, a number of sizable Wayne County businesses operate on eastern time because it is more efficient and makes better operational sense.

A number of letters focused on obtaining medical care outside the county. Several of the letters were from senior citizens who found the current system to be confusing and inconvenient for making doctor appointments and scheduling medical tests, which often must be done early in the morning. A family physician stated that being in the Central Time Zone was a hardship for his staff in making patient referrals.

Several comments from lawyers and legal professionals noted that all Social Security hearings, workers' compensation hearings, bankruptcy hearings, Federal court trials, and virtually all State administrative hearings and court appellate proceedings are held in the Eastern Time Zone. Others noted that the State and Congressional offices they must deal with are all located in the Eastern Time Zone.

The owner and general manager of a local radio station noted that weather bulletin and emergency and security action information systems are located in the Eastern Time Zone and the warnings are written based on eastern time observance. The commenter was concerned that, in case of an emergency, an inexperienced operator might confuse the time zones and rely on inaccurate, and presumably life-threatening, information. Another commenter, noted that the Boy Scout camp was located in the Eastern Time Zone and discussed the adverse impact the time difference had on his scouts. A cable television technician noted that using eastern time would simplify using a VCR during recording of programs. In addition, he noted that the television guide is on eastern time.

One commenter argued, ''Wayne County, Kentucky is a part of the Eastern Time Zone community in all ways except for what our clocks say. Please set our clocks to the same time as the rest of the community.'' Another commenter stated, ''[t]he majority of the people who have business, social, or educational contacts out of the county will benefit . . . People who confine all of these activities to the county will be impacted minimally, if at all. This change is clearly desirable as it will benefit more people and businesses than it will harm, with a great many not being affected at all.''

Another major argument was that changing the time zone would support the economic growth and development of the county. A number of commenters focused on the competitive nature of attracting new businesses to the county and argued that the confusion and inconvenience of juggling time zones is a deterrent to new entrants. Others focused on the positive impact a change would have on tourism. According to these commenters, a large majority of tourists come from the Eastern Time Zone and want their visit to be as hassle-free as possible. A number of other commenters argued that efficient business operation is hampered by the time difference and removing that impediment will allow for growth.

Another common, and strongly held, argument was that the change was vital for progress. One commenter stated, ''I have children and grandchildren here in this poverty stricken area and I do believe that there is a possibility that this change might help them and their children to earn a better wage and have a better life.'' Another commenter said, ''give us a real chance to improve and grow our economy, give us a chance at a better future.''

A number of parents stated that the change would have a positive impact on their children and families. One stated his belief that his children would be better rested and, therefore, would be better able to perform in school, if the time change were adopted. Several commenters wanted to minimize the time children were unsupervised in the afternoon when they believe children, particularly teenagers, are most likely to get into trouble. Others focused on the difficulties of scheduling athletic and after-school activities with neighboring counties. In some cases, children must leave school early in order to arrive on time for scheduled activities in the Eastern Time Zone. As a result, according to one commenter, many parents are unable to attend their children's after school activities because

they cannot leave work early in order to allow for the time change.

Many of the commenters expressed personal preferences and concerns. A number of commenters noted the burden of losing an hour when traveling to the Eastern Time Zone, particularly when beginning work or school early in the morning. Several commenters said they were prevented, or at least dissuaded, from taking early morning courses at institutions of higher learning because of the need to leave home an hour earlier in the morning. Others who work in Wayne County feel that that current time zone boundary limits the time they can shop or obtain other services in Somerset. Some commenters focused on the positive impacts a change would have on working conditions and family relationships. A few noted that currently, it is hard to get replacement parts from the Eastern Time Zone later in the day.

A number of those favoring the change were surprised by the controversy. These commenters alleged that most residents supported their position or, at least, did not care. Others commented that people would adjust and that the opposition was simply a fear of change. One commenter stated, ''[m]oving Wayne County to the Eastern Time Zone will bring about advances, we understand these advances will be over time and will not be readily recognized by the general public. But move us and 5 years later we will all have benefited and looking back we will all be able to see the results.''

In response to the concern about farmers, one commenter noted that the change would benefit part-time farmers. The commenter stated that many people who work in manufacturing jobs farm part-time after their workdays are over. If companies do not adjust their work hours, the time change would provide an extra hour of daylight after work. Other commenters argued that farmers work by the sun, not the clock, and that time observance should have no impact on most of their activities.

In terms of geography, several commenters stated that Wayne County is ''out of line'' with neighboring counties, all of which are on eastern time. For example, one noted that Jefferson County, Kentucky, is on eastern time and about five counties west of Wayne County.

A number of commenters made observations about the decision-making process in this case. Several noted the extensive opportunity for public input both to the Fiscal Court and the Department of Transportation. Others noted that both the current and previous Fiscal Courts had voted in favor of a change, which presumably shows longstanding political support. A different commenter noted his great skepticism about holding a vote on the time change. As an elected official himself, the commenter noted that the county is known for very low voter turnout, and doubted that any vote would provide a more representative sampling of community opinion.

The Decision

We appreciate the community's overwhelming response in this proceeding. Many people invested a substantial amount of their time to write lengthy and well-reasoned letters to help us make this decision. Every comment was read, and reread, several times.

We find that it would suit the ''convenience of commerce'' to move Wayne County from the Central to the Eastern Time Zone. Based on the facts presented, the county is very reliant on areas in the Eastern Time Zone to provide a majority of goods and services. In addition, most business and political leaders who commented believe that this change would provide a positive economic benefit to the area. As the people closest to the situation, we defer to their opinion on this matter.

This was a difficult case to decide because of the deep split in the community. The proponents of the change made their case under the statutory criterion. Nevertheless, we were concerned about the substantial number of individuals who fervently oppose any change. We carefully considered, and reconsidered, the degree of public support necessary to make a time zone change viable. Although we considered ''tabling'' the issue until there was greater unanimity in the community, we ultimately decided that this would be a dereliction of our duty to make the decision based on the statutory criterion. Although we regret that some will be unhappy with this decision, we are hopeful that ultimately the change will not be as uncomfortable as some anticipate.

Other Issues

A few commenters asked us to abolish daylight saving time. That issue is outside the scope of this rulemaking. Under the Uniform Time Act, a State is free to observe, or not observe, daylight saving time. If it chooses to observe, it must begin and end its observance on the federally mandated dates. Commenters that wish to be exempted from daylight saving time should explore this option with their State representatives.

A few commenters did not like time zone boundaries that divided States, or at least did not go in a more-or-less straight line. Time zone boundaries were originally set up in the late 1800s. Although they were based on geographic considerations (i.e., the sun should be more or less overhead at noon), the exact boundary was set largely based on the convenience of commerce and the needs of the railroads. In addition, geographic boundaries, such as mountains and rivers, also play a role. Therefore, it is reasonable to expect variation in the time zone boundary alignment.

Impact on Observance of Daylight Saving Time

This time zone change does not affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis and Notices

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)(2) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979.) We expect the economic impact of this rule to be so minimal that a full regulatory analysis is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small business, 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. This rule primarily affects individuals and their scheduling of activities. Although it will affect some small businesses, not-for-profits, and perhaps, several small governmental jurisdictions, it will not be a substantial number. In addition, the

change will not have a significant economic impact within the meaning of the Act. I, therefore, certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 12612 and have determined that this rule does not have sufficient implications for federalism to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and Executive Order 12875, enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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 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

This rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

List of Subject in 49 CFR Part 71

Time.

PART 71—[AMENDED]

For the reasons discussed above, the Office of the Secretary amends Title 49 Part 71 as follows:

1. The authority citation for Part 71 continues to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (c) of § 71.5, *Boundary line between eastern and central zones,* is revised to read as follows:

§ 71.5 Boundary line between eastern and central zones

(a) * * *

(b) * * *

(c) *Kentucky.* From the junction of the east line of Spencer County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) lines of Taylor County and northeasterly along the east (southeast) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey and Pulaski Counties to the intersection with the western boundary of Wayne County; and then south along the western boundary of Wayne County to the Kentucky-Tennessee boundary.

* * * * *

Issued in Washington, D.C. on August 10., 2000.

Rodney E. Slater,

Secretary.

[FR Doc. 00–20854 Filed 8–14–00; 10:29 am]

BILLING CODE 4910–62–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000810231–0231–01; I.D. 042400I]

RIN 0648–AM04

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule modifies the recreational and commercial red snapper fishing seasons; allocates two-thirds of the commercial red snapper quota for the spring fishing season, with the remainder available for the fall fishing season; increases the recreational minimum size limit for red snapper; and reinstates a 4-fish recreational red snapper bag limit for captain and crew of for-hire vessels (charter vessels and headboats). The intended effect of this final rule is to maximize the economic benefits from the red snapper resource within the constraints of the stock rebuilding program for this overfished resource.

DATES: This final rule is effective September 18, 2000, except for the amendment to § 622.34(l) which is effective September 1, 2000.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727–570–5305, fax: 727–570–5583, email: Richard.Raulerson@noaa.gov. Comments on any ambiguity or unnecessary complexity arising from the language used in this final rule should be addressed to the Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, telephone: 727–570–

5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

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

In accordance with the FMP's framework procedures, the Council recommended, and NMFS published, a proposed rule (65 FR 36656, June 9, 2000) to close the recreational red snapper fishery from January 1 through April 20 and from November 1 through December 31; increase the recreational minimum size limit for red snapper from 15 inches (38.1 cm) to 16 inches (40.6 cm) total length; reinstate a 4-fish recreational red snapper bag limit for captain and crew of for-hire vessels (charter vessels and headboats); reduce the openings of the spring commercial red snapper fishing season from 15 days per month to 10 days per month; delay the opening of the fall commercial red snapper fishing season from noon on September 1 to noon on October 1; and allocate two-thirds of the commercial red snapper quota for the spring fishing season, with the remainder available for the fall fishing season. The preamble to the proposed rule explained the need and rationale for these measures and also explained the relationship between the measures in this rule and a closely related interim rule (64 FR 71056, December 20, 1999) that was subsequently extended (65 FR 36643, June 9, 2000). Those descriptions are not repeated here.

Comments and Responses

Seven comments were received on the proposed rule. They are summarized and responded to here:

Comment 1: One individual commented that fishing regulations have become overly complex and, as a result, compliance has been reduced. This individual suggested that simplification of regulations be a priority.

Response: NMFS agrees that the current fishing regulations are complex and that complexity can confuse fishers and reduce compliance. NMFS agrees that regulations should be simplified where possible; however, any simplification must be consistent with the Magnuson-Stevens Act.

Comment 2: One individual stated that the allocation of 51 percent of the red snapper annual total allowable catch (TAC) to the commercial fishery was unfair and that more fish should be allocated to the recreational fishery. This individual also stated that the red snapper fishery in the eastern and western Gulf of Mexico should be managed separately.

Response: These issues were discussed at the November 1999 Council meeting when the Council voted to request an interim rule to set red snapper management measures for 2000. This final rule does not address the allocation of TAC or separate regulations for the eastern and western Gulf. The Council may choose to address these issues in the future through an FMP amendment.

Comment 3: Two comments objected to the delay in the opening of the fall commercial season from September 1 to October 1. One stated that prices are lower after Labor Day and that adverse weather in the fall creates a safety hazard if the season extends into November. This individual expressed a preference for an earlier rather than a later starting date.

Response: The economic information presented in the Council's regulatory amendment and deliberations by the Council suggest that a delay in the opening date of the fall season could increase economic benefits to the fishery. Based on statements by seafood dealers, the Council concluded that there is low demand for seafood in September but that demand and prices improve in October. Delaying the start of the fall commercial season until October is intended to make fresh red snapper available at a time when the consumer demand is greater and, thus, allow fishermen to get better prices for their catch. This delay will have no adverse impact on conservation of the red snapper resource; it merely adjusts the timing of when the allowable catch may be taken.

The delay in the start date will result in fishing activity later in the fall when cold fronts could produce windy conditions and rough seas. However, the delay will result in less likelihood of hurricanes or other tropical storms occurring during fishing periods. Thus, it is not clear that the delay will subject vessels to any increased danger at sea due to adverse weather.

Comment 4: One individual opposed the use of minimum size limits in the red snapper fishery based on his belief that most of the undersized fish released will die as a result of capture trauma. Two comments expressed opposition to the increase in the recreational minimum size limit because this could increase regulatory discards. Another comment stated that NMFS has underestimated bycatch mortality in the recreational fishery.

Response: NMFS is concerned with regulatory discards and the mortality rates of released red snapper. Based on the best scientific information now available, NMFS believes that minimum size limits are an effective conservation measure in this fishery. Minimum size limits are a widely used fishery management tool and are in part designed to allow females to spawn at least once before entering the fishery. This pool of protected mature females acts as a buffer against overfishing and recruitment failure in a severely overfished stock. The effectiveness of this strategy depends on the survival rate of released fish. NMFS' stock assessments incorporate a survival rate of 80 percent for released red snapper in the recreational fishery and 67 percent in the commercial fishery based on the best available scientific information. NMFS is currently reviewing recent studies on the release mortality rates of red snapper and will recommend the Council consider any appropriate changes in management measures, if justified.

Comment 5: One comment objected to the status quo TAC of 9.12 million lb (4.14 million kg) and stated that the TAC should be no greater than 5.8 million lb (2.63 million kg). This comment also raised concerns that the overfishing objective for red snapper in the FMP has not been amended to reflect the requirements of the Sustainable Fisheries Act (SFA) regarding preventing overfishing and rebuilding overfished stocks. Two comments stated that the rule could result in unacceptably high fishing mortality rates and that TAC may be too high. They stated that fishery management plans must prevent, not merely reduce, overfishing and expressed concerns that overfishing continues to occur in the red snapper fishery. These two comments urged NMFS to work with the Council to establish interim rebuilding goals.

Response: The Council recommended no change to the status quo TAC of 9.12 million lb (4.14 million kg) in its proposed regulatory amendment; thus, this rule does not address or alter the current TAC.

The 1999 red snapper stock assessment included a wide range of estimates of maximum sustainable yield (MSY) and the stock biomass associated with MSY. NMFS recognizes that there is considerable uncertainty associated with these estimates and that the Council has latitude to consider this uncertainty when developing a new stock rebuilding plan. Conditions

approaching those estimated to exist near MSY for red snapper have not been seen in decades, and, thus, the assessment models require assumptions regarding the productivity of the stock in predicting MSY. The SFA requires greater reductions in the red snapper harvest and in shrimp trawl bycatch mortality of juvenile red snapper than did previous management targets. Depending on the reduction of red snapper bycatch mortality achieved in the shrimp fishery and appropriate stock rebuilding parameters, the Council's 1999 Reef Fish Stock Assessment Panel estimates of acceptable biological catch for TAC range from 0 to 9.12 million lb (0 to 4.14 million kg). The best available scientific information indicates that the 9.12 million-lb (4.14 million-kg) TAC for 2000 may slow the rate of recovery in the early years of any stock rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved, as expected. However, an immediate and significant reduction in TAC would have serious adverse economic effects upon participants in the fishery.

NMFS agrees that additional action is required to establish a rebuilding plan for red snapper that is consistent with the requirements of the SFA. Section 304(e)(4)(A) of the Magnuson-Stevens Act states that for overfished stocks, fishery management plans must specify a time period for ending overfishing and rebuilding the fishery. On November 17, 1999, NMFS disapproved the red snapper rebuilding plan proposed for the Council's Generic SFA Amendment. NMFS disapproved the plan because it specified a fishing-mortality-based rebuilding target rather than a biomass-based target and because it did not estimate the time to rebuild in the absence of fishing mortality consistent with the requirements of the Magnuson-Stevens Act (as amended by the SFA) and the national standard guidelines. The Magnuson-Stevens Act, as amended by the SFA, mandates that overfished stocks be rebuilt to a biomass level capable of producing MSY. Until a new rebuilding plan is implemented, NMFS will continue to base red snapper management upon the criteria specified in the FMP. The NMFS Southeast Fisheries Science Center has determined that the status quo TAC is compatible with the FMP's existing stock rebuilding plan, provided that bycatch reduction of at least 50 percent will be achieved in year 2000 and beyond, that harvests will not exceed quotas, and that future recruitment, on average, will increase as spawning stock biomass increases.

At the July 2000 Council meeting, NMFS presented a draft red snapper stock rebuilding plan for the Council's consideration that specifies a timeframe for ending overfishing and achieves recovery of the stock within the allowed timeframe. To address uncertainty in the current assessment of the status of the stock and the magnitude of biomass-based rebuilding targets, the rebuilding plan contains interim rebuilding goals to ensure that adequate progress is made toward stock recovery. The Council has referred this plan to its Reef Fish Stock Assessment Panel for review in August 2000. The Council must take action to recommend this or another rebuilding plan that is in compliance with the Magnuson-Stevens Act.

Comment 6: Two comments stated that a set recreational fishing season (April 21 to October 31) violates the Magnuson-Stevens Act requirement that the red snapper recreational fishery be closed once the quota is reached. These two comments and another comment raised concerns that the recreational fishery has consistently exceeded its quota.

Response: The Magnuson-Stevens Act requires that the Gulf of Mexico red snapper recreational fishery be closed when the quota is reached. To comply with this requirement, NMFS works with the Council to implement red snapper recreational fishery management measures and establish closure dates that, based upon the best available scientific information, are likely to result in annual recreational catches that approximate the quota. NMFS uses a computer simulation model to project estimates of how many fish will be caught for various time periods based on a lengthy historical database. Establishing fishery closure dates based on projections is the only practicable method of setting such dates. This is because the real-time data are not available soon enough toward the end of the fishing season to allow for the evaluation and analysis necessary to determine the appropriate closure date and implement it in time to prevent quota overages. The intent of the interim rule issued December 20, 1999, and extended on June 9, 2000, as well as this final rule, which replaces the interim rule, is to reduce overfishing of red snapper by increasing the likelihood of compatible fishery closures by the Gulf states. In turn, a higher level of compliance should result and, thus, reduce the probability of exceeding the recreational quota in 2000.

Comment 7: One comment stated that shrimp trawl bycatch reduction devices (BRDs) reduce red snapper juvenile mortality by only 17 to 26 percent, less than the 40-percent level NMFS believes was achieved in 1999.

Response: NMFS disagrees. NMFS currently estimates that BRDs reduce red snapper bycatch mortality by approximately 40 percent and that greater reductions in 2000 are likely to result from changes in the design of acceptable BRDs and from improvements in industry's ability to use BRDs effectively as experience is gained. The 1999 Reef Fish Stock Assessment Panel also concluded that bycatch mortality for red snapper in 1999 was reduced about 40 percent. The improvement in BRD performance in 1999 is, in part, a result of the elimination of the configuration that resulted in the elephant ear flap obstructing the opening of the BRD.

Classification

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

NMFS prepared an FRFA for this final rule, based on the initial regulatory flexibility analysis (IRFA) and public comments. A summary of the FRFA follows.

The regulatory amendment implemented by this final rule was prepared by the Council and submitted to NMFS for review, approval, and implementation under authority of the Magnuson-Stevens Act. The Council concluded that the proposed rule, if adopted, would have a significant economic impact on a substantial number of small business entities and prepared an IRFA. Management changes under this rule that will have an economic impact on small entities include increasing the recreational red snapper size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm); allowing the captain and crew of for-hire vessels to retain a 4-fish bag limit; setting the recreational red snapper season from April 21 through October 31; starting the commercial spring season on February 1 and having mini-seasons of 10 days each month until the spring quota is reached; and, starting the fall mini-seasons (already established at 10 days per month) on October 1.

The primary FMP objective addressed by the rule is to establish a harvest level that will achieve a red snapper spawning potential ratio of 20 percent by the year 2019. This rule also has the objective of attempting to maximize the net benefits to be obtained from the TAC consistent with the primary FMP objective. Preliminary economic

analyses by NMFS and management suggestions offered by red snapper stakeholders suggested that such improvements in net benefits were possible.

NMFS received seven comments on the proposed rule and categorized the comments according to subject matter, including comments that involve economic impacts on small entities. Two commercial fishermen from Texas objected to the delay in the opening of the fall commercial season from September 1 to October 1 on the basis that prices are allegedly lower after Labor Day and that adverse weather in the fall creates a safety hazard. However, NMFS analyses and statements by seafood dealers indicate that a delay in the opening date of the fall season will increase prices and economic benefits. NMFS recognizes that weather patterns vary in the Gulf of Mexico. Although the delayed opening could result in more exposure to cold front-related weather, it should reduce exposure to hurricanes that present a more severe safety risk. There were no changes to the proposed rule that resulted from these public comments.

The Council determined that 450 to 650 commercial vessels representing small entities would be directly affected by the rule. Most of the vessels use handline gear, have an average length of 38 ft (11.6 m) and generate average annual gross revenues of about $52,000. About 1,200 charterboats and headboats representing small entities would be affected by the rule. The charterboat businesses use boats that average 37 ft (11.3 m) in length and generate about $56,000 in sales, while the headboats have an average length of 62 feet (18.9 m) and have annual receipts of about $140,000. No additional reporting, record keeping, or other compliance requirements by small entities are contained in the final rule.

Four alternatives, including the status quo of a minimum size limit of 15 inches (38.1 cm) total length, were identified for the proposal to increase the recreational red snapper size limit to 16 inches (40.6 cm). The status quo and a lower size limit of 14 inches (35.6 cm) were rejected because both alternatives would increase the rate of harvest and lead to a shorter season, thereby reducing the recreational value. An alternative of no size limit with a requirement to retain the first four fish was considered. This alternative was rejected because the biological evidence shows that the greater abundance of small fish would lead to a need to lower the TAC to maintain the spawning potential ratio goal. A lower TAC implies a lowering of economic benefits. An 18'' minimum size limit was rejected because of comments from recreational fishermen that undersize released fish were suffering high release mortalities. A conservative approach, which considers that the release mortality could be higher than was originally assumed, argues against adoption of a substantially higher minimum size limit. The Council proposed a captain and crew bag limit allowance of four fish and considered the status quo of no bag limits for captain and crew. Although the RIR found that the captain and crew bag limit may lead to a reduction in net economic benefits, the Council chose the alternative because it believed that the benefits from a longer season would not exceed the loss of harvest privileges for captain and crew. The Council considered five alternatives, including the status quo, to their proposal to set a recreational red snapper season and to give the Regional Administrator, Southeast Region, NMFS (Regional Administrator) the authority to delay the opening date in an attempt to accommodate additional landings related to the action allowing a 4–fish bag limit for captain and crew of for-hire vessels. Under the status quo, the season starts on January 1 and closes when the quota is met. The status quo has resulted in short seasons that eliminate some of the more profitable for-hire fishing trips that occur later in the year. For the 2000 fishing season, under status quo conditions the fishery is projected to remain open 210 days, allow 192,000 red snapper target trips, and produce approximately $41 million in angler consumer surplus. The Council investigated suitable alternatives to increase angler participation and consumer surplus and initially chose the April 15 through October 31 alternative. This scenario results in a 200-day fishing season, which is 10 days shorter than the status quo season but would accommodate 199,000 red snapper target trips because the season would extend into the more intensely fished fall months. This level of effort would produce approximately $42 million in angler consumer surplus, or $1 million more than the status quo. However, the current regulations still require a closure whenever the quota is determined to be met, and the RIR indicates that trips occurring later in the season are more valuable than trips occurring earlier in the year. For this reason, the Council also proposed giving the Regional Administrator the authority to delay the opening date to accommodate overruns that were otherwise projected to be associated with the captain and crew bag limits. The intent was to maintain the October 31 closing date while keeping the recreational sector within its quota. The date chosen by the Regional Administrator was April 21 and that date appears in the final rule. This scenario would result in a 194-day fishing season. Total consumer surplus would remain approximately equal to that of the status quo at $41 million, yet approximately 2,000 additional target trips would be allowed, for a total of 194,000 angler trips. The Council noted that an additional consequence of shifting the season may be the generation of geographically differential impacts, particularly within the for-hire sector. The for-hire fleet is relatively more active in the western Gulf, particularly Texas, during the winter months, and has fewer available target species than the eastern Gulf fleet, which prosecutes the fishery more heavily in the fall and has a greater number of available alternative species to target when the red snapper fishery is closed. Thus, closure of the fishery during the winter months in favor of an extended fall season, while increasing total effort and consumer surplus, may result in a disproportionate distribution of impacts. To address this concern, a rejected alternative was to open the recreational season for January and February, close it for late winter, reopen at an unspecified date in the spring or summer and then close it for the year whenever the quota was met. This approach would attempt to maximize for-hire profits through more closely linking the open seasons with the high vacation seasons in the different areas of the Gulf of Mexico. Since there was not enough information available to evaluate the economic consequences of the alternative, notably the absence of information on how fishing patterns might shift, and there was also no spring/summer opening date specified, the economic outcome of the alternative could not be evaluated. An additional rejected recreational alternative to address the regionally variable demand patterns would split the Gulf of Mexico into subregions with the possibility of different seasons, sub-allocations, size limits and bag limits. This alternative was rejected based on a determination by NOAA's General Counsel that the alternative could not be considered under a regulatory amendment but would require a full FMP amendment.

The Council set specific regulations for the spring and fall commercial seasons in order to maximize economic benefits. For the spring season, the Council proposed starting the season on February 1 and having mini-seasons of

10 days each month until the spring quota is reached. The status quo alternative of 15 day mini-seasons in the spring was rejected because an economic analysis conducted by NMFS and included in the RIR indicated an increase of net benefits from the shorter mini-seasons. The fall mini-seasons were already established at 10 days per month, so the Council elected to maintain the status quo from that respect. However, the Council proposed to initiate the fall season on October 1 versus the status quo of September 1 because demand and prices tend to be higher in October, and the delay would have no adverse impact on conservation of red snapper.

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

The amendment to § 622.34(l) delays the opening of the fall commercial red snapper fishing season from noon on September 1 to noon on October 1. This delayed opening was proposed initially by representatives of the commercial red snapper fishing industry who believed that the later opening date would help to optimize revenues derived from the available fall commercial quota. Seafood dealers have stated that both the demand for seafood and ex-vessel prices are higher in October than in September. The delayed opening is intended to increase revenues to commercial harvesters and to help ensure that fresh red snapper are available when consumer demand is greatest. To ensure that these benefits are achieved for the fall 2000 fishing season, the amendment to § 622.34(l) must be effective no later than September 1, 2000. Accordingly, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds for good cause that a 30-day delay in the effective date of § 622.34(l) would be contrary to the public interest.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be directed to NMFS Southeast Regional Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: August 11, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

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

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

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

2. In § 622.34, paragraph (n) is removed and reserved; the suspension of paragraph (l) is lifted; and paragraphs (l) and (m) are revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on October 1, whichever occurs first. From October 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

(m) *Closures of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through April 20 and from November 1 through December 31. During a closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(n) [Reserved]

* * * * *

3. In § 622.37, paragraph (d)(1)(vi) is removed; the suspension of paragraph (d)(1)(iv) is lifted; and paragraph (d)(1)(iv) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iv) Red snapper—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(iii) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, paragraphs (b)(1)(viii) and (b)(1)(ix) are removed; the suspensions of paragraphs (b)(1)(iii) and (b)(1)(v) are lifted; and paragraph (b)(1)(iii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4.

* * * * *

5. In § 622.42, paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(A) Two-thirds of the quota specified in § 622.42(a)(1)(i), 3.10 million lb (1.41 million kg), available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on October 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

* * * * *

[FR Doc. 00–20994 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 080300A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Retention limit adjustment.

SUMMARY: NMFS adjusts the daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in all areas to two school BFT and two large school or small medium BFT per vessel from September 1, 2000, through October 15, 2000. In addition, NMFS is making subsequent adjustments to the daily retention limit, as noted in the DATES section of this document. This action is being taken to provide increased fishing and data collection opportunities in all areas without risking overharvest of this category.

DATES: Effective 1 a.m., local time, September 1, 2000, until 11:30 p.m., local time, October 15, 2000, the daily retention limit in all areas is adjusted to two school BFT (measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length) and two large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 150 cm) curved fork length).

Effective October 16, 2000, the daily retention limit in all areas is adjusted to one large school or small medium BFT until May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. NMFS may increase or reduce the per-angler retention limit for any size class BFT or may change the per-angler limit to a per-boat limit or a per-boat limit to a per-angler limit. In addition, NMFS may make closures or changes to a retention limit effective in certain areas and/or regions.

NMFS is responsible for implementing a recommendation of the International Commission for the Conservation of Atlantic tunas (ICCAT) to limit the catch of school BFT to no more than 8 percent by weight of the total domestic quota over each 4-consecutive-year period. NMFS implements this ICCAT recommendation through annual and in season adjustments to the school BFT landings and school BFT reserve categories, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 65 FR 42883, July 12, 2000). The recent ICCAT recommendation allows NMFS more flexibility to make interannual adjustments for overharvests and underharvests, provided that the 8-percent landings limit is met over the applicable 4-consecutive-year period. This approach provides NMFS with the flexibility to enhance fishing opportunities and the collection of information on a broad range of BFT size classes and responds to requests from the recreational fishing community for more advance notice of retention limit adjustments and greater stability and certainty in planning for the fishing season.

Since July 31, 2000, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. In the announcement for the daily retention limit effective June 23 through July 30, 2000 (65 FR 19860, April 13, 2000), which adjusted the retention limit to two school and one large school or small medium BFT per vessel, NMFS announced the intention to adjust the daily retention limit once again during late summer abd early fall season when BFT have moved further north to the waters off Rhode Island, New York, and northern New Jersey, contingent upon the availability of BFT Angling category quota.

Over the last several years, NMFS has received comments from mid-Atlantic fishermen that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips. In 1999, NMFS increased the daily retention limit to two school BFT and one large school or small medium BFT per vessel for the periods June 25 through July 25 and September 1 through October 6, and comments from Angling category participants regarding the 1999 fishing season were positive. NMFS is encouraged by the positive feedback regarding the date certain nature of the 1999 season, and has determined that a late-season daily retention limit adjustment is warranted to ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

Preliminary Large Pelagic Survey estimates of landings for June through July 23, 2000, indicate that approximately 12.5 metric tons (mt) of school BFT and approximately 23.6 mt of large school/small medium BFT have been landed. These figures are approximately 9.2 and 7.8 percent of the 2000 Angling category quotas for school and large school/small medium BFT, respectively.

Effective September 1, 2000, through October 15, 2000, NMFS adjusts the BFT Angling category daily retention limit for all areas to two school BFT and two large school or small medium BFT per vessel. After October 15, 2000, the daily retention limit for all areas will be one large school or small medium BFT per vessel. The daily retention limit and the duration of daily retention limit adjustment have been selected based on an examination of past and current catch and effort rates. Allowing two large school or small medium BFT per vessel is different from the past few retention limit adjustments, when retention of only one fish from the larger size classes was allowed. NMFS has chosen a higher retention limit for this adjustment due to relatively low landings to date, along with the increased quota for these size classes due to under harvest in 1999. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or additional retention limit adjustment, in all or some areas, is necessary to enhance scientific data collection and fishing opportunities. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, shall be announced through publication in the **Federal Register.** In addition, anglers may call the Atlantic Tunas Information Line at 888–USA–TUNA (888–872–8862) or 978–281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System by calling 888–USA–TUNA (888–872–8862) or, if landed in the state of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North

Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under Execution Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 11, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–20992 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 081100A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Massachusetts that the quota has been harvested, and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, August 17, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,555 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, or 757,834 lb (343,748 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1999, a total of 804,964 lb (365,126 kg) were landed in Massachusetts, creating a 47,122 lb (21,374 kg) overage that was deducted from the amount allocated for landings in the State during 2000 (65 FR 33486, May 24, 2000). The resulting 2000 quota for Massachusetts is 710,712 lb (322,374 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Massachusetts has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 17, 2000, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 17, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 11, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–20993 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 160
Thursday, August 17, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ23

Prevailing Rate Systems; Redefinition of the Los Angeles, CA, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to remove Inyo County, CA, from the Los Angeles, CA, appropriated fund Federal Wage System (FWS) wage area. The county, excluding the China Lake Naval Weapons Center portion, would be defined to the Las Vegas, NV, FWS wage area. This change would reflect the regulatory criteria we use to define FWS wage areas more accurately. It would affect FWS employees at Death Valley National Park by placing them on a higher wage schedule.

DATES: We must receive comments by September 18, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606–2848; FAX at (202) 606–0824; or email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION:

The Office of Personnel Management (OPM) is proposing to move Inyo County, California, from the Los Angeles, CA, appropriated fund Federal Wage System (FWS) wage area to the Las Vegas, NV, FWS wage area. The county is currently an area of application county in the Los Angeles wage area. China Lake Naval Weapons Center is located in Inyo, Kern, and San Bernardino Counties, CA. China Lake Naval Weapons Center would remain a part of the Los Angeles FWS wage area so that the installation would continue to be defined to a single wage area. The regulatory criteria we use to define FWS wage areas indicate that the main employment locations for FWS employees at China Lake are properly defined to the Los Angeles wage area. We would place the rest of Inyo County in the Las Vegas FWS wage area. The Las Vegas wage area currently consists of two survey counties, Clark and Nye Counties, NV, and three area of application counties, Esmeralda and Lincoln Counties, NV, and Mohave County, AZ.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Inyo County should be part of the Las Vegas wage area. The distance criterion is the major factor in our determination. The county is much closer to the Las Vegas wage area than to the Los Angeles wage area. Inyo County is approximately 194 km (120 miles) from Las Vegas. The county is approximately 203 km (126 miles) from Nellis Air Force Base, the Las Vegas wage area's host installation. We studied the other criteria, but they did not favor one wage area more than another. The Las Vegas, NV, FWS wage area would consist of two survey counties, Clark and Nye Counties, NV, and four area of application counties, Esmeralda and Lincoln Counties, NV, Mohave County, AZ, and Inyo County, CA.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definition of the Los Angeles FWS wage area.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of California is amended by revising the listing for Los Angeles; and for the State of Nevada, by revising the listing for Las Vegas, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

California

* * * * *

Los Angeles

Survey Area

California:
Los Angeles

Area of Application. Survey area plus:

California:
Inyo (Includes the China Lake Naval Weapons Center portion only)
Kern (Includes the China Lake Naval Weapons Center, Edwards Air Force Base, and portions occupied by Federal activities at Boron (City) only)
Orange
Riverside (Includes the Joshua Tree National Monument portion only)
San Bernardino (All of San Bernardino County except that portion occupied by, and south and west of, the Angeles and San Bernardino National Forests)

Ventura

* * * * *

Nevada

Las Vegas

Survey Area

Nevada:
Clark
Nye

Area of Application. Survey area plus:

Nevada:
Esmeralda
Lincoln
Arizona:
Mohave
California:
Inyo (Excludes the China Lake Naval Weapons Center portion only)

* * * * *

[FR Doc. 00–20897 Filed 8–16–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248, and 264

[INS No. 2059–00]

RIN 1115–AF29

Procedures for Processing Temporarily Agricultural Worker (H–2A) Petitions by the Secretary of Labor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 13, 2000, at 65 FR 43535, the Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register**, to amend its regulations regarding the temporary agricultural worker (H–2A) program. The proposed rule requires alien workers to sign a petition request for change of status or extension of stay; provides that all petition requests including extension of stay and change of status petitions must be filed with the Department of Labor (DOL); and provides that the current Service petition fee will be collected by DOL as a part of a combined fee. To ensure that the public has ample opportunity to fully review and comment on the proposed rule, this notice extends the public comment period from August 14, 2000, through September 18, 2000.

DATES: Written comments must be submitted on or before September 18, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2059–00 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Office of Adjudications, Business and Trade Services Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone 202–353–8177.

Dated: August 14, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–21047 Filed 8–15–00; 11:28 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that currently requires a revision of the Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. This proposed AD would require a further revision of the AFM to specify conditions for minimum fuel weight requirements and procedures for ground transfer of fuel for certain airplanes, repetitive inspections to detect discrepancies of the center tank override/jettison fuel pumps, and replacement of any discrepant pump with a new or serviceable pump. This proposal would also require that any override/jettison pump that incorporates a configuration without a diffuser be restored to a configuration that incorporates a diffuser. This proposed AD would also require installation of a new configuration center tank fuel pump, which would terminate the AFM revisions regarding fuel system operating procedures and repetitive inspection requirements. This proposal is prompted by reports of cracks detected in the override/jettison fuel pump inlet diffuser. The actions specified by the proposed AD are intended to prevent ignition of fuel vapors due to the generation of sparks, to prevent a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation, and to ensure satisfactory fuel pump and fuel system operation.

DATES: Comments must be received by October 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–226–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. 98–NM–226–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–226–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 11, 1997, the FAA issued AD 97–19–15, amendment 39–10136 (62 FR 48754, September 17, 1997). That AD is applicable to all Boeing Model 767 series airplanes, and requires a revision of the FAA-approved Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. That action was prompted by a report that an override/jettison fuel pump failed due to damage to an impeller unit and pumping unit housing caused by a loose diffuser ring in the fuel pump assembly. The requirements of that AD are intended to prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation.

Other Relevant Rulemaking

Prior to issuance of AD 97–19–15, the FAA issued AD 94–11–05, amendment 39–8921 (59 FR 27970, May 31, 1994), which requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies, and either repair of the pumping unit assembly or replacement with a new assembly if any discrepancy was detected.

Actions Since Issuance of Previous Rules

Since the issuance of AD 97–19–15, cracks have been found in an override/jettison fuel pump inlet diffuser on a Boeing Model 767 series airplane. Subsequent inspection revealed that the screws connecting the inlet diffuser to the pump housing were still tight. The cracks, formed by high-cycle fatigue, likely were caused by a preload in the diffuser ring.

Also since the issuance of AD 97–19–15, an additional failure of a center tank fuel pump was reported. In this event, the screws connecting the inlet diffuser to the pump housing wore through the housing, liberating the diffuser.

Three occurrences of such center tank fuel pump damage have been noted on airplanes that were inspected in accordance with AD 94–11–05. The FAA also received two reports of fuel pumps with loose inlet diffuser screws in 1999, which were found during accomplishment of Boeing Alert Service Bulletin 767–28A0050.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, and Revision 1, dated December 22, 1999. The alert service bulletin describes procedures for a visual inspection of the inlet diffuser assembly to detect cracks and determine whether the assembly is securely attached to the pump housing. The alert service bulletin also describes procedures for replacement of a discrepant pump with a new pump. The alert service bulletin also describes procedures for deactivating the center/auxiliary fuel tank on airplanes equipped with a center tank scavenge system, as an option to the inspection.

Boeing Alert Service Bulletin 767–28A0050 refers to Sundstrand Corporation Alert Service Bulletin 5006286–28–A8, dated October 10, 1997, as an additional source of service information for accomplishment of the inspection.

The FAA also has reviewed and approved Boeing Service Bulletin 767–28–0052, dated May 20, 1999, which describes procedures for the installation of an override/jettison fuel pump that has a new configuration (without the inlet diffuser). This service bulletin also describes procedures for the installation of placards at the airplane's fueling panel to prohibit the use of JP–4 and Jet-B fuels. Since approving Boeing Service Bulletin 767–28–0052 and the production equivalent change, the FAA has learned that the no-inlet diffuser fuel pump has shown output pressure fluctuations that have led to numerous fuel pump imbalance conditions.

The FAA has also reviewed and approved Boeing Alert Service Bulletin 767–28A0057, dated November 18, 1999, and Boeing Alert Service Bulletin 767–28A0059, dated December 22, 1999. These alert service bulletins provide instructions to install the diffuser assembly on center tank override/jettison pumps that had been previously configured without a diffuser assembly in accordance with Boeing Service Bulletin 767–28–0052, or the production equivalent.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–19–15 to continue to require revising the AFM to include procedures that will ensure that the center tank override/jettison fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. The proposed AD also would require repetitive detailed visual inspections to detect discrepancies of the center tank override/jettison fuel pumps, replacement of any discrepant pump with a new or serviceable pump, and an alternative revision to the AFM to provide an optional procedure for maintaining a minimum amount of fuel in the center tank prior to flight when center tank fuel pumps are to be used. The proposed AD would require accomplishment of the inspection and replacement, as specified in Boeing Alert Service Bulletin 767–28A0050, Service Bulletin 767–28–0052, and Service Bulletin 767–28–0059; described previously, except as discussed below.

Differences Between Proposed AD and Relevant Service Information

Boeing Alert Service Bulletin 767–28A0050 limits its effectivity to Boeing Model 767 series airplanes having line numbers 001 through 672, and Boeing Alert Service Bulletin 767–28A0050, Revision 1, limits its effectivity to Boeing Model 767 series airplanes having line numbers 001 through 768. However, the FAA has determined that all Model 767 series airplanes are subject to the identified unsafe condition, and this proposed AD would apply to all Model 767 series airplanes.

Cost Impact

There are approximately 768 airplanes of the affected design in the worldwide fleet. The FAA estimates that

299 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revisions that are currently required by AD 97–19–15, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The AFM revisions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revisions proposed by this AD on U.S. operators is estimated to be $17,940, or $60 per airplane.

The inspection that is proposed in this AD action would take approximately 3 or 6 work hours per airplane to accomplish (3 hours for airplanes not equipped with jettison fuel pumps, 6 hours for airplanes equipped with jettison fuel pumps), at an average labor rate of $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 $180 or $360 per airplane, per inspection cycle.

Should an operator be required to install a center tank override/jettison fuel pump equipped with an inlet diffuser (as proposed by paragraph (g) or (h) of this AD), it would take approximately 5 work hours (per pump) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the pump installation proposed by this AD on U.S. operators is estimated to be $300 per airplane.

Since the manufacturer has not yet developed a modification of the center tank override/jettison fuel pump commensurate with the actions proposed by this AD, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed modification. A further problem in developing a specific cost estimate is the fact that modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The proposed compliance time of 24 months should provide ample time for the development, approval, and installation of an appropriate modification.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10136 (62 FR 48754, September 17, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–226–AD. Supersedes AD 97–19–15, Amendment 39–10136.

Applicability: All Model 767 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation, accomplish the following:

AFM Revisions: Alternatives

(a) Within 14 days after October 2, 1997 (the effective date of AD 97–19–15), accomplish the actions specified by either paragraph (b) or (c) of this AD.

Restatement of Requirements of AD 97–19–15

(b) Accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank prior to engine start.

The center fuel pumps must be selected 'OFF' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

Note: On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty.''

(2) Revise the Limitations Section of the FAA-approved AFM procedure titled ''FUEL SYSTEM, FUEL USAGE II (fuel in center tank),'' to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''Use the center tank fuel for all operations with all operable fuel pumps 'ON' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

Note: The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance.''

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the

following procedure. This may be accomplished by inserting a copy of this AD into the AFM.

''Use of Fuel From the Center Tank—When the center tank approaches 'EMPTY' during normal use or fuel transfer, select both center tank fuel pump switches 'OFF' with the first occurrence of any of the following:

• The center tank fuel reaches 1,000 pounds (453 kilograms);

• Either of the center tank fuel pump 'PRESS' lights illuminate; or

• Either the 'CTR L FUEL PUMP' or 'CTR R FUEL PUMP' EICAS message is displayed.''

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''Center Tank Fuel Pump Faults—A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump 'OFF' and do not re-select 'ON.' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) 'OPEN.'

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank.''

New Requirements of this Ad

(c) Accomplish the actions required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD. Following accomplishment of the requirements of these paragraphs, the AFM revisions required by paragraph (b) of this AD may be removed from the AFM.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank when the entry doors are closed with the airplane readied for initial taxi.

The center fuel pumps must be selected 'OFF' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

Note: On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty.''

(2) Revise the Limitations Section of the FAA-approved AFM procedure titled ''FUEL SYSTEM, FUEL USAGE II (fuel in center tank),'' to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''Use the center tank fuel for all operations with all operable fuel pumps 'ON' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

Note: The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance.''

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedure. This may be accomplished by inserting a copy of this AD into the AFM.

''Use of Fuel From the Center Tank—When the center tank approaches 'EMPTY' during normal use or fuel transfer, select both center tank fuel pump switches 'OFF' with the first occurrence of any of the following:

• The center tank fuel reaches 1,000 pounds (453 kilograms);

• Either of the center tank fuel pump 'PRESS' lights illuminate; or

• Either the 'CTR L FUEL PUMP' or 'CTR R FUEL PUMP' EICAS message is displayed.''

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''Center Tank Fuel Pump Faults—A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump 'OFF' and do not re-select 'ON.' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) 'OPEN.'

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank.''

Ground Transfer of Fuel

(d) For Model 767–200 and –300 series airplanes that are equipped with any override fuel pump having part number S343T002–5, –8, –12, or –15 (which are configured with machined inlet diffusers) and that are not equipped with a center tank scavenge system: For any period during which ground transfer of fuel is accomplished below 1,000 pounds (453 kilograms), accomplish the ground fuel pressure defueling actions specified by paragraphs (d)(1) and (d)(2), in accordance with the Boeing 767 Maintenance Manual Section 28–26–00, Pressure Defueling Procedures, titled ''For Override Pumps with a Diffuser Installed.''

(1) Only one center tank pump may be operated, and that pump must be selected ''OFF'' at or greater than 400 pounds (200 kilograms), as indicated on the center tank fuel quantity indication system (FQIS), or at the first indication of a pump low pressure light.

(2) The pitch attitude of the airplane must be recorded prior to this procedure to verify that it is between −1 and +2 degrees. This may be accomplished by viewing the pitch inclinometer, located in the left main gear wheel well.

Repetitive Inspections

(e) For airplanes that are equipped with any override or jettison fuel pump having part number S343T002–5, –8, –12, or –15 (which are configured with machined inlet diffusers), except as provided by paragraph (f) of this AD: Within 60 days after the effective date of this AD, remove the override fuel pump and jettison fuel pump, as applicable, of the center tank, and perform a detailed visual inspection of the pump to detect discrepancies (cracking, screw movement, and diffuser movement), in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, or Revision 1, dated December 22, 1999. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(1) If no discrepancy is detected, prior to further flight, reinstall the pump in accordance with the alert service bulletin.

(2) If any discrepancy is detected, prior to further flight, replace the pump with a new or serviceable pump, in accordance with the alert service bulletin.

Note 2: Boeing Alert Service Bulletin 767–28A0050 refers to Sundstrand Alert Service Bulletin 5006286–28–A8, dated October 10, 1997, as an additional source of service information for accomplishment of the inspection required by paragraph (d) of this AD.

Note 3: 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.''

(f) For airplanes equipped with a center tank scavenge system: For any period during which the center fuel tank is deactivated in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, or Revision 1, dated December 22, 1999, the actions specified by paragraph (e) of this AD are not required.

Pump Replacement

(g) For airplanes that are equipped with any override fuel pump having part number S343T002–23, –51, –81, or –121 (which are configured WITHOUT inlet diffusers): Within 6 months after the effective dated of this AD, accomplish the actions specified by either paragraph (g)(1) or (g)(2) of this AD.

(1) Replace the override fuel pump with a fuel pump having a machined inlet diffuser installed, in accordance with Boeing Alert Service Bulletin 767–28A0057, dated November 18, 1999. Or

(2) Replace the override fuel pump with a fuel pump modified in accordance with paragraph (i) of this AD.

(h) For airplanes that are equipped with any jettison fuel pump having part number S343T002–23, –51, –81, or –121 (which are configured WITHOUT inlet diffusers): Within 6 months after the effective date of this AD, accomplish the actions specified by either paragraph (h)(1) or (h)(2) of this AD.

(1) Replace the jettison fuel pump with a fuel pump having a machined inlet diffuser installed, in accordance with Boeing Service Bulletin 767–28–0059, dated December 22, 1999. Or

(2) Replace the jettison fuel pump with a fuel pump modified in accordance with paragraph (i) of this AD.

Installation of Modified Pumps

(i) For all airplanes: Except as provided by paragraphs (g)(2) and (h)(2) of this AD, within 24 months after the effective date of this AD, install modified center tank override and jettison fuel pumps that are not subject to the unsafe condition described in this AD. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Terminating Action

(j) Accomplishment of the requirements of paragraph (e) of this AD constitutes terminating action for the requirements of AD 94–11–05, amendment 39–8921 (59 FR 27970, May 31, 1994).

(k) Accomplishment of the requirements of paragraph (i) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (c), (d), (e), (g), and (h) of this AD, and the requirements of AD 94–11–05, amendment 39–8921.

Spares

(l) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number S343T002–5, –8, –12, or –15, unless that pump has been inspected and corrective actions have been performed in accordance with the requirements of either paragraph (b) or (c), and paragraph (e), of this AD.

(m) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number S343T002–23, –51, –81, or –121.

Alternative Methods of Compliance

(n)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–19–15, amendment 39–10136, are approved as alternative methods of compliance when performing the requirements of paragraphs (b) and (c) of this AD.

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

Special Flight Permits

(o) 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 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20966 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[Docket No.

RIN 1205–AB24

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure; Reopening and Extension of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing comments on the proposed rule that would require employers to submit the fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposed rule also would modify the fee structure for H–2A labor certification applications. This action is taken to permit additional comment from interested persons

EFFECTIVE DATE: Interested persons are invited to submit written comments on or before September 18, 2000.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications, 200 Constitution Avenue, NW., Room N–4318, Washington, D.C. 20210. Telephone: (202) 219–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 13, 2000, (65 FR 43545–43583), we published a proposed rule to require employers to submit the fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposal also would modify the fee structure for H–2A labor certification applications.

Because of the continuing interest in this proposal, we believe it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 20 CFR Part 655, Subpart B (Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)) is reopened and extended through September 18, 2000.

Signed at Washington, DC, this 11th day of August, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–20855 Filed 8–15–00; 11:27 am]

BILLING CODE 4510–30–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6851–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed deletion of the General Electric (GE) Wiring Devices Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II office proposes to delete the GE Wiring Devices Superfund Site (Site), which is located in the municipality of Juana Diaz, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Puerto Rico Environmental Quality Board have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing a direct final action along with this proposed deletion without prior proposal because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no significant

adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by September 18, 2000.

ADDRESSES: Comments should be submitted to: Caroline Kwan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308. Hours: 9 AM to 5 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repository locations: The Press Office at the Mayor's Office, Casa Alcaldia de Juana Diaz, Calle Degetau, (787) 837–2185. Hours: 8 AM to Noon; 1 PM to 4:30 PM, Monday through Friday.

U.S. Environmental Protection Agency, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 207, Santurce, Puerto Rico 00907, (787) 729–6951 Ext. 263. Hours: 7 AM to 4 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Kwan may be contacted at the above address, by telephone at (212) 637–4275, by FAX at (212) 637–4284 or via e-mail at *kwan.caroline@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: July 28, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 00–20726 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–3432–N4]

Medicare Program; Open Town Hall Meeting to Discuss Criteria for Making Coverage Decisions—August 31, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This document announces a town hall meeting for all interested parties to discuss criteria we would use to make certain national coverage decisions. This meeting presents one aspect of the evolving process for making the Medicare coverage process more open and responsive to the public.

DATES: August 31, 2000, from 9 a.m. until 12 noon, E.D.T.

ADDRESSES: The meeting will be held at the HCFA headquarters auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Patricia Brocato-Simons at 410–786–0261.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1999, we published a notice in the **Federal Register** (64 FR 22619) that announced the process we use to make national coverage decisions under the Medicare program. We also announced that we would not be adopting, as final, a 1989 proposed rule that set forth the criteria we would have used to make coverage decisions under Medicare. On May 16, 2000, we published a notice of intent (NOI) in the **Federal Register** (65 FR 31124) that announced our intention to issue a proposed rule and solicited advance public comments on the criteria we would use to make national coverage decisions under the ''reasonable and necessary'' provisions of section 1862(a)(1) of the Social Security Act (the Act). We extended the closing date of the comment period from June 15, 2000 to July 17, 2000. We received 118 public comments from major organizations and individuals with an interest in our coverage process. Commenters expressed their views on the following issues:

- Cost as a coverage criterion.
- Increased evidence burden.
- Limited choice or interference with the practice of medicine.
- Withdrawal of coverage.
- Burden of proof.

In the NOI, we explained that these coverage decisions are prospective, population-based policies that apply to a clinical subset or class of Medicare beneficiaries. We described the clinical circumstances and setting under which an item or service is available (or not available). We included information and approaches we are considering at this time for making coverage decisions. We also clarified that the NOI was not intended to address individual medical necessity determinations and claims adjudications by our contractors and other adjudicators, nor was it intended to address changes in current Medicare payment policies.

II. Format of Meeting

We will begin the meeting with a brief overview of the May NOI that solicited advance public comments on proposed criteria we would use in making future, national coverage decisions. Following this introduction will be a more detailed explanation of HCFA's NOI criteria for sake of clarity. This discussion will then be followed by a specified amount of time for public presentations by participants who submit a prior request to speak.

III. Registration

Individuals may register by contacting Ms. Patricia Brocato-Simons either by telephone at 410–786–0261, by mail, at 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, Maryland 21244–1850, fax, at 410–786–9286, or electronically at *Pbrocatosimons@hcfa.gov.* Please provide, as applicable, your name, title, firm name, address, telephone number, fax number, and electronic mailing address. Participants who wish to display an exhibit or make a presentation at the meeting are asked to contact Ms. Brocato-Simons at 410–786-0261 or via E-mail at *Pbrocatosimons@hcfa.gov* as soon as possible. Please identify the topic(s) for your presentation and an estimate of the amount of time required to make the presentation. Because of time constraints, we may need to limit the number of individuals who make presentations. We will notify participants who have been selected to make a presentation. We will assign presentation times before the meeting. While the meeting is open to the public, attendance is limited to the space available.

We will accept written questions, comments, or other materials, before and during the meeting, or up to 14 days after the meeting. Address comments to: DHHS, HCFA, ATTN: Patricia Brocato-

Simons, Office of Clinical Standards and Quality/CAG, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–0261, Fax Number: (410) 786–9286, E-mail: *Pbrocatosimons@hcfa.gov.* Although there is no special format for the materials, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

Authority: Sections 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 98.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medicare insurance Program.)

Dated: August 14, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–21084 Filed 8–16–00; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; DA 00–1825]

Common Carrier Bureau Seeks Comment on Updating Line Counts for Calculating High-Cost Universal Service Support for Non-Rural Carriers for the Year 2001

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In a Public Notice in this proceeding released on July 24, 2000, the Common Carrier Bureau (Bureau) sought comment on updating line count values for purposes of determining support for the year 2001. In this document, the Bureau extends the comment cycle of that Public Notice. The Bureau has extended the comment cycle to give the public more time to respond. The Bureau extends the original comment date from August 28, 2000 to August 30, 2000. The reply comment date has been extended from August 15, 2000 to September 6, 2000.

DATES: Submit comments on or before August 30, 2000 and reply comments on or before September 6, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, room TW–B204.

FOR FURTHER INFORMATION CONTACT: Katie King, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805.

On July 24, 2000, the Common Carrier Bureau released a Public Notice seeking comment on updating line counts for calculating high-cost universal service support for non-rural carriers for the year 2001 and establishing comment and reply comment dates of August 8 and August 15, 2000, respectively. We extend the comment and reply comment dates to August 30 and September 6, 2000, respectively. Accordingly, reply comments addressing comments filed August 8 and August 30, 2000 are due September 6, 2000.

On October 21, 1999, the Commission adopted two orders implementing a new high-cost universal service support mechanism for non-rural carriers for determining support beginning January 1, 2000. The Commission recognized the importance of updating the inputs in the universal service cost model as technology and other conditions change. On April 7, 2000, the Commission released an order clarifying how updated line count data, filed by non-rural carriers every quarter, would be used to determine support amounts for the year 2000. In this Public Notice, we seek comment on updating line count input values for purposes of determining support for the year 2001.

Line counts are used for two general purposes in the high-cost support mechanism for non-rural carriers. First, line counts are used in the universal service cost model to estimate the forward-looking costs of providing supported services. Second, line counts are used to calculate support based on those costs and target that support to high-cost areas.

We seek comment on updating line count data in the universal service cost model. If the line count input values are not updated, non-rural support would continue to increase indefinitely because of line growth. Thus, the non-rural high-cost support mechanism would never take into account the economies of scale resulting from serving more lines. On July 31, 2000, non-rural carriers will file year-end 1999 wire center line count data. We specifically seek comment on whether the Commission should update the line count input values used in the cost model for purposes of determining support amounts for the year 2001. If the Commission were to use these updated line counts in the model, we seek comment on how these line counts, which are USF loops, should be allocated to the classes of service used in the model. In particular, we seek comment on whether the Commission should use wire center line count data filed by non-rural carriers pursuant to the *1999 Data Request* to allocate lines to the classes of service used in the model. If the Commission were to use the *1999 Data Request* to allocate USF loops to switched line categories, we also seek comment on how to determine the number of special lines in each wire center. Now that carriers file wire center line count data, these line counts should be matched to the wire centers used in the model. Accordingly, we also seek comment on how to match the quarterly wire center line counts with the wire centers in the model.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 30, 2000 and reply comments on or before September 6, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this

proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Deputy Chief, Accounting Policy Division.

[FR Doc. 00–20876 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 00–48; RM–9499; DA 00–1628]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 21, 2000, the Public Safety and Private Wireless Division released an order extending the comment and reply comment period in WT Docket No. 00–48. The extension was requested to allow interested parties more time to propose new maritime requirements and to evaluate the existing regulations for proposal of the removal of unnecessary or duplicative requirements from its rules. The comment period is extended from July 24, 2000 to August 23, 2000, and the reply comment period is extended from August 22, 2000 to September 21, 2000.

DATES: Comments are to be filed on or before August 23, 2000, and reply comments on or before September 21, 2000.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Genevieve Augustin, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, (202) 418–0680 or via E-mail to ''gaugusti@fcc.gov''.

SUPPLEMENTARY INFORMATION: The Order was adopted on July 20,2000 and released on July 21, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Ordes/2000/fcc00076.pdf*.

Summary of the Order

1. On July 14, 2000, the United States Coast Guard (USCG) requested that the time for filing comments in response to the *Notice of Proposed Rule Making* (NPRM), 65 FR 21695, April 24, 2000, in the above-captioned proceeding released by the Commission on March 24, 2000, be extended forty-five days, from July 24, 2000, to September 7, 2000.

2. The USCG notes that the NPRM asked commenters to review part 80 of the Commission's Rules and identify any rules that were obsolete, unnecessary, or duplicative. The USCG states that it needs additional time to propose many routine regulation updates and deletions as it has not been possible to complete a comprehensive review of part 80 regulations in the time provided. Further, the USCG states that it and other groups will be proposing to incorporate several International Maritime Organization (IMO) and International Telecommunications Union (ITU) regulation changes.

3. The Commission does not routinely grant extensions of time. In this instance, however, it is desirable that the record be as complete as possible and that it include the views of as large a cross section of the maritime radio community as possible. This interest must be balanced, however, against the fact that certain rules applicable to past safety systems have become obsolete or redundant, and it is necessary to implement previous changes in IMO and ITU regulations or standards. Moreover, we note that the original comment period, of ninety days after the NPRM was published in the **Federal Register**, was substantial. After considering all of these circumstances, we believe an extension of thirty days is warranted and would provide interested parties sufficient time to respond to the NPRM in the above-captioned proceeding. We therefore extend the period of time for filing comments to and including August 23, 2000, and we extend the period for filing reply comments to and including September 21, 2000.

4. Pursuant to Section 1.46 of the Commission's Rules, the USCG's request to extend the deadline for filing comments, filed July 14, 2000, is granted in part and denied in part to the extent indicated.

5. This action is taken by delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–20877 Filed 8–16–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 160

Thursday, August 17, 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 11, 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 or 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, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 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.

National Agricultural Statistics Service

Title: Monthly Hog Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production and related economic factors. The information collection is being submitted to implement a Monthly Hog Survey Program. Implementation of a monthly hog survey is specified in Title IX—Livestock Mandatory Reporting, Subtitle C—Related Swine Reporting Provisions, Section 931, Improvement of Hogs and Pigs Inventory Report, which passed as part of the fiscal year 2000 Agricultural Appropriations Bill in October 1999. The Monthly Hog Survey Program will supplement the Hog Survey Program currently conducted as part of the Quarterly Agricultural Survey. The monthly surveys will use a shorter version of the quarterly questionnaire and will be conducted eight times a year, during the months between the Quarterly Hog Surveys.

Need and Use of the Information: NASS will collect information to determine production and marketing strategies, by the agricultural industry to assess markets and potential demand for products, and by the Federal government to analyze potential and actual production.

Description of Respondents: Farms.

Number of Respondents: 3,300.

Frequency of Responses: Reporting: Other (8 off qtr. months).

Total Burden Hours: 3,658.

National Agricultural Statistics Service

Title: Women on U.S. Farms.

OMB Control Number: 0535–NEW.

Summary of Collection: The National Agricultural Statistics Services (NASS) requests approval to expand the knowledge base concerning the participation of women in agriculture through a one-time telephone interview study. The last national-level study about women's participation in agriculture occurred in 1980 and was limited in the extent to which it addressed these issues. While specific tasks performed by people on farms have continued to change, NASS has limited information about how these changes have affected women. The U.S. Census of Agriculture, the leading source of statistics about agricultural production and farm operators in the United States, undercounts women's involvement in farm enterprises because only one operator per farm is counted.

Need and Use of the Information: The proposed information collection will address the following: (1) The nature and extent of women's participation in on-farm tasks and decision-making; (2) the type and level of their involvement in off-farm employment and in the informal economy; (3) characteristics of the farm operation; and (4) socio-demographic characteristics of the woman herself. Interviews will be conducted using a computer-assisted telephone interviewing system. The findings from the proposed study will provide information for developing government policies and programs that can more effectively serve women and men who live and work on farms, lower structural barriers and increase opportunities for women.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 2178.

Rural Utilities Service

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et. seq.* (RE Act). The Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers. RUS collects information as a part of the loan-making process using several forms.

Need and Use of the Information: RUS will collect information to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are

reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,621.

Rural Business-Cooperative Services

Title: Annual Survey of Farmer Cooperatives.

OMB Control Number: 0570–0007.

Summary of Collection: The Rural Business-Cooperative Services (RBS) was mandated the responsibility to acquire and disseminate information pertaining to agricultural cooperatives under the Cooperative Marketing Act of 1926: 7 U.S.C. 451–457 and Public Law No. 450. The primary objective of RBS is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The annual survey collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. RBS will use a variety of forms to collect information.

Need and Use of the Information: RBS uses the information collected for program planning, evaluation of service work, and cooperative analysis and education. By not collecting this information, the RBS would have difficulty carrying out its policy on farmer cooperatives.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2649.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2404.

Economic Research Service

Title: The Use of Food Safety Practices in Meat and Poultry Manufacturing and the Costs of the HACCP Regulation.

OMB Control Number: 0536–NEW.

Summary of Collection: Recent estimates suggest that microbial pathogens cause 6.5–33 million cases of human illness and up to 9,000 deaths each year. The findings have made food safety a major White House policy priority and have led to the enactment of the Pathogen Reduction Act of 1996. The Act mandates that meat and poultry slaughter and ground meat processing plants must comply with Salmonella standards established by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) and adopt generic E. coli pathogen testing. The Act also requires all meat and poultry slaughter and processing plants to write, maintain, and comply with standard Sanitation Operating Procedures (SSOPs) and implement and comply with Hazard Analysis Critical Control Point (HACCP) quality control points. The Economic Research Service (ERS) has the responsibility for providing economic research on the economics of food safety in the meat and poultry industries. ERS has agreed to conduct a cost analysis of the Pathogen Reduction Act to meat and poultry slaughter and processing manufacturing plant.

Need and Use of the Information: ERS will collect data to explore issues related to the costs and effectiveness of the Pathogen Reduction Act of 1996 and adoption and use of food safety equipment, methods, and sanitation practices. The data will also enhance ERS' ability to answer questions related to the costs of anticipated food safety regulatory changes and provide information on the strength and pervasiveness of the industry's commitment to food safety quality control. Without the data from the survey, policy makers are handicapped by a lack of detailed knowledge of the equipment, methods, and sanitation practices that plants employ to control pathogens in meat and poultry products.

Description of Respondents: Busienss or other for-profit.

Number of Respondents: 1312.5.

Frequency of Responses: Reporting: Other (One-time Survey).

Total Burden Hours: 656.25.

National Agricultural Statistics Service

Title: Honey Survey.

OMB Control Number: 0535–0153.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Domestic honeybees are critical to the pollination of U.S. crops, especially fruits and vegetables. Africanized bees, parasites, diseases, and pesticides threaten the survival of bees. NASS will collection information us8ing a survey.

Need and Use of the Information: NASS will collect information on the number of colonies, honey production, stocks, and prices. The survey will provide data needed by the Department and other government agencies to administer programs and to set trade quotas and tariffs. Without the information agricultural industry would not be aware of changes at the State and national level.

Description of Respondents: Farms.

Number of Respondents: 9,248.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,492.

Foreign Agricultural Services

Title: Dairy Tariff-Rate Import Quota Licensing Regulation.

OMB Control Number: 0551–0001.

Summary of Collection: The Foreign Agricultural Service (FAS) requests an extension of the current approved information collection in support of the Dairy Tariff-Rate Import Quota Licensing program. The Import Regulation 1, Regulation 1, Revision 8 governs the administration of the import licensing system for certain dairy products subject to tariff-rate quotas (TRQs). Imports of nearly all cheese made from cow's milk (except soft ripened cheese such as Brie) and certain non-cheese dairy products are subject to TRQs and the licensing provision of Revision 8. Applicants must submit the required form each quota year, January 1st through December 31st, to apply for and receive an import license.

Need and Use of the Information: FAS will use the information to ensure that the intent of the legislation is correctly administered and to determine an applicant's eligibility to obtain benefits. If the information were collected less frequently, FSA would be unable to issue licenses on an annual basis in compliance with the regulations.

Description of Respondents: Individuals or households.

Number of Respondents: 440.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 270.

Agricultural Marketing Services

Title: Marketing Order Committee/ Board Interview.

OMB Control Number: 0581–NEW.

Summary of Collection: The Agricultural Marketing Service (AMS), under the authority of the Agricultural Marketing Agreement Act of 1937, regulates certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. AMS would like to conduct a series of interviews to gather information from marketing order and agreement managers and committee or board members. The participants would be asked about their concerns about serving on marketing order or agreement

committees or boards. Other questions would focus on developing an understanding of what motivates participation by committee or board members in providing oversight of marketing order and agreement committees and boards. The interviews would be conducted by a contractor and are estimated to take approximately one hour.

Need and Use of the Information: AMS will collect qualitative information to develop a baseline for understanding how to work with all industry representatives more effectively, how to assist existing members in clarifying perceived barriers to more effective oversight by industry members, and how to help AMS support leadership growth. Ultimately, AMS hopes to use the information gathered to lay the groundwork for a Leadership Development Program that would increase participation by all groups in committee and board activities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 50.

Agency has requested emergency approval by August 18, 2000.

Food and Nutrition Service

Title: Assessment of Computer Matching in the Food Stamp Program.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Service (FNS) is responsible for the development and implementation of national Food Stamp Program policy. State agencies are responsible for administration of the Food Stamp Program with FNS monitoring State operations and evaluating performance. One method used by States to verify the eligibility of new food stamp applicants and the continuing eligibility of current recipients is computer matching. A variety of databases are available for this use. FNS plans to conduct a census of the State agencies to gather current information on (1) How States use external databases that have been available to them for several years; and (2) newer matching strategies that have been suggested as relevant to the Food Stamp program or mandated by legislation. The study will be conducted with the support of a contractor who will use telephone interviews as a means of gaining answers to a set of predetermined questions.

Need and Use of the Information: The data collected in this study will provide FNS with a comprehensive overview of how States are currently using computer matching strategies for error reduction in the Food Stamp Program. The results of the study will provide FNS with valuable information that can inform decision making; assist in policy development; and influence program design decisions. The primary users of the information will be FNS headquarters, FNS regional offices, State Food Stamp agencies, Congress and other Federal agencies concerned with program integrity issues. If this information is not collected, then FNS' ability to improve the integrity of the Food Stamp Program with respect to computer matching will be impaired.

Description of Respondents: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 16.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 212.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–20915 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–031N]

National Conference on Animal Production Food Safety

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is cosponsoring, with the USDA's Agriculture Research Service, the Animal Plant Health Inspection Service, the Cooperative State Research, Education and Extension Service, the Agriculture Marketing Service and the Food and Drug Administration's Center for Veterinary Medicine and Center for Food Safety and Applied Nutrition, a National Conference on Animal Production Food Safety. The meeting will be held in St. Louis, Missouri on September 6–7, 2000. The purpose of the conference will be to review the status of food safety at the food animal production level, to provide an update on industry quality assurance activities, and to review ongoing research in support of animal production food safety practices.

DATES: The meeting will be held September 6–7, 2000.

ADDRESSES: The meeting will be held at the Hyatt Regency St. Louis, One St. Louis Union Station, St. Louis, MO, (314) 231–1234 or (800) 233–1234. On September 6, the meeting time will be 8 a.m. to 5 p.m. On September 7, the meeting time will be 8 a.m. to 3:30 p.m. Submit one original and two copies of written comments to: FSIS Docket Room, Docket #00–031N, Room 102 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Debi Seymour, Federation of Animal Science Societies, (217) 356–3182 in Savoy, IL. If you require a sign language interpreter or other special accommodations, please notify Ms. Seymour 7 days before the meeting. For technical information contact Mr. Dan Vitiello, Animal Production Food Safety Staff, FSIS, by Telephone (202) 690–2676, FAX (202) 720–8213, or e-mail *dan.vitiello@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Administration's Draft Preliminary Food Safety Strategic Plan (available on *www.foodsafety.gov*), states that the foundation of any food safety system includes the articulation and implementation of a unified research agenda to provide the scientific knowledge needed for prevention, monitoring, surveillance, inspection, regulation, and education programs. It also suggests that there are a number of challenges to improving the scientific basis of the food safety system. For example, it states that gaps exist in our knowledge of microbial pathogens and in our ability to measure their impact on human health. It also notes that the limited knowledge about microbial contamination hampers efforts to develop on-farm preventative controls and systems of testing.

The National Conference will review the current status of food safety at the food animal production level, provide an update on industry quality assurance activities, and review ongoing research in support of animal production food safety practices. The National Conference will provide an opportunity for discussion of (1) gaps in research to address food safety at the animal production level and (2) what additional educational efforts are needed to improve food safety at the animal production level.

Participation in the conference will be limited to available seating

(approximately 250 people). The target audience for the conference includes representatives from food safety regulatory agencies, producers, animal producer organizations, veterinarians, animal scientists, agricultural educators, extension agents, researchers, consumers, and others with interest in food safety.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: August 14, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–20974 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 16, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202)720–9550. FAX: (202)720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Section 306C WWD Loans and Grants.

OMB Control Number: 0572–0109.

Type of Request: Reinstatement with change of a previously approved collection.

Abstract: Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) authorizes the Rural Utilities Service to make loans and grants to low-income rural communities whose residents face significant health risks. These communities do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities, as determined by the Secretary. The Section 306C WWD Loans and Grants program is administered through 7 CFR Part 1777.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 17.5 hours per response.

Respondents: Not for profits; State, Local or Tribal Government.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1,050 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202)690–1078. FAX: (202)720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 2000.

Christopher A. McLean,

Administrator, Rural Utilities Service.

[FR Doc. 00–20973 Filed 8–16–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1114]

Expansion of Foreign-Trade Zone 174, Tucson, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Tucson, Arizona, grantee of Foreign-Trade Zone 174, submitted an application to the Board for authority to expand FTZ 174 (Site 2) within the Century Park Research Center in Tucson, Arizona, within the Tucson Customs port of entry (FTZ Docket 56–99; filed 11/8/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 63785, 11/22/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and

that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 174 (Site 2) is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of August 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–20988 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2000]

Foreign-Trade Zone 104—Chatham County, Georgia Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting authority to expand its zone in Chatham County, Georgia, within the Savannah Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 8, 2000.

FTZ 104 was approved on April 18, 1984 (Board Order 256, 49 FR 17789, 4/25/84) and expanded on October 13, 1995 (Board Order 775, 60 FR 54469, 10/24/95). The zone project currently consists of the following sites (2,163 acres) in the Savannah, Georgia area: *Site 1* (32 acres)—within the 3,400-acre Savannah International Airport; *Site 2* (10 acres)—Warehouse #83B, on Hunt Avenue within the 800-acre Garden City (Containerport) Terminal of the Georgia Ports Authority on the Savannah River, Chatham; *Site 2a* (1 acre, 43,560 sq. ft.)—730 King George Boulevard, Savannah; *Site 3* (1,820 acres)—Crossroads Business Center, I–95 and Godley Road, Chatham County; and, *Site 4* (300 acres)—SPA Industrial Park, 1 mile east of the I–95/U.S. 80 interchange in Chatham County.

The applicant is now requesting authority to expand its general-purpose zone to enlarge two existing sites (Sites 2 and 4) and add two new sites (Proposed Sites 5 and 6). *Site 2* will be expanded to include an additional 839 acres at the Garden City (Containerport) Terminal (owned by the Georgia Ports Authority), 2 Main Street, Garden City; and, 226 acres at the Ocean Terminal (owned by the Georgia Ports Authority), 950 West River Street, Savannah. The proposed changes would expand *Site 2* from 10 acres to 1,075 acres. *Site 4*, which is adjacent to the airport, will be expanded to include an additional portion of the SPA Industrial Park consisting of 1,052 acres (owned by J. C. Bamford Excavators Ltd.), located at 1 Bamford Boulevard, Pooler. The proposed change would expand *Site 4* from 300 acres to 1,352 acres. The two new proposed sites are as follows: *Proposed Site 5* (94 acres)—Savannah International Trade and Convention Center (owned by Chatham County), One International Drive, Savannah; and, *Proposed Site 6* (2,239 acres)—Mulberry Grove site (owned by the Georgia Ports Authority), Interstate 95 and State Highway 21, Savannah. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 16, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 31, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 6001 Chatham Center Drive, Suite 100, Savannah, GA 31405.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230.

Dated: August 8, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–20985 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–2000]

Foreign-Trade Zone 134–Chattanooga, Tennessee Application For Foreign-Trade Subzone Status Komatsu America International Co. (Construction Equipment); Chattanooga, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Chattanooga Chamber Foundation, grantee of FTZ 134, requesting special-purpose subzone status for the manufacturing facilities (construction equipment) of Komatsu America International Company (Komatsu), located in Chattanooga, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 11, 2000.

The Komatsu facilities (48.95 acres, 494,559 sq. ft.) are located at 409 Signal Mountain Road. These facilities (425 employees) are currently used for the manufacture of hydraulic excavators, wheel loaders, motor graders, and mobile cranes. Some of the components used in manufacturing these products may be purchased from abroad (domestic content on certain products can range up to 77%), including the following categories: internal-combustion piston engines and engine parts; hydraulic turbines; turbojets, turbopropellers, and other gas turbines; liquid, air and vacuum pumps; air-conditioning machines; gaskets, gasket sets, and mechanical seals; electric motors and generators; primary cells and primary batteries; electric storage batteries; electrical equipment (including for ignition, starting, lighting, or signaling, and windshield wipers and defrosters); styrene polymers; plastic products (including tubes, pipes, hoses, fittings, plates, sheets, film, foil, tape, strip, closures, and builders' ware); vulcanized rubber products (including plates, sheets, strip, rods, profile shapes, tubes, pipes, hoses, and conveyor or transmission belts); leather articles for technical uses; agglomerated cork; paper and paperboard products (including labels, cellulose wadding, and webs of cellulose fibers); glass products (including safety glass, mirrors, envelopes for lamps, signaling glassware and optical elements, and glass fibers and articles thereof); reservoirs, vats and similar containers of iron or steel; fasteners of iron or steel; iron or steel springs; copper products (including

bars, rods, profiles, plates, sheets, strip, foil, tubes, pipes, tube or pipe fittings, nails, tacks, drawing pins, and staples); aluminum products (including plates, sheets, strip, tubes, pipes, and tube or pipe fittings); hand tools; spanners and wrenches; padlocks and locks; base metal products (including mountings, fittings, castors, stoppers, caps, lids, and sign plates); taps, cocks, and valves for pipes, boilers, shells, and vats; portable electric lamps; electric heating equipments; microphones, loudspeakers, headphones, and earphones; sound reproducing devices; radio and television receivers; electrical resistors; electrical switching apparatuses; electric lamps; insulated wire, cable, and conductors; motor vehicle bodies, parts, and accessories; instruments, meters, and counters; seats and other furniture; and cigarette and other lighters. Duty rates on these categories range from duty-free to 12.5%.

Zone procedures would exempt Komatsu from Customs duty payments on foreign components used in export production. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign input materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste (scrap rate estimated at 5% to 7% of parts). FTZ procedures will help Komatsu to implement a more cost-effective system for handling Customs requirements (including reduced Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 16, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 31, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

U.S. Department of Commerce Export Assistance Center, 601 West Summit Hill Drive, Suite 300, Knoxville, TN 37902.

Dated: August 11, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–20986 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1113]

Expansion of Foreign-Trade Zone 20 Norfolk-Newport News, Virginia, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Virginia Port Authority, grantee of Foreign-Trade Zone 20 (Norfolk-Newport News, Virginia, area), submitted an application to the Board for authority to expand FTZ 20 to include sites in Accomack County, Virginia, at the Goddard Space Flight Center-Wallops Flight Facility (Site 14) and the Accomack Airport Industrial Park (Site 15), adjacent to the Norfolk-Newport News Customs port of entry (FTZ Docket 44–98; filed 9/15/98; amended on 6/2/99 and 7/24/00);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 51338, 9/25/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 20, as amended, is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 28th day of July 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–20987 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative and new shipper reviews.

SUMMARY: On April 7, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative and new shipper reviews of the antidumping duty order on carbon steel wire rope from Mexico (65 FR 18283). The merchandise covered by this order is carbon steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from this review is stainless steel wire rope and all forms of stranded wire, with the following exception. Based on the affirmative final determination of circumvention of the antidumping duty order, 60 FR 10831 (Feb. 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa, S.A. de C.V. (Camesa) and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. The reviews cover two manufacturers, Camesa and Cablesa, S.A. de C.V. The period of review is March 1, 1998 through February 28, 1999. We received no comments on our preliminary results and have made no changes to our calculations. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0666 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On April 7, 2000, the Department published the preliminary results of the administrative and new shipper reviews of the antidumping duty order on carbon steel wire rope from Mexico (65 FR 18283). We invited parties to comment on our preliminary results of review. We received no comments. The Department has conducted these administrative and new shipper reviews in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this order consists of carbon steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090.

Excluded from this review is stainless steel wire rope, which is classifiable under the HTSUS subheading 7312.10.6000, and all forms of stranded wire, with the following exception. Based on the affirmative final determination of circumvention of the antidumping duty order, 60 FR 10831 (Feb. 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. Such merchandise is currently classifiable under subheading 7312.10.3020 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Comments From Interested Parties and Changes Since the Preliminary Results

We received no comments from interested parties in response to our preliminary results. We have made no changes in the margin calculations.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period March 1, 1998 through February 28, 1999:

Manufacturer/exporter	Margin (percent)
Camesa, S.A. de C.V.	111.68
Cablesa, S.A. de C.V.	0.00

Cash Deposit Instructions

As a result of a Sunset Review of carbon steel wire rope from Mexico, the Department has revoked the antidumping duty order for this case, effective January 1, 2000. *See Revocation of Antidumping Duty Orders: Certain Steel Wire Rope From Japan, Korea, and Mexico,* 65 FR 3205–01 (Jan. 20, 2000). Therefore, we have instructed the Customs Service to terminate suspension of liquidation for all entries of subject merchandise made on or after January 1, 2000. We will issue additional instructions directing the Customs Service to liquidate all entries of carbon steel wire rope made on or after January 1, 2000, without regard to antidumping duties.

Entries of subject merchandise made prior to January 1, 2000, will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Assessment Rate

The Department shall determine, and Customs shall assess, antidumping duties on all entries made during the current review period (March 1, 1998 through February 29, 1999). In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 7, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20980 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary results of changed-circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. Based on information on the record, we preliminarily determine that GCC Cementos, S.A. de C.V., is the

successor-in-interest to Cementos de Chihuahua, S.A. de C.V., for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Davina Hashmi, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–5760 respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1999, Cementos de Chihuahua, S.A. de C.V. (CDC), requested that the Department of Commerce (the Department) conduct an expedited changed-circumstances review, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act). In that letter, CDC stated that effective December 1, 1999, GCC Cementos, S.A. de C.V., (GCCC) a newly created company, will be the successor in interest to CDC due to a corporate reorganization. CDC also stated that it would become a holding company and the parent of GCCC and its subsidiary companies. On December 13, 1999, the petitioner, the Southern Tier Cement Committee, opposed CDC's request that the Department initiate an expedited changed-circumstances review. Since the Department had very little information on the record concerning this corporate reorganization, the Department concluded that it would be inappropriate to conduct an expedited changed-circumstances review and issue a preliminary determination concurrent with the initiation of a changed-circumstance review. Thus, the Department published only a notice of initiation. See *Gray Portland Cement and Clinker From Mexico: Notice of Initiation of Antidumping Duty Changed-Circumstances Review*, 65 FR 1592 (January 11, 2000). On January 20, 2000, the Department sent a questionnaire to GCCC requesting additional information. On February 9, 2000, the Department received GCCC's response to the questionnaire. On April 6, 2000, the Department sent a supplemental questionnaire to GCCC. GCCC responded on April 27, 2000. On June 23, 2000, the Department conducted a verification of information pertaining to this changed-circumstances review at GCCC's offices in Chihuahua, Mexico.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the 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).

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as ''other hydraulic cements.''

The HTS subheadings are provided for convenience and customs purposes only. Our written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Review

In accordance with section 751(b) of the Act, the Department initiated a changed-circumstances review to determine whether GCCC is the successor-in-interest to CDC for purposes of determining antidumping duty liability with respect to gray portland cement and clinker from Mexico. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; (4) customer base. See, *e.g.*, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Changed-Circumstances Review*, 64 FR 55696, 55697 (October 14, 1999) (*AFBs from Japan*). While no single or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See, e.g.*, *Industrial Phosphoric Acid from Israel; Final Results of Changed-Circumstances Review*, 59 FR 6944, 6945–46 (February 14, 1994), *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992) (*Brass Sheet and Strip from Canada*), and *AFBs from Japan*. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the same cash-deposit rate of its predecessor. See, *e.g.*, *Brass Sheet and Strip from Canada*.

On December 1, 1999, CDC ceased production and marketing operations of merchandise subject to the antidumping duty order on gray portland cement and clinker from Mexico. During verification, the Department examined the audited financial statements for CDC and GCCC for the fiscal year ending December 31, 1999. In addition, the Department also examined the reports from the independent auditors. Both of these documents demonstrate that CDC's current assets, fixed assets, liabilities, stockholder equity, and personnel were transferred to GCCC on December 1, 1999. The Department also examined the ''Informe Especial de Escision'' (spin-off report), which was presented to the board of directors of CDC and which confirms that GCCC will assume the property of all machinery and equipment from CDC. Further, CDC's February 9, 2000, questionnaire response at 2 also indicated that it transferred all of its production facilities, including its physical plant, equipment, and personnel, to GCCC. The Department also reviewed the contract between the unionized workers and the management of GCCC which stated that GCCC assumed all labor agreements pertaining to CDC. In addition, GCCC demonstrated that it had the same members on its board of directors as were formerly on the CDC board of directors. The Department also examined the CDC general organizational structure for November 1999 and the GCCC general organizational structure for January 2000 which confirmed that there were no changes in personnel or functions.

The Department reviewed a sample letter sent on November 24, 1999, to a customer explaining that GCCC would be created as a spin-off from CDC and that the new company would be producing, selling, and carrying on all activities currently conducted by CDC. In addition, at verification, Department officials discussed the channels of distribution for GCCC and observed that there were no changes from those which CDC used. Also at verification, the Department reviewed exhibits

identifying the types of customers which purchase GCCC's cement through the bulk channel of distribution and the bag channel of distribution for the United States and Mexico. These lists were identical to the lists of customer categories provided by CDC in its questionnaire response for the 1998/1999 administrative review of the order currently in progress. In addition, in CDC's February 9, 2000, changed-circumstances questionnaire response at 16, CDC states that GCCC has the identical customer base and supplier relationships as CDC.

During verification, the Department verifiers also examined the list of product codes for CDC prior to the reorganization and the product codes for GCCC after the reorganization and observed that there were no changes. The Department examined the November 1999 cost-of-production worksheets for CDC and tied the consolidated ending-inventory values to the beginning GCCC December 1999 cost-of-production worksheet. The GCCC inventory values tied to the monthly trial balances by plant.

As discussed above, CDC has demonstrated that it transferred its management, production facilities, supplier relationships, and customer base to the newly created company GCCC. As such, based on our analysis of information on the record, we preliminarily determine that GCCC is the successor-in-interest to CDC.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: August 11, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20983 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–836]

Polyvinyl Alcohol From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 7, 2000, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol from Japan. The review covers Kuraray Co., Ltd., a manufacturer/exporter of the subject merchandise. The period of review is May 1, 1998, through April 30, 1999.

We received no comments from interested parties on our preliminary results. As a result, we have made no changes to the margin calculation. Accordingly, the final results of this administrative review do not differ from the preliminary results. The final weighted-average dumping margin for Kuraray Co., Ltd. is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 2000).

Background

The review covers one manufacturer/exporter, Kuraray Co., Ltd. (Kuraray). The period of review (POR) is May 1, 1998, through April 30, 1999.

On June 7, 2000, the Department published in the **Federal Register** the preliminary results of the first antidumping duty administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from Japan (65 FR 36112).

We invited parties to comment on the preliminary results of the review. Neither the petitioner nor Kuraray submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Changes Since the Preliminary Results

Since neither party submitted comments for consideration in the final results, our final results remain unchanged from the preliminary results.

Final Results of Review

We determine that the following weighted-average margin percentage exists for Kuraray for the period May 1, 1998, through April 30, 1999:

Manufacturer/exporter	Margin (percent)
Kuraray	2.07

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with with 19 C.F.R. 351.106(c)(2), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of PVA from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Kuraray will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 77.49 percent. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: August 11, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–20981 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware from Mexico: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Dinah McDougall at (202) 482–3773, or Rebecca Trainor at (202) 482–4007, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the thirteenth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico, which covers the period December 1, 1998, through November 30, 1999.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 2000).

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in this thirteenth administrative review of porcelain-on-steel cookware from Mexico within this time limit due to the need to issue verification reports and to conduct numerous margin programming changes resulting from verification findings prior to the preliminary results.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until October 16, 2000.

Dated: August 14, 2000.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–20984 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 30, 2000, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China for exports by Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co. entered during the period May 7, 1998, through January 31, 2000 (65 FR 40609), on an expedited basis.

We gave interested parties an opportunity to comment on the preliminary results and received comments from the respondents, and rebuttal comments from the petitioners. Based on our analysis of the comments received, the final results are unchanged from the preliminary results. The dumping margin applicable to the exports under review is the PRC-wide rate listed below in the section entitled ''Final Results of Review.'' These results do not cover exports of certain preserved mushrooms from the People's Republic of China by China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd. during the

period August 5, 1998, through January 31, 2000.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On June 30, 2000, the Department published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) for two manufacturer/exporters (65 FR 40609). We invited interested parties to comment on the preliminary results of review. On July 10, 2000, we received comments from the respondents Mei Wei Food Industry Co., Ltd. (Mei Wei) and Tak Fat Trading Co. (Tak Fat). The petitioners [1] submitted rebuttal comments on July 17, 2000. The Department has now completed this review with respect to exports of certain preserved mushrooms from the PRC by Mei Wei and Tak Fat that were entered during the period May 7, 1998, through January 31, 2000, in accordance with section 751 of the Act and 19 CFR 351.213. The administrative review of certain preserved mushrooms which were exported from the PRC by China Processed Food Import & Export Co. (CPF) and Gerber Food (Yunnan) Co. (Gerber) during the period August 5, 1998, through January 31, 2000, continues and our preliminary results for these reviews will be issued by October 31, 2000.

Scope of the Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species Agaricus bisporus and Agaricus bitorquis. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to this review is currently classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47.2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated August 11, 2000, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit in Room B–099 of the main Commerce Building and accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Based on our analysis of the comments received, the final results remain unchanged from the preliminary results, as we have applied the PRC-wide rate to exports of the subject merchandise by Mei Wei and Tak Fat for the reasons described in the preliminary results (*see* 65 FR 40610–40611; June 30, 2000). The following margin applies for the period May 7, 1998, through January 31, 2000, for those imports of subject merchandise where the exporter is Mei Wei or Tak Fat: [3]

Exporter/manufacturer	Margin percentage
PRC-wide Rate	198.63

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries during the period of review, except for those entries made between May 7, 1998, through August 4, 1998, which are enjoined under *Tak Fat* v. *United States,* CIT court no. 99–03–00143. The Department will issue appraisement instructions directly to the Customs Service. Upon publication of the final results of this administrative review, the cash deposit rate for all shipments by Mei Wei or Tak Fat of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, will be the PRC-wide rate stated in the final results of this administrative review, as provided for by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review for these companies.

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See ''Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000.

[3] As discussed in the preliminary results, this determination does not constitute a finding of separate rates for Mei Wei or Tak Fat in this segment of the proceeding.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 11, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Whether Reviewed Entries Are Within the Scope of the Order

Comment 2: Use of Adverse Facts Available

Comment 3: Enjoined Entries During the ''Critical Circumstances'' Period

[FR Doc. 00–20982 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081100B]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1261, 1262); issuance of permit 1225.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a scientific research permit applications from Mr. Vincent A. Mudrak, of U.S. Fish & Wildlife Service (USFWS) (1261), and Dr. Cindy Driscoll, of the Maryland Department of Natural Resources (MDDNR) (1262); NMFS has issued permit 1225 to Mr. Bruce Hecker, of South Carolina Aquarium (1225).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00pm eastern standard time on September 18, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

Endangered Shortnose sturgeon (*Acipenser brevirostrum*).

Endangered Green turtle (*Chelonia mydas*), endangered Hawksbill turtle (*Eretmochelys imbricata*), endangered Kemp's ridley turtle (*Lepidochelys kempii*), endangered Leatherback turtle (*Dermochelys coriacea*), threatened Loggerhead turtle (*Caretta caretta*).

New Applications Received

Application 1261: The applicant requests a five-year permit to maintain captively-bred shortnose sturgeon for scientific research at the Warm Springs Hatchery operated by the US Fish and Wildlife Service. Research Activities include feeding studies, propagation studies and studies identified in the recovery plan for shortnose sturgeon.

Application 1262: The applicant has requested a five-year permit to take 50 loggerhead, 30 Kemp's ridley, 10 leatherback, 5 green and 5 hawksbill turtles from the upper and middle Chesapeake Bay for scientific research purposes. Each turtle would be captured, handled, measured, weighed, tagged, and have biological samples (tissue and blood) collected and then released. Yearly sampling would occur from May to November.

Permits Issued

Notice was published on 12/17/1999 (64 FR 70697) that Mr. Bruce Hecker, of South Carolina Aquarium applied for an enhancement permit (1225). The aquarium proposed to maintain a population of up to eight juvenile shortnose sturgeon in a captive environment for educational purposes. This application meets Recovery Task 2.5 C concerning public education and raising public awareness of sturgeon issues. The aquarium proposes to present the fish in a manner that will enhance the conservation of the species through public education. Permit 1225 was issued on July 25, 2000, authorizing take of listed species. Permit 1225 expires June 30, 2005.

Dated: August 14, 2000.

Wanda Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–20991 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080300C]

Marine Mammals; File No. 924–1484–00

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Marsha Green, Ph.D., Psychology Department, Albright College, P.O. Box 15234, Reading, Pennsylvania 19612–5234, has requested an amendment to

Scientific Research Permit No. 924–1484–00.

DATES: Written or telefaxed comments must be received on or before September 18, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301) 713–2289;

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213, (562) 980–4001; and

Protected Resources Coordinator, Pacific Islands Area Office, National Marine Fisheries Service, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu HI 96814–4700, (808) 973–2935.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 924–1484–00, issued on February 8, 2000 (65 FR 6175) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226). Permit No. 924–1484–00 authorizes the applicant to conduct controlled vessel approach trials and obtain audio/video recordings on humpback whales (*Megaptera novaeangliae*) during the course of research to evaluate whale behavior in the presence of vessels. The research occurs in Hawaiian waters between Maui and Lanai, and off the northwest coast between Kona and Hawaii. The authority of this permit currently expires on August 31, 2004.

The permit holder is now requesting authorization to: (1) change the expiration date to August 31, 2005; (2) add approach takes for spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*) and bottlenose dolphins (*Tursiops truncatus*) when in the presence of humpback whales; and (3) increase annual humpback whale takes to 350 for controlled vessel approaches and 700 for video/audio recordings.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 14, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–20990 Filed 8–16–00; 8:45 am]

BILLING CODE 3510–22–F

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Cooperation Treaty.

Form Number(s): PTO/SB/2101/134/144, PTO 1382, PCT/Model of Power of Attorney, PCT/Model of General Power of Attorney, PCT/IPEA/401, PCT/IB/328.

Agency Approval Number: 0651–0021.

Type of Request: Revision of a currently approved collection.

Burden: 595,060 hours annually.

Number of Respondents: 439,554 responses per year.

Avg. Hours Per Response: Based on estimates and knowledge of this information collection, the USPTO estimates the burden hours required by the public to gather, prepare and submit the required information to be the following amounts of time: 1 hour for the Request and Fee Calculation (PCT/RO/101), demands (PCT/IPEA/401 Annex and Notes), and amendments; 3 hours for descriptions/claims/drawings/abstracts; 0.25 hours for transmittal letters to the RO/US (PRO/1382), PCT/Model of Power of Attorney, PCT/Model of General Power of Attorney, extensions of time, priority documents, indications/deposited microorganisms, notices/confirmation/precautionary designations, notices effecting later elections (PCT/IB/328), and for fee authorizations; 2 hours for responses to invitations to correct defects; 0.5 hours for requests for rectification of obvious errors; and 4 hours for petitions. In addition, the USPTO estimates that it will take the following amount of time for the public to provide the information for these information requirements overlooked in previous submissions: 0.25 hours for requests to the IB to transmit copies of an international application; withdrawals of international applications, designations of the state, demands, election, and priority claims; and requests/authorizations to access international applications; and 2 hours for translations. The time estimates for the forms include the amount of time the USPTO estimates it will take an applicant to read and understand the instructions, gather the necessary information, complete the forms, prepare the necessary attachments, and submit the forms to the USPTO.

Needs and Uses: This information collection is required by the provisions of the Patent Cooperation Treaty (PCT). The PCT is administered by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. The general purpose of the PCT is to simplify the filing of international applications for the same invention in each of 108 designated countries. The USPTO would not be able to fulfill its obligations as a PCT Receiving Office (RO), an International Searching Authority (ISA), or as an International Preliminary Examining Authority (IPEA), if this information was not collected. The applicant must supply the information in order to apply for patent protection under the PCT. The USPTO uses the information to process, search and examine the application and to process any other communique

concerning the application, as required by the PCT. The IB uses the information to administer international applications as required by the PCT. This information collection does have associated forms; however, not all of the information required by the collection is collected from the public by using forms.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms; the Federal Government; and state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Thao P. Nguyen, Acting Records Officer, Office of Data Management, Data Administration Division, (703) 308–7397, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231.

Written comments and recommendations for the proposed information collection should be sent on or before September 18, 2000 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 11, 2000.

Thao P. Nguyen,

Acting Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 00–20881 Filed 8–16–00; 8:45am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include: an update on the Blue Collar Wage Setting project; a partnership presentation by the Army Operations Support Command, AFGE Local 15 and NAGE R7–68; and other topics related to the enhancement of Labor-Management partnerships through DoD.

DATES: The meeting is to be held on September 19, 2000, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by September 11, 2000, in order to be considered at the September 19 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Ben James at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Ben James, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 730.

Dated: August 10, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–20917 Filed 8–16–00; 8:45 am]

BILLING CODE 5001–10–M

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 16, 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 11, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement

Title: Application for Free Loan Service of Captioned Media Program (English and Spanish Version) and Media Response Card (English and Spanish Version)

Frequency: On Occasion

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 1,170,000

Burden Hours: 40,667

Abstract: This package provides an application form for prospective users of captioned media and response cards to evaluate satisfaction with captioned media.

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. 00–20918 Filed 8–16–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 18, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, 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.

Dated: August 11, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Assessing Literacy Models in the Boston Public Schools.

Frequency: Semi-Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 873;

Burden Hours: 2,055.

Abstract: Funding has been granted to carry out an evaluation of four literacy models currently implemented in the Boston Public Schools. The purpose of the evaluation will be to gather information about the strengths and weaknesses of these models across all domains of literacy and for all types of students. The data collected from sixteen schools and approximately 800 students over a two-year period will inform practice in the school district and nationwide through dissemination in professional publications.

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 Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@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. 00–20919 Filed 8–16–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–437–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 11, 2000.

Take notice that Cove Point LNG Limited Partnership (Cove Point) tendered for filing on August 7, 2000 certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of such tariff sheets is March 27, 2000. Cove Point also tendered for filing on August 7, 2000 certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date of such tariff sheets is June 14, 2000.

Cove Point states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 revised its regulations regarding releases of capacity for less than one year (short-term releases). The Commission waived the rate ceiling for short-term releases until September 30, 2002, and clarified its posting and bidding requirements for short-term releases.

The changes to the capacity release regulations became effective on March 26, 2000, however the Commission allowed pipelines to remove inconsistent tariff provisions within 180 days of the issuance of Order No. 637. In compliance, Cove Point is making the following revisions to its tariff sheets. First, Section 4 of Rate Schedules FPS–1, FPS–2, FPS–3, and FTS–1 is being changed to state that the maximum rate ceiling does not apply to short-term releases until September 30, 2002. Second, Section 4 of the aforementioned rate schedules and Section 10 of the General Terms and Conditions are being modified to state that the rates for short-term releases in this time frame are not subject to refund. Third, Section 10 of the General Terms and Conditions is being changed to reflect the Commission's modifications to the posting and bidding requirements for short-term releases of capacity and to incorporate the waiver of the maximum rate ceiling as described above.

Cove Point states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties. In accordance

with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Cove Point's main offices at 2800 Post Oak boulevard in Houston, Texas.

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. 00–20899 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–440–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 11, 2000.

Take notice that on August 7, 2000, Dominion Transmission, Inc. (Dominion), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 1, 2000:

Third Revised Sheet No. 367
Third Revised Sheet No. 369
Second Revised Sheet No. 370
Second Revised Sheet No. 371
Fourth Revised Sheet No. 373
Fourth Revised Sheet No. 374
Second Revised Sheet No. 375

Dominion states that the purpose of this filing is to comply with the Commission's Order Nos. 637 and 637–A at Docket Nos. RM 98–10 and 98–12, which requires pipelines to remove the maximum ceiling rate for short-term capacity release transactions. Specifically, Dominion has filed to remove the maximum rate ceiling for capacity release transactions of less than one year until September 30, 2002. Further, Dominion, as required by Order No. 637–A, has filed to make all short-term capacity release transactions of more than 31 days, including transactions at or above maximum rates, subject to the posting and bidding requirements.

Dominion states that copies of its filing have been served upon Dominion's customers and interested state commissions. Dominion also states that copies of this filing are available for public inspection during regular business hours, at Dominion's principal offices in Clarksburg, West Virginia.

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. 00–20901 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–441–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 11, 2000.

Take notice that on August 7, 2000, Dominion Transmission, Inc. (DTI), formerly CNG Transmission Corporation, filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets in order to correct inadvertent typographical and clerical errors appearing in certain tariff sheets.

DTI states that copies of its filing have been served upon DTI's customers and interested state commissions. DTI also states that copies of this filing are also available for public inspection during regular business hours in a convenient form and place at DTI's offices at 445 West Main Street, Clarksburg, West Virginia 26301.

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. 00–20902 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–439–000]

High Island Offshore System, L.L.C.; Notice of Filing

August 11, 2000.

Take notice that on August 7, 2000, High Island Offshore Company, L.L.C. (HIOS), P.O. Box 2511, Houston, Texas 77252, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume 1, the revised tariff sheets listed in Appendix A. HIOS proposes that the foregoing tariff sheets be made effective September 1, 2000.

HIOS states that this filing is made to reflect changes relating to the implementation of a new Interactive Internet Website.

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.

[FR Doc. 00–20909 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

New York Power Authority; Notice of Scoping Document 2 and Request for Additional Study Requests and Soliciting Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions

August 11, 2000.

The New York Power Authority (NYPA) is the licensee for the St. Lawrence-FDR Power Project (Project) (FERC No. 2000–010), which is located on the St. Lawrence River, St. Lawrence County, New York. The license for the Project expires October 31, 2003.

NYPA, the Federal Energy Regulatory Commission (Commission), the New York State Department of Environmental Conservation, resource agencies, local governments, non-governmental organizations, and the public have been conducting a Cooperative Consultation Process (CCP) to identify resource issues to be addressed during the relicensing of the Project. On April 19, 2000, Scoping Document 2 (SD2) was filed with the Commission for the Project and distributed to those on the mailing list. SD2 is a work product of the CCP Team. A copy of SD2 is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the NYPA's address listed below.

The Project and Ontario Hydro's Robert H. Saunders Generating Station, which together form the International St. Lawrence Power Project, were developed as part of a comprehensive plan by the governments of the United States and Canada to develop and regulate the international waters of Lake Ontario and the St. Lawrence River. Flow releases at the Project and the Robert H. Saunders Generating Station are in accordance with the International Joint Commission's (IJC) Plan of Regulation for Lake Ontario and are under the direction of the IJC's International St. Lawrence River Board of Control.

The primary features of the 912-megawatt Project are the Robert Moses Power Dam, two water-control dams (portion of the 1,980-foot-long, 72-foot-high Iroquois Dam within the United States and 2,960–foot–long and 109-foot-high Long Sault Dam), the 721-foot-long, 108-foot-high Massena Intake and 10.9 miles of dikes.

With this Notice we are soliciting additional study requests, preliminary comments, recommendations, terms and conditions, and prescriptions for the Project. All comments should be sent to: Mr. John J. Suloway, New York Power Authority, 123 Main Street, White Plains, NY 10601 with one copy filed with the Commission at: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. All comments must include the Project name and number, and bear the heading ''Preliminary Comments'', ''Preliminary Recommendations'', ''Preliminary Terms and Conditions'', ''Preliminary Prescriptions'', or ''Additional Study Requests''. Any party interested in commenting must do so by September 8, 2000.

With this Notice, we are initiating consultation with the State Historic Preservation Officer, as required by Section 106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3.

The Commission's contact for this Project is Dr. Jennifer Hill, E-mail address *Jennifer.Hill@FERC.Fed.US* or telephone (202) 219–2797.

David P. Boergers,

Secretary.

[FR Doc. 00–20913 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–132–001]

Northern Natural Gas Company; Notice of Amendment

August 11, 2000.

Take notice that on August 2, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–132–001 an application pursuant to Sections 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity granted by order issued June 30, 1998, in Docket No. CP98–132–000,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

In its amended application, Northern proposed to construct and operate facilities consisting of two segments of pipe totaling approximately 5.6 miles of 30-inch-diameter pipe, with appurtenances, to be located in Washington and Dakota Counties, Minnesota, rather than construct the facilities originally authorized in Docket No. CP98–132–000. Northern proposes to extend its 30-inch-diameter C-Line approximately 2.3 miles to be located in Washington County, and extend its 30-inch-diameter D-Line approximately 3.3 miles to be located in Dakota County. Northern states that the proposed facilities are necessary to provide 40 MMcf per day of incremental firm transportation service to Koch Energy Services for use at its Rosemount Refinery. The total cost for the proposed project is estimated to be $8.1 million.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or Michele Winckowski, Senior Regulatory Analyst, at (402) 398–7082.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before September 1, 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

[1] Northern Natural Gas Company, 83 FERC ¶61,354 (1998).

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. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the 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 Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–20903 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–438–000]

Pine Needle LNG Company; LLC; Notice of Tariff Filing

August 11, 2000.

Take notice that Pine Needle LNG Company, LLC (Pine Needle) tendered for filing on August 7, 2000 certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheets is March 27, 2000.

Pine Needle states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 revised its regulations regarding releases of capacity for less than one year (short-term releases). The Commission waived the rate ceiling for short-term releases until September 30, 2002, and clarified its posting and bidding requirements for short-term releases.

The changes to the capacity release regulations became effective on March 26, 2000, however the Commission allowed pipelines to remove inconsistent tariff provisions within 180 days of the issuance of Order No. 637. In compliance, Pine Needle is making the following revisions to its tariff sheets. First, Section 4.1 of Rate Schedule LNG–R is being changed to state that the maximum rate ceiling does not apply to short-term releases until September 30, 2002. Second, Section 4.1 of the aforementioned rate schedule is being modified to state that the rates for short-term releases is this time frame are not subject to refund. Third, Section 20 of the General Terms and Conditions is being changed to reflect the Commission's modifications to the posting and bidding requirements for short-term releases of capacity and to incorporate the waiver of the maximum rate ceiling as described above.

Pine Needle states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place a Pine Needle's main offices, at 2800 Post Oak Boulevard in Houston, Texas.

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. 00–20900 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–435–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

August 11, 2000

Take notice that on August 4, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which sheets are enumerated in Appendix A attached thereto.

Transco states that the purpose of the instant filing is track rate changes attributable to transportation service

purchased from Texas Gas Transmission Corporation under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and storage service purchased from Texas Eastern Transmission Corporation under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT and Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Included in Appendices B and C attached to the filing are the explanations and details regarding the computation of the revised Rate Schedule FT–NT and S–2 rate changes respectively.

Transco states that copies of the filing are being mailed to each of its FT–NT and S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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.

[FR Doc. 00–20910 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–443–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

August 11, 2000.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 7, 2000, certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheets is March 27, 2000, with the exception of First Revised Sheet No. 122H, which has a proposed effective date of April 14, 2000.

Transco states that the purpose of this filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, the Commission in Order No. 637 revised its regulations regarding releases of capacity for less than one year (short-term releases). The Commission waived the rate ceiling for short-term releases until September 30, 2002, and clarified its posting and bidding requirements for short-term releases.

The changes to the capacity release regulations became effective on March 26, 2000, however the Commission allowed pipelines to remove inconsistent tariff provisions within 180 days of the issuance of Order No. 637. In compliance, Transco is making the following revisions to its tariff sheets. First, Section 3 of Rate Schedules LNG–R, WSS–Open Access–R, FT–R, FTN–R and ESS–R is being changed to state that the maximum rate ceiling does not apply to short-term releases until September 30, 2002. Second, Section 3 of the aforementioned rate schedules are being modified to state that the rates for short-term releases in this time frame are not subject to refund. Third, Section 42 of the General Terms and Conditions is being changed to reflect the Commission's modifications to the posting and bidding requirements for short-term releases of capacity and to incorporate the waiver of the maximum rate ceiling as described above.

Transco states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

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 and 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 also 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. 00–20911 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–48–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Londonderry 20″ Replacement Project

August 11, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee Gas) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed replacement including:

- 19.3 miles of 20-inch-diameter pipeline in Middlesex County, Massachusetts, and Hillsborough and Rockingham Counties, New Hampshire;
- A new 130,000 dekatherms per day (dthd) meter site adjacent to the existing Londonderry Meter Station in Rockingham County, New Hampshire; and
- Four new mainline values.

The 20-inch-diameter pipeline and three of the mainline valves would replace 19.3 miles of the existing 8-inch-diameter Concord #1 Lateral (270B–100)

from Valve 270B–103 in Dracut, Massachusetts, to the Londonderry Meter Station in Londonderry, New Hampshire, and three associated 8-inch mainline valves.

Tennessee Gas proposes to locate the new pipeline in the same right-of-way occupied by the replaced pipeline and a 12-inch-diameter pipeline that would remain in place.

The purpose of the proposed facilities would be to transport 130,000 dthd of natural gas to the AES-Londonderry Project planned by AES Enterprises (AES). The AES-Londonderry Project is a 720-megawatt, natural gas-fired combined cycle power plant.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 2, PJ–11.2.
- Reference Docket No. CP00–48–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 11, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–20904 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

August 11, 2000.

a. Type of Filing: Notice of Intent To File an Application for a New License.

b. Project No.: 2686.

c. Date Filed: July 28, 2000.

d. Submitted By: Nantahala Power and Light—current licensee.

e. Name of Project: West Fork Hydroelectric Project.

f. Location: On the West Fork of the Tuckasegee River in Jackson County, North Carolina. The project does not utilize federal lands.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604.

i. FERC Contact: Steve Kartalia, steve.kartalia@ferc.fed.us, (202) 219–2942.

j. Effective date of current license: May 1, 1965.

k. Expiration date of current license: January 31, 2006.

l. Description of the Project: The project consists of the following two developments:

The Thorpe Development consists of the following existing facilities: (1) A 900-foot-long, 150-foot-high earth and rockfill dam; (2) a 410-foot-long, 122-foot-high saddle dam; (3) a spillway having two 25-foot by 12-foot Taintor gates; (4) a 1,462-acre reservoir at a normal water surface elevation of 3,491.75 feet USC & GS datum; (5) a series of three tunnels and three penstocks; (6) a powerhouse containing a single generating unit with an installed capacity of 21,600 kW, and (7) other appurtenances.

The Tuckasegee Development consists of the following existing facilities: (1) A 254-foot-long, 61-foot-high concrete arch dam topped with 3-foot-high flashboards; (2) a 7.9-acre reservoir at a normal water surface elevation of 2,278.75 feet USC & GS datum; (3) a tunnel leading to a 15-foot-diameter surge tank; (4) a powerhouse containing a single generating unit with an installed capacity of 3,000 kW; (5) a 1.8-mile-long, 6.6 kV transmission line; and (6) other appurtenances.

m. 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 January 31, 2004.

David P. Boergers,

Secretary.

[FR Doc. 00–20906 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

August 11, 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.: 11855–000.

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 USC 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 trailrace, 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 turbine 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 structure, wicket gates, and turbines; (2) to reconstruct the powerhouse with a steel roof and red concrete block walls; (3) 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 at 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 of the application is filed, and must serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 00–20907 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 2589–024.

c. Date filed: July 29, 1999.

d. Applicant: Marquette Board of Light and Power.

e. Name of Project: Marquette Hydroelectric Project.

f. Location: On the Dead River, near the City of Marquette, Marquette County, Michigan. 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: David E. Hickey, Executive Director, Marquette Board of Light and Power, 2200 Wright Street, Marquette, Michigan 49855; (906) 228–0322.

i. FERC Contact: Lee Emery, E-mail address: *lee.emery@ferc.fed.us,* or telephone (202) 219–2779.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First 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 has been accepted for filing and is ready for environmental analysis at this time.

1. Description of the Project: The Marquette Project consists of two hydropower developments: the No. 2 (Forestville) development at river mile (RM) 2.5 and the No. 3 (Tourist Park) development at RM 1.0.

The No. 2 development, which is located immediately downstream of the Dead River Project's (FERC Project no. 10855) McClure development, consists of the following existing facilities: (1) a 202-foot-long, 62 foot-high concrete-capped Cyclopean masonry dam comprising: (a) a 197-foot-long concrete retaining wall, (b) a 75-foot-long training wall, and a (c) 33-foot-wide intake for the penstock with inclined trashracks having 1.5-inch clear spaced steel bars, a head gate, and hoist. The masonry dam, which functions as an uncontrolled spillway during extremely high flows, has a spillway crest elevation of 771.0 feet National Geodetic Vertical Datum (NGVD). It is founded on, and anchored to, the bedrock; (2) one 90-inch-diameter, wood-stave penstock that is approximately 4,200 feet long and conveys water from the intake structure to a concrete surge tank; (3) two 440-foot-long, 78-inch-diameter steel penstocks that convey water from the surge tank to Powerhouse No. 2; (4) Powerhouse No. 2, a 40-foot by 96-foot

reinforced concrete and brick structure that contains two turbines, with a combined capacity of 3.2 MW; (5) a 110-acre reservoir; and (6) appurtenant facilities.

The No. 3 development consists of the following existing facilities: (1) a dam that includes (looking from left to right downstream): (a) a 37-foot-long spillway left dike that has a crest elevation of 642.82 feet and a reinforced concrete core wall with a top elevation of 641.84 feet; (b) a concrete ogee uncontrolled spillway that is 80 feet long and has a crest elevation of 638.84 feet (its maximum height is 21 feet above the streambed); (c) a spillway section that contains two 10-foot-high by 10-foot-wide Taintor gates (rollway crest beneath gates is at elevation 629.84 feet) and electric hoists; (d) a 758-foot-long spillway right dike that has a crest elevation of 642.84 feet and a reinforced concrete wall (crest width 13.5 feet); and (e) a reinforced concrete intake structure that has a single 20-foot-wide by 17-foot-high bay, inclined trashracks having 2.0-inch clear spaced steel bars, and a horizontally hinged gate with a dedicated electric hoist; (2) one 8-foot-diameter, 150-foot-long steel penstock that is supported on 9 reinforced-concrete pedestals and conveys water from the intake to Powerhouse No. 3; (3) Powerhouse No. 3, a 28-foot by 40-foot reinforced-concrete and brick structure containing one 700 kW vertical generating unit; (4) a 100-acre reservoir; and (5) appurtenant facilities.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20246, 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.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–20908 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockets Nos. RP99–322–000 and RP96–45–000]

Northern Border Pipeline Company; Notice of Informal Settlement Conference

August 11, 2000.

Take notice that an informal settlement conference will be convened in these proceedings on August 23 and 24, 2000 commencing at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues and drafting possible settlement documents in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215, William J. Collins (202) 208–0248, or Joel M. Cockrell (202) 208–1184.

David P. Boergers,

Secretary.

[FR Doc. 00–20912 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Site Visit

August 11, 2000.

Take notice that on August 30 and 31, 2000, the Commission staff will visit the Mokelumne River Hydroelectric Project No. 137 to view the project facilities and area. The project is located in eastern California near the city of Sacramento, in Alpine, Amador, and Calaveras Counties, California. The project occupies federal lands in the Eldorado and Stanislaus National Forests. All interested individuals, organizations, and agencies are invited to accompany the Commission staff on the site visit.

On Wednesday, August 30, the participants will meet at 8 a.m. at the parking lot of Highway 88 at the turn-off to Tiger Creek Road (access road to the Tiger Creek powerhouse and afterbay). On Thursday, August 31, participants will meet at 8 a.m. at a location to be determined and announced at the end of the day on Wednesday. Those interested in participating should contact Steve Peirano at (415) 973–4481 in advance. Participants should provide their own transportation (a high clearance or four-wheel drive vehicle is recommended) for the site visit and should bring their own lunches.

For further information, please contact Jim Fargo at (202) 219–2848.

David P. Boergers,

Secretary.

[FR Doc. 00–20905 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 11, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–65–000, 7–24–00, Senator Charles D. Lemmond, Jr.
2. CP00–14–000, 6–16–00, Todd Potas
3. CP00–59–001, 6–2–00, Thomas H. Waggener
4. CP00–114–000, 7–22–00, Fanny B. Turner
5. CP00–59–001, 7–31–00, S. Ray Aycock
6. CP00–14–000, 7–31–00, Janet Rowe
7. CP00–14–000, 7–14–00, Janet Rowe
8. CP00–14–000, 7–13–00, Janet Rowe
9. CP00–14–000, 7–27–00, Janet Rowe
10. CP00–14–000, 7–20–00, Mark Cline
11. Project No. 2030, 7–11–00, Julie A. Keil and Jim Manion

David P. Boergers,

Secretary.

[FR Doc. 00–20914 Filed 8–16–00; 8:45 am]

BILLING CODE 6717–70–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; ICRs Planned To Be Submitted

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following six continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before October 16, 2000.

ADDRESSES: U.S. EPA, 1200 Pennsylvania Avenue, mail code 2223A, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see Section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources. The standards must reflect application of the best technological system of continuous emission reductions. Such reductions should take into consideration the cost of achieving emission reduction, or any non-air quality health and environmental impact and energy requirements.

The EPA is charged under section 112 of the Clean Air Act (CAA or Act), as amended, to establish national emission standards for hazardous air pollutants (NESHAP). These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction.

In addition, Section 114 of the Clean Air Act allows the Administrator to require inspections, monitoring, and entry into facilities to ensure compliance with any requirement of this Act. Records and reports are necessary to enable the EPA to identify facilities that may not be in compliance with the standards. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 CFR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to industry for the currently approved ICRs. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following six continuing ICRs to the Office of Management and Budget (OMB):

(1) NSPS Subpart E: New Source Performance Standards (NSPS) for Municipal Incinerators; EPA ICR number 1058.07; OMB number 2060.0040; expiration date April 30, 2001.

(2) NSPS Subpart GG: Stationary Gas Turbines; EPA ICR Number 1071.06; OMB number 2060.0028; expiration date January 31, 2001.

(3) NESHAP–MACT Subpart R: Gasoline Distribution; EPA ICR number 1659.03, OMB number 2060.0325; expiration date February 28, 2001.

(4) NESHAP Subpart T: Halogenated Solvent Cleaning; EPA ICR number 1652.03.; OMB number 2060.0273; expiration date May 31, 2001.

(5) NESHAP Subpart JJ: Wood Furniture Manufacturing; EPA ICR number 1716.02; OMB number 2060.0324; expiration date February 28, 2001.

(6) RCRA Subpart CC: Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers, EPA ICR Number 1593.04; OMB number 2060.0318; expiration date February 28, 2001.

B. Contact Individuals for ICRs

(1) NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators; Joyce Chandler of the Commercial Services & Municipal Branch, at (202) 564–7073/(202) 564–0009 or via E-mail to *Chandler.Joyce@epamail.epa.gov.*; OMB Control No. 2060–0040; EPA ICR No.1508.07; expiration date April 30, 2001.

(2) NSPS Subpart GG: Stationary Gas Turbines; Chris Oh of the Energy and Transportation Branch at (202) 564–7004 or via E-mail to *Oh.Christopher@epamail.epa.gov*; EPA ICR No. 1071; OMB No. 2060.0028; expiration date January 31, 2001.

(3) NESHAP–MACT Subpart R: Gasoline Distribution Facilities (Stage 1); Julie Tankersley of the Energy and Transportation Branch at (202) 564–7002/(202) 564–0050 or via E-mail to *Tankersley.Julie@epamail.epa.gov.*, EPA ICR No. 1659.03; OMB No. 2060.0325; expiration date February 28, 2001.

(4) NESHAP Subpart T: Halogenated Solvent Cleaning; Acquanetta Delaney of the Commercial Services & Municipal Branch, at (202) 564–7061/(202) 564–0009 or via E-mail to *Delaney.Acquanetta@epamail.epa.gov*; EPA ICR No.1652.03; OMB No. 2060.0273; expiration date May 31, 2001.

(5) NESHAP Subpart JJ: Wood Furniture Manufacturing; Robert Marshall of the Manufacturing Branch at (202) 564–7021/(202) 564–0050 or via E-mail to *Marshall.Robert@epa.gov*, EPA ICR No. 1716.02; OMB No. 2060.0324; expiration date February 28, 2001.

(6) RCRA Subpart CC: Tanks; Everett Bishop of the Energy and Transportation Branch at (202) 564–7032/(202) 564–0050 or via E-mail to *Bishop.Everett@epa.gov*, Subpart E; EPA ICR No. 1593.04; OMB No. 2060.0318; expiration date February 28, 2001.

C. Individual ICRs

(1) NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators Subpart E; OMB number 2060.0040; EPA ICR No. 1058.07; and expiration date April 30, 2001.

Affected Entities: Entities potentially affected by this action are those which are subject to the New Source Performance Standards (NSPS) for Incinerators Subpart E. The NSPS Subpart E standards of 40 CFR 60.50 apply to each incinerator with a charging rate of more than 45 metric tons per day (50 tons per day), which commenced construction, reconstruction, or modification after the August 17, 1991 and before proposal date of NSPS Subpart E. For Subpart E an incinerator is any furnace burning solid waste (refuse, more than 50 percent of which is municipal type waste) to reduce the volume of waste by removing combustible matter. The Subpart Ea standards of CFR Part 60 apply to municipal incinerators with a capacity greater than 225 megagrams per day (250 ton/day) of municipal solid waste or refuse-derived fuel, for which construction, modification, or reconstruction commenced between March 20, 1989 and September 20, 1994. Large municipal waste combustors that are constructed, modified, or reconstructed after September 20, 1994 are subject to NSPS Subpart Eb.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60, Subpart E, New Source Performance Standards for Incinerators.

Owners or operators of units subject to Subpart E must provide EPA, or the delegated State regulatory authority, with the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operation change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

The recordkeeping requirements for owners and operators of incinerators consist of maintaining records of the following: the occurrence and duration of any startups and malfunctions as they occur in the operation of an affected facility; measurements of particulate matter (PM) emissions; the initial performance test results including information necessary to determine the conditions of the performance test; performance test measurements and results including conversion factors and measurements of PM emissions; and daily charging rate and hours of operation.

Any owner/operator subject to this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Burden Statement: In the currently approved ICR, the recordkeeping burden is estimated to average 89 hours per respondent for a total annual burden of 8,544 hours. The reporting burden for

Subpart E is for the one-time only reports. Therefore, the annual reporting burden for that collection of information is zero since it is estimated that there will be no new incinerators subject to the standard. The estimated number of respondents is 96 and the estimated number of responses is 33,696. There is no annualized cost burden associated with this ICR.

(2) NSPS Subpart GG: Stationary Gas Turbines; EPA ICR No. 1071.06; OMB number 2060.0028; expiration date January 31, 2001.

Affected Entities: Entities affected by this action are those stationary gas turbines for which construction, modification, or reconstruction is commenced after October 3, 1977, and that has a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60, Subpart GG. NSPS, Subpart GG was proposed on October 3, 1977 and promulgated on September 10, 1979. These standards apply to all stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (based on the lower heating valued of the fuel fired), and commencing construction, modification, or reconstruction after the date of proposal. The pollutants regulated under this subpart include sulfur dioxide (SO_2) and nitrogen oxides (NO_X).

The reporting requirements for this type of facility include the initial notifications required under 40 CFR 60.7 which include: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. The standard also requires reporting of the results of the initial performance test to determine compliance with the applicable SO_2 and/or NO_X standards. For units using a continuous emission monitoring system (CEMS) to determine compliance with the NO_X and SO_2 standards, the regulation requires submittal of the results of the CEMS demonstration. After the initial report, the standards for NO_X and SO_2 requires each affected facility to submit semi-annual excess/compliance reports. These excess emission reports and monitoring system performance reports shall include the magnitude of excess emissions, the date and time of the exceedence or deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs or adjustments).

The recordkeeping requirements for all stationary gas turbine consist of maintaining records of the following: the occurrence and duration of any startup, shutdown, or malfunction as described; the initial performance test results including information necessary to determine the conditions of the performance test; performance test measurements and results including the applicable sulfur dioxide and/or PM results; the sulfur and nitrogen content of the fuel; the fuel to water ratio; the rate of fuel consumption; and the ambient conditions. The fuel sulfur content and fuel to water ratio measurements are used to monitor SO_2 and NO_X, respectively. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements.

Burden Statement: In the currently approved ICR, the estimated total annual reporting and recordkeeping hour burden is 76,681 person-hours and the total annual responses is 1,500. This estimate is based on the assumption that are approximately 625 existing affected facilities and 50 new facilities will become subject to the standard each year for the three years covered by this ICR. There are no capital and operation and maintenance cost associated with this ICR.

(3) NESHAP–MACT Subpart R: Gasoline Distribution Facilities (Stage 1); EPA ICR number 1659.03, and OMB number 2060–0325; expiration date February 28, 2001.

Affected Entities: Entities affected by this action are new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants (HAP) emissions or are located at sites that are major sources of HAP emissions.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 63, Subpart R. Effective enforcement of this rule is necessary due to the hazardous nature of benzene (a known human carcinogen)and the toxic nature of the other 10 HAP's emitted from gasoline distribution facilities.

In order to ensure compliance with the standards, adequate reporting and record keeping is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure that leakage emissions from cargo tanks and process piping equipment components (both liquid and vapor) during loading are being minimized; and (3) ensure that emission control devices are being properly operated and maintained; and (4) ensure that emissions from storage vessels are minimized and rim seal and fitting defects are repaired on a timely basis.

Specifically, the rule's reporting requirements that apply to both bulk gasoline terminals and pipeline breakout stations include initial notification; notification of compliance status; notification of construction/reconstruction; notification of anticipated startup; notification of actual start up; semiannual reports; and reporting of area source compliance. In addition, bulk gasoline terminals are required to provide notification of performance tests and on CMS evaluation.

The rule's recordkeeping requirements that apply to both bulk gasoline terminals and pipeline break out stations maintaining records of: equipment visual inspections; equipment leak data; storage tank seal inspections; startups/shutdowns/malfunctions; and area source status. In addition, bulk gasoline terminals are required to maintain records of filing cargo tank inspection records; updating cargo tank inspections; and of the cross-checking cargo tank inspection file.

Industry Burden Statement: In the currently approved ICR, the average annual burden to industry to meet these reporting and record keeping requirements is estimated at 32,575 person-hours (31,797 person-hours for bulk gasoline terminals plus 778 person-hours for pipeline breakout stations). This estimate is based on approximately 263 respondents (243 bulk gasoline terminals plus 20 pipeline breakout stations). Since there are no new sources anticipated, the only reporting burden for this industry is the semi-annual reporting of excess emissions which is estimated at 10 hours per report for bulk gasoline terminals, and 8 hours per report for pipeline break out stations. There is no capital/startup costs, since there are no new sources anticipated. The estimated total annual operation and maintenance cost to the industry is $850,500.

(4) NESHAP Subpart T: Halogenated Solvent Cleaning; EPA ICR No. 1652.03;

OMB number 2060.0273; expiration date May 31, 2001.

Affected entities: Entities potentially affected by this action are those which operate individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines that use any solvent containing methylene chloride, perchloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform or any combination of these halogenated HAP solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 63, Subpart T. Effective enforcement of this rule is necessary due to the hazardous nature of HAP emissions from halogenated solvent cleaners which may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAP standards were promulgated for this source category, as required under section 112 of the Clean Air Act.

HAP emissions from halogenated solvent cleaners are the result of inadequate equipment design and work practices. These standards rely on the proper design and operation of halogenated solvent cleaners such as working-mode covers, freeboard ratio of 1.0, and reduced room draft to reduce solvent emissions from halogenated solvent cleaners.

Certain records and reports are necessary to enable EPA to identify sources subject to the standards and to ensure that the standards are being achieved. Owners/operators of halogenated solvent cleaners must provide EPA with an initial notification of existing or new solvent cleaning machines; initial statement of compliance; an annual control device monitoring report (owners/operators of batch vapor and in-line cleaning machines); an annual solvent emission report (owners/operators of batch vapor and in-line cleaning machines complying with the alternative standard); and exceedence of monitoring parameters or emissions. The records that the facilities maintain indicate to EPA whether they are operating and maintaining the halogenated solvent cleaners properly to control emissions.

Burden: For the currently approved ICR, the annual reporting and recordkeeping burden is estimated to average 43 hours per reporting response and 95 hours for recordkeeping for a total 45,207.20 hours. The estimated number of responses is 11,463. The estimated number of respondents is 3,821 which includes vapor in-line halogenated solvent cleaning machines and 752 batch cold cleaning machines. The estimated total capital cost for facilities with batch vapor and/or in-line solvent cleaning machine to achieve compliance is $17,000 (assume 2.6 cleaning machines per facility). The estimated annual operation and maintenance cost for batch vapor and/or in-line solvent cleaning machine is $858. Existing sources were not required to comply with the standard until December 1997.

(5) NESHAP Subpart JJ: Wood Furniture Manufacturing Operations; EPA ICR No. 1716.02; OMB number 2060.0324; expiration date February 28, 2001.

Affected Entities: Entities potentially affected by this action are wood furniture manufacturing operations.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 63, Subpart JJ. Information is supplied to the Agency under the applicable rule by owners and operators of new and existing wood furniture manufacturing operations that are major sources of hazardous air pollutants (HAPs).

The respondents are required by 40 CFR Part 63, Subpart JJ to submit periodic reports and perform various recordkeeping activities to enable the Administrator to:

(i) Identify new, modified, reconstructed and existing sources subject to the standard, and

(ii) Ensure that the standards, which are based on maximum achievable control technology, are being met.

The reporting requirements of the standard include the following: an application requesting approval for construction/reconstruction; notification of start-up, construction and reconstruction; notification of physical/operational changes; site-specific performance and CMS performance evaluation test plans; notification and reporting of performance and CMS tests/results; a semi-annual compliance report; work practice standards implementation plan reports; notification to the Agency of rule applicability; and notification and reporting of compliance status.

The recordkeeping requirements of the rule include maintaining records of: startups, shutdowns, and malfunctions; the work practice implementation plan; continuous monitoring system (CMS) data; the types and quantities of finishing, cleaning materials and adhesives used; monthly weighted average emission calculations; documentation of area source status, if claimed; and performance and CMS tests. A five-year maintenance and retention of records is required by this standard.

Burden: In the currently approved ICR, it is estimated that the total annual burden for recordkeeping and reporting requirements is 91,430 hours and the estimated cost to respondents is $34,830,000. This estimate is based on an estimate number of respondents of 750. The total number of annual responses is 54,721. The average annual burden per response is therefore 1.67 hours. The frequency of response, for most reporting requirements, is semi-annual. The annualized capital and start-up costs for the respondents over the expected useful life of the control equipment is $34,830,000.

(6) RCRA Subpart CC: Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers, EPA ICR Number 1593.04; OMB number 2060.0318; expiration date February 28, 2001.

Affected entities: Entities potentially affected by this action are those that treat, store or dispose of hazardous waste (large quantity generators and treatment, storage and disposal facilities) subject to the Resource Conservation and Recovery Act (RCRA).

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 264, Subpart CC and 40 CFR Part 265, Subpart CC. RCRA Subpart CC requires controls for minimizing release of volatile organic air emissions from tanks, surface impoundments and containers holding hazardous waste. Records and reports are necessary in order for the EPA to determine that the standards are implemented and maintained to protect human health and the environment.

Organic air emissions from hazardous waste TSDFs can contain toxic chemical compounds. Cancer and other adverse noncancerous human health effects can result from exposure to these emissions. Organic emissions from TSDFs react photochemically with other compounds in the atmosphere to form ground level ozone. Excessive ambient ozone concentrations are a major air quality problem in many cities throughout the United States. Nationwide organic emissions from TSDFs are estimated to be approximately one million megagrams per year. These organic emissions are estimated to result in 48 excess incidences of cancer per year nationwide and a 3×10^{-2} maximum individual risk (MAR). The experience of the EPA in implementing and

enforcing New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under authority of the Clean Air Act has demonstrated that certain information must be collected to ensure compliance with air emission standards. Information collection is needed by the EPA to determine: (a) whether a hazardous waste contains sufficiently low concentrations of volatile organics to allow the waste to be managed in a tank, surface impoundment, or container without the use of emission controls, and (b) for units requiring emission controls, whether the controls are being properly operated and maintained. The collected information will be used by the EPA enforcement personnel to ensure that the requirements of the recommended rules are being properly applied and that emission control devices are being properly operated and maintained on a continuous basis.

In addition, records and reports are necessary to enable the EPA to identify TSDF owners or operators that may not be operating in compliance with the standards. The reported information is used by the EPA to target TSDFs for inspection and identify what records or waste management units should be inspected at the TSDF. The information that TSDF owners or operators are required to maintain is recorded in sufficient detail to enable owners or operators to demonstrate their means of complying with the applicable standards. The data collected by the affected facility is retained at the facility for a minimum of three years.

Burden Statement: In the currently approved ICR, the average annual reporting burden is 5 hours and the average annual recordkeeping burden is 76 hours. This estimate includes making waste determinations, semiannual inspection of roofs and monitoring emissions, and recordkeeping of such results. There are 6,228 respondents subject to these requirements. The estimate on the number of respondents is based on the 1995 Biennial Report, which indicated that 70% of the 1,787 treatment, storage, and disposal facilities (TSDFs) and 25% of the 19,908 large quantity generators (LQGS) are subject to this regulation. There is no capital costs associated with the installation of new roofs. There are operation and maintenance costs for closed vent systems totaling $1,939,000. Based upon the 1997 Biennial Report figures, we expect that the number of facilities subject to this regulation will increase 5% for the next ICR.

Dated: July 27, 2000.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 00–20122 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6853–4]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Project XL Draft Final Project Agreement for the Labs21 Project.

SUMMARY: EPA is requesting comments on a Draft Project XL Final project Agreement (FPA) for the Labs21 Project. The FPA is a voluntary agreement developed collaboratively by the U.S. EPA, potential sponsors, and interested stakeholders. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits.

Through the Labs21 XL Project, EPA is planning to offer laboratories regulatory or policy flexibility through a customized XL review process as a means to enable laboratories to maximize environmental performance under Labs21. Labs21 is a voluntary initiative being developed by EPA to improve laboratory environmental performance through gains in energy and water efficiencies.

EPA envisions developing the Labs21 XL project in two stages. The first stage is the completion and signing of the FPA that is the subject of this Federal Register Notice. In signing this FPA, the relevant EPA offices will commit to working internally within the EPA and with laboratories to determine how to harmonize Labs21 and XL application and review processes with the goal of making it possible for EPA to utilize information compiled on facilities under Labs21 as the core data for the XL review. The second stage of the Labs21 XL project will be to develop and issue case-specific agreements for testing innovative ways to maximize environmental performance at laboratories. EPA will negotiate these case-specific agreements through the existing XL process, and the agreements will consequently need to meet XL criteria for sponsors and for the project as a whole.

DATES: The period for submission of comments ends on August 31, 2000.

ADDRESSES: All comments on the proposed Final Project Agreement should be sent to: Nina Bonnelycke, U.S. EPA, Room 1027WT (1802), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be faxed to Ms. Bonnelycke at (202) 260–1812 or sent via electronic mail to bonnelycke.nina@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Nina Bonnelycke, Room 1027WT (1802) U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL.* Questions regarding the draft FPA should be directed to Nina Bonnelycke at 202–260–3344. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Room 1029WT (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at *http://www.epa.gov/ProjectXL.*

For more information on EPA's Labs21 program, please contact Phil Wirdzek at Mail Code 3204 U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, phone: 202–564–2094, email: wirdzek.phil@epa.gov.

Dated: August 11, 2000.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–20969 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6852–9]

Board of Scientific Counselors Executive Committee Meeting—Closed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Office of Research and Development's Board of Scientific Counselors (BOSC) will have a

teleconference meeting on September 13, 2000. Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA) and 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend new Board members to the Assistant Administrator for Research and Development to serve on the BOSC. In making these decisions, the members need to have full and frank discussions. Such personnel issues, where disclosure would constitute an unwarranted invasion personnel privacy, are protected from disclosure by exemption 2 and 6 of section 552(b)(c) of the U.S.C. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCER (MC 8701R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone: (202) 564–6853 or e-mail at: *hamilton.shirley@epa.gov.*

Dated: August 11, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–20968 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6853–3]

Notice of Availability of Draft Aquatic Life Criteria Document for Cadmium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft Aquatic Life Criteria Document for Cadmium.

SUMMARY: Section 304(a)(1) of the Clean Water Act requires the Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. EPA is revising its aquatic life criteria for cadmium. Today, EPA is notifying the public about the availability of the draft document and is also announcing that the draft document is ready to undergo peer review.

EPA is notifying the public about the availability of this draft document and its peer review in accordance with the Agency's new process for developing or revising criteria (63 FR 68354, December 10, 1998). As indicated in the December 10, 1998 FR notice, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria. EPA is soliciting views from the public on issues of science pertaining to the information used in deriving the draft criteria.

DATES: All significant scientific information must be submitted to the Agency under docket number W–00–15. All significant scientific information submissions are requested to be submitted within 60 days after publication of this notice. Information submitted after this date may not receive the degree of consideration of information submitted earlier. The Administrative Record supporting this draft guidance document is available at the Water Docket, Room EB–57, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 4:00 p.m. For access to docket materials call (202) 260–3027 for an appointment. A reasonable fee will be charged for photocopies.

ADDRESSES: Send an original and three copies of any written significant scientific information to W–00–15 Comment Clerk, Water Docket, Ariel Rios 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, Room EB57, 401 M Street, SW., Washington, DC 20460. Issues may also be submitted electronically to *OW-Docket@epa.gov.* Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

Copies of the draft criteria document entitled, *2000 Update of Ambient Water Quality Criteria for Cadmium,* may be obtained from EPA's Water Resource Center by phone at (202) 260–7786, or by e-mail to *center.water-resource@epa.gov* or by conventional mail to EPA Water Resource Center, RC–4100, 401 M Street SW., Washington, DC 20460. Alternatively, consult *www.epa.gov/OST/standards* for download availability.

FOR FURTHER INFORMATION CONTACT: Cindy Roberts, Health and Ecological Criteria Division (4304), US EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460; (202) 260–2787; *roberts.cindy@epa.gov*

SUPPLEMENTARY INFORMATION:

What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires the EPA to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards and provide a scientific basis for them to develop controls of discharges or releases of pollutants. The criteria also provide a scientific bases for EPA to develop Federal regulations under section 303(c).

Why Is EPA Notifying the Public About the Draft Cadmium Document and Peer Review?

Today, EPA is notifying the public about the availability of the draft aquatic life criteria document for cadmium and its peer review to expand the public's involvement in the criteria development process.

In following the Agency's new process, EPA notified the public of its intentions to revise the aquatic life criteria for cadmium in the **Federal Register** on October 29, 1999 (64 FR 58409). At that time EPA made available to the public all references identified by a recent literature review and solicited any additional pertinent data or scientific views that would be useful in revising the aquatic life criteria. EPA revised the aquatic life criteria for cadmium based on the new data and now has a draft document that is ready to undergo peer review.

As indicated in the December 10, 1998 FR notice, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria. EPA is soliciting views from the public on issues of science pertaining to the information used in deriving the draft criteria. EPA will review and consider significant scientific information submitted by the public that might not have otherwise been identified during development of these criteria.

Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354) and in the EPA document entitled, National Recommended Water Quality—Correction (EPA 822–Z–99–001, April 1999). The purpose of the revised process is to provide expanded opportunities for public input, and to

make the criteria development process more efficient.

Jeanette Wiltse,

Acting Director, Office of Science and Technology.

[FR Doc. 00–20972 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6852–8]

Air Quality Criteria for Carbon Monoxide (Final)

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The U.S. Environmental Protection Agency (EPA), National Center for Environmental Assessment, is today announcing the availability of a final document, Air Quality Criteria for Carbon Monoxide, EPA 600/P–99/001F, dated June 2000. Required under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest, relevant scientific information that may have an impact on the next periodic review of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO).

ADDRESSES: A limited number of copies of the Air Quality Criteria for Carbon Monoxide are available from the National Service Center for Environmental Publications. Request a copy by telephoning 1–800–490–9198 or 513–489–8190 and providing the title and the EPA number for the document, EPA 600/P–99/001F. Internet users may obtain a copy from the EPA's National Center for Environmental Assessment (NCEA) home page. The URL is http://www.epa.gov/ncea/.

FOR FURTHER INFORMATION CONTACT: Mr. James Raub, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4157; facsimile: 919–541–1818; E-mail: raub.james@epa.gov.

SUPPLEMENTARY INFORMATION: Sections 108 and 109 of the Clean Air Act (CAA) require that the EPA carry out a periodic review of the scientific information available for the ''criteria'' air pollutants such as carbon monoxide and revise, where appropriate, the National Ambient Air Quality Standards (NAAQS) for them. In keeping with these requirements of the CAA, the National Center for Environmental Assessment-RTP, within the Office of Research and Development, has proceeded with review and revision of the CO Air Quality Criteria Document (AQCD). The scientific information selected for assessment in the CO AQCD includes the more recent literature published since completion of the previous CO AQCD in 1990.

As part of EPA's standard AQCD development process, a draft of the revised CO AQCD underwent peer review at a workshop conducted on September 17–18, 1998 (63 FR 47494, September 8, 1998). In addition, two subsequent external review drafts were released for public comment from March to May 1999 (64 FR 13198, March 17, 1999) and October to November 1999 (64 FR 55923, October 15, 1999). The Clean Air Scientific Advisory Committee (CASAC) reviewed the respective external review drafts on June 9, 1999 (64 FR 27784, May 21, 1999) and November 18, 1999 (64 FR 57453, October 25, 1999). Final closure from CASAC was received on January 11, 2000. Revisions in response to the comments received have been incorporated into the final document.

Dated: July 24, 2000.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 00–20970 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6853–1]

Notice of Availability for Draft Guidance on BACT for NO_X Control at Combined Cycle Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is making available for public review and comment a preliminary draft of its pending guidance on BACT for NO_X Control on Combined Cycle Turbines. Several issues have been brought to EPA's attention as a result of recent controversies involving State permitting agencies, utilities, and turbine manufacturers over appropriate best available control technology (BACT) controls for NO_X at natural gas combined cycle turbines for electric power generation. Selective Catalytic Reduction (SCR) has been considered BACT for limiting NO_X emissions on many natural gas combined cycle turbines in attainment areas. These issues have to do with the impact of requiring selective catalytic reduction on dry low NO_X natural gas combined cycle turbines for electric generation.

The BACT is required for new or modified major sources in order to prevent significant deterioration of air quality in attainment areas. The Clean Air Act allows permitting authorities to weigh environmental, energy, and economic concerns against the proven environmental benefits of technologies such as SCR in making BACT determinations in order to determine whether a less effective technology for NO_X control is warranted in specific cases. In the case of dry low NO_X natural gas combined cycle turbines, the NO_X reduction that SCR achieves is sufficiently small that other considerations may become relatively important to consider in determining BACT. The guidance and supporting background information review those considerations.

A draft of EPA's guidance is available for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider the comments from the public in the preparation of the final guidance. It is important that the draft guidance being made available today for public review and comment does not represent official EPA policy or a formal position on the subject matter discussed and therefore is not to be relied on in interpreting EPA policy.

DATES: The comment period on the draft guidance will close on September 18, 2000.

ADDRESSES: Written comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail smith.pam@epa.gov.

FOR FURTHER INFORMATION CONTACT: Ellen Brown, Office of Policy Analysis and Review, U.S. EPA, 1200 Pennsylvania Avenue, Washington, DC 20460, telephone 202–564–1669 or E-mail brown.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: A copy of the draft guidance document may be obtained by calling or E-mailing Pamela J. Smith. The draft guidance may also be downloaded from the NSR Web Site http://www.epa.gov/ttn/nsr under the topic ''What's New on NSR.''

Dated: August 9, 2000.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–20971 Filed 8–16–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:31 a.m. on Monday, August 14, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than August 9, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 14, 2000.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 00–21033 Filed 8–14–00; 4:43 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE & TIME: Tuesday, August 22, 2000 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 24, 2000 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2000–08 (Reconsideration)—Philip D. Harvey.

Draft Advisory Opinion 2000–21—Conservative Party of the State of New York by counsel, John N. Ciampoli.

Draft Revisions to FEC Forms and Instructions.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–21070 Filed 8–15–00; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACYF CB–2000–02]

Grant to National Conference of State Legislatures

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of award.

SUMMARY: Notice is hereby given that ACYF will award grant funds without competition to the National Conference of State Legislatures (NCSL). This grant is a sole source award which will assist State legislatures in addressing ''second generation'' issues arising from implementation of the Adoption and Safe Families Act (ASFA) and to educate legislators on the new Child Welfare rules that impact existing State Plan requirements. This award is made non-competitively after our review of an unsolicited proposal submitted by NCSL.

1. Background: NCSL has a unique relationship with State legislatures that enables them to help legislators understand critical child welfare issues in light of recent changes to Federal law and policy. NCSL is a bipartisan, non-profit organization that serves the Nation's legislatures and staff. It is an instrumentality of the States, providing informational services to State legislators, allowing them to make policy decisions based on reliable, objective and comprehensive analyses. In addition to providing research, publications, and consultative services, NCSL provides policymakers with the opportunity to exchange ideas and communicate with each other on the most pressing problems States face, as well as solutions that work. NCSL plans to accomplish these goals through special briefings, publications, delivering on-site technical assistance, holding special sessions at regular NCSL meetings, and the tracking of State child welfare legislation.

Following our review of the proposal submitted by the NCSL for these activities, this award is made noncompetitively. The NCSL proposal presents a unique opportunity to establish a continuing dialogue with State legislatures across the country.

2. The project period will be for 17 months, beginning September 29, 2000 and ending February 28, 2002. The grantee will be awarded $193,301 during the project period.

Authority: This award will be made pursuant to Title IV–E of the Social Security Act.

FOR FURTHER INFORMATION CONTACT: Pat Hagen, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Room 2420, Washington, DC 20447; Telephone: (202) 205–8575.

Dated: August 11, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–20950 Filed 8–16–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on Contracting for the Performance of Title IV–E Administrative Functions

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of request for public comment.

SUMMARY: The Children's Bureau, in the Administration on Children, Youth and Families, administers the title IV–E program which providers funds to States to assist in meeting the needs of certain children who are removed from their homes and placed in foster care. Federal financial participation (FFP) is available for a portion of the costs States incur in operating the foster care maintenance payments program.

We have received a number of inquiries regarding the requirements and/or restrictions associated with State's contracting for the performance of title IV–E administrative functions. In light of the range and complexity of the questions posed by States, we would like to examine the issues raised more closely. This notice invites public comment on State practices in contracting for the performance of title IV–E administrative functions. Based on comments received, we will determine the need for additional guidance related to contracting for the performance of specific title IV–E administrative functions.

Section 471(a)(5) of the Social Security Act requires States to '' * * * use such methods relating to the establishment and maintenace of personnel standards on a merit basis * * *'' Under a merit system of personnel administration, certain administrative functions must be performed by State agency employees. Functions that must be retained by the State agency are referred to as ''inherently governmental.'' Office of Management and Budget Circular A–76, ''Performance of Commercial Activities,'' defines ''inherently governmental functions,'' *i.e.*, those that must be performed by government employees, as ''* * * those activities which require either the exercise of discretion in applying Governmental authority or the use of value judgment in making decisions for the Government * * *'' The determination of a child's eligibility for title IV–E is, for example, an inherently governmental function.

We are requesting that respondents express their views with regard to how the legal prohibition against contracting out inherently governmental functions is consistent with, and its implications for, existing State practice, as well as plans for future contracting. It would assist our decision-making if respondents from State child welfare agencies would identify which, if any, title IV—E administrative functions the State currently contracts out. Please identify those considerations you would like us to take in developing additional policy guidance, in the event we determine it is warranted.

DATES: In order to be considered, written comments in response to this Notice must be received September 18, 2000.

ADDRESSES: Please address written comments to: Kathy McHugh, Director of Policy, Children's Bureau, Administration on Children Youth and Families, 330 C Street, SW., Room 2411, Washington, DC 20447. Comments will *not* be accepted electronically, by telephone, or by fax.

FOR FURTHER INFORMATION CONTACT: Joe Bock, Child Welfare Program Specialist Children's Bureau, Administration on Children, Youth, and Families at (202) 205–9632.

Dated: August 10, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–20857 Filed 8–16–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing a Compliance Risk Guidance for the Ambulance Industry

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties as the OIG develops a Compliance Risk Guidance (CRG) for ambulance service providers, especially those serving Medicare, Medicaid and other Federal health care program beneficiaries. The ambulance industry has experienced a number of instances of ambulance provider and supplier fraud and abuse and has expressed interest in increasing the awareness of the industry to assist in protecting against such conduct. In response to the industry's concerns, the OIG has, to date, written seven Advisory Opinions on a variety of ambulance-related issues [1] and has published a proposed rule concerning a safe harbor for ambulance restocking.[2]

In an effort to provide further guidance, the OIG is soliciting comments, recommendations and other suggestions from concerned parties and organizations on how best to develop an ambulance CRG to reduce the potential for fraud and abuse. The OIG expects that the CRG will outline the most common and prevalent fraud and abuse risk areas for the ambulance industry. In addition, the CRG will provide guidance on how to: (1) Address these risk areas; (2) prevent the occurrence of instances of fraud and abuse; and (3) develop corrective actions when those risks or instances of fraud and abuse are identified.

The OIG expects that the risk areas identified in the CRG will not be all-inclusive. Ambulance providers and suppliers will remain responsible for identifying those risk areas particular to their specific operations.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on October 16, 2000.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–1–CRG, Room 5527 A, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–1–CRG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8 A.M. to 4:30 P.M.

FOR FURTHER INFORMATION CONTACT: Sonya Castro, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION: The contents of this CRG will differ from the previous OIG compliance program guidances.[3] Although the CRG will refer to the seven elements of establishing an effective compliance program, set forth in the previous compliance program

[1] See Advisory Opinions Nos. 97–6, 98–3, 98–7, 98–13, 99–1, 99–2 and 99–5. The Advisory Opinions can be found on the OIG web site at http://www.hhs.gov/oig.

[2] See 65 FR 32060; May 22, 2000.

[3] The OIG has issued compliance program guidance for the following eight industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies, hospices, Medicare+Choice organizations offering coordinated care plans and nursing facilities. Additionally, the Individual and Small Group Physician Practice Compliance Program Guidance has been issued in draft form (June 12, 2000; 65 FR 36818). The Compliance Program Guidances can be found on the OIG web site at http://www.hhs.gov/oig in the Electronic Reading Room, or by calling the OIG Public Affairs office at (202) 619–1343.

guidances,[4] the CRG will concentrate on specific identified risk areas and related compliance program best practices.

The CRG will include an additional section relating to risk areas associated with the Medical Assistance or Medicaid program requirements. The OIG intends to broadly address the Medicaid risks in light of the fact that the coverage and reimbursement rules differ among the various Medicaid programs. In order for the OIG to adequately incorporate the most prevalent Medicaid risk areas, we are requesting comments and suggestions from the various State agencies providing Medicaid services and from those ambulance providers and suppliers that furnish a significant level of services to Medicaid beneficiaries.

The OIG would also appreciate specific comments related to compliance regarding the proposed Medicare ambulance fee schedule.[5] As appropriate, we ask that commenters please provide detailed justifications and empirical data supporting such comments.

Dated: August 11, 2000.

Michael F. Mangano,

Principal Deputy Inspector General.

[FR Doc. 00–20856 Filed 8–16–00; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request, NCI Cancer Information Service Demographic/ Customer Service Data Collection

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 7, 2000, Vol. 65, No. 25, page 5873–5874 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NCI Cancer Information Service Demographic/Customer Service Data Collection. *Type of Information Collection Request:* Revision. OMB No. 0925–0208 expires October 2000. *Need and Use of Information Collection:* The Cancer Information Service (CIS) provides the general public, cancer patients, families, health professionals, and others with the latest information on cancer. Essential to providing the best customer service is the need to collect data about callers and web users and how they found out about the service. This effort involves a telephone survey and a web survey. The telephone survey involves asking seven questions to five categories of callers for an annual total of approximately 500,430 callers. Three of the seven questions will be asked to 100% of five categories of callers for an annual total of approximately 333,620 callers; four questions will be asked to 50% of the same five categories of callers for an annual total of approximately 166,810 callers. The web survey involves asking eight questions to an annual total of approximately 75,266 voluntary users of the CIS web site. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 500,430 callers and 75,266 web users; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* Telephone—.00328 and .0083 and Web—.0137; and *Estimated Total Annual Burden Hours Requested:* Telephone—2,479 and Web—1,031. The annualized cost to respondents is estimated at: $42,120. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals or households				
Telephone:				
—3 questions (100%)	333,620	1	0.00328	1,094
—4 questions (50%)	166,810	1	0.0083	1,385
Web:				
—8 questions (100%)	75,266	1	0.0137	1,031
Annualized Totals	575,696			3,510

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

[4] The seven elements of an effective compliance program include: (1) The development of written policies and procedures; (2) the designation of a compliance officer and other appropriate bodies; (3) the development and implementation of effective training and education programs; (4) the development and maintenance of effective lines of communication; (5) the enforcement of standards through well-publicized disciplinary guidelines; (6) the use of audits and other evaluation techniques to monitor compliance; and (7) the development of procedures to respond to detected offenses and to initiate corrective action.

[5] The Health Care Financing Administration's proposed Medicare ambulance fee schedule is expected to be published in the **Federal Register** shortly.

technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Chris Thomsen, Chief, Cancer Information Service Branch, OC, OD, NCI, Building 31, Room 10A16, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–5583 ext. 239 or E-mail your request, including your address to: thomsenc@mail.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 18, 2000.

Dated: August 7, 2000.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 00–20904 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Dennis Penn, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 211; fax: 301/402–0220; e-mail: pennd@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Preparation and Use of Androgenic Compounds

Richard P. Blye and Hyun K. Kim (NICHD) DHHS Reference Nos. E–069–00/0 filed 31 Mar 2000 and E–069–00/1 filed 04 Apr 2000.

The technology describes the finding of the orally active androgenic compound, 7α, 11β-dimethyl-19-nortestosterone 17-bucyclate (Also known as CDB–4386A). This 17-bucyclate androgen compound is orally bioavailable and possesses greater potency than Methyltestosterone, the only oral androgen commercially available in this country. Too, this compound may be injected as an aqueous suspension, whereas other injectable androgens require an oil diluent. Androgens find use in the treatment of male hypogonadism regardless of the cause. Consequently they are used for the treatment of hypogonadotropic hypogonandism, as the androgenic component of male hormonal contraceptives and for androgen supplementation in hormone replacement therapy (HRT) in both men and women.

Process for Preparing 17-Alpha-Acetoxy-11-Beta-[4-(N,N-Dimethylamino)phenyl]-21-Methoxy-19-Norpregna-4,9-Diene-3,20-Dione, Intermediates Useful in the Process, and Processes for Preparing Such Intermediates

Hyun K. Kim (NICHD), and Pemmaraju Rao, James Cessac, and Anne Marie Simmons of the Southwest Foundation for Biomedical Research DHHS Reference No. E–013–00/0 filed 29 Dec 1999.

This invention relates to a process for preparing 17-alpha-acetoxy-11-beta-[4-(N,N-dimethylamino)phenyl]-21-methoxy-19-norpregna-4,9-diene-3,20-dione. This method substantially increases the yield over existing methods and will substantially reduce the cost of production of this compound. Other advantages include: (1) Use of smaller quantities of solvent and reagent; (2) use of intermediates, reagents, or byproducts which are relatively safe to handle and dispose of, no use of chromatography; (3) a purification procedure easier to practice on large scale from kilograms to multi-kilograms, including no use of chromatography if possible; and (4) in some cases, recycling the by-products was successfully achieved.

Novel Anti-thrombin Peptide From Mosquito Salivary Gland

Jesus G. Valenzuela, Jose M.C. Ribeiro, and Ivo Francischetti (NIAID) DHHS Reference No. E–143–99/0 filed 29 Jun 1999.

Currently, treatment and prophylaxis of thrombotic diseases involve therapeutic agents which act in one of two different ways. The first type inhibits a-thrombin activity or a-thrombin formation, thus preventing clot formation. The second category accelerates thrombolysis and dissolves the blood clot, thereby removing it from the blood vessel and unblocking the flow of blood. Heparin is an example of the first class and is widely used; however, heparin is less effective in treating patients with an anti-thrombin III deficiency. Hirudin is an example of the second class of anti-thrombotic drugs.

This invention relates to an anti-thrombin (*Anophelin*) isolated from the salivary glands of the mosquito *Anopheles albimanus*. The purified peptide inhibits thrombin induced platelet aggregation, thrombin esterolytic activity, and thrombin cleavage of fibrinogen. This peptide has no homologies to proteins of known function in GenBank, and is a novel, specific, and tight binding inhibitor of α-thrombin.

Ichthyosiform Skin Diseases

Peter M. Steinert, Nemes Zoltan and Lyuben Marckov (NIAMS) DHHS Reference No. E–149–99/0 filed 23 Jun 1999.

Many inherited autosomal recessive ichthyoses (ARI) are caused by improper or incomplete lipid barrier function in the skin due to genetic errors of either protein or lipid synthesis. It is previously known that the mutations in the transglutaminase 1 gene resulting in inactive enzyme is the cause of one ARI disease termed lamellar ichthyosis. This relates to the discovery that a principal function of the enzyme is to attach ceramide lipids for complete protein/lipid barrier function in the skin. This invention also describes how to: (1) Make large quantities of this enzyme that can be stored in a stable form which can be readied for use at short notice; (2) a simple way to make synthetic ceramide lipid analogs that function the same way as normal skin ceramides; and (3) make synthetic lipid vesicles that can carry, in a stable fashion, both the enzyme and synthetic ceramide so that it might be applied to affected ARI skin in order to provide ameliorative therapy.

High Sensitivity Phage Display Protein Detection Method

Carl R. Merril (NIMH) DHHS Reference No. E–185–98/0 filed 14 Apr 1999.

This new technology extends the range of protein detection appreciably under the absolute limit of 0.01ng for the Silver stain method. In an average protein molecule this amounts to 20 million molecules. The average cellular concentration of protein is 5000 molecules, so that an amplification system is needed to detect protein on that level. In this method, phage that display specific ligands or antibodies provide such an amplification system and therefore allow for detection. In addition, a particular phage expressing a known binding protein may be used to identify a specific protein and aid in the purification of that specific protein. The identification ability has both diagnostic and therapeutic potential.

The key novel feature of this technology in the market place would be its high sensitivity and the numerous benefits associated with it. It opens up whole new areas of analysis, such as on the cellular level, allowing for looking at protein variations within a single cell. Theoretically, as little as one protein molecule could be detectable.

The potential market for this invention would be in several distinct areas: Research—incorporation into kits to perform complete assays; Purification—aiding in the manufacturing process; Diagnostic—detection of variations of a specific protein within a cell; Therapeutic—identification of specific drug targets through the ability to bind to receptor sites.

Dated: August 3, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–20922 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Construction.

Date: August 30, 2000.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 8th Floor, Room 8060, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Special Review, Referral and Resources, Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 8060, Rockville, MD 20892, 301/594–1403.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20933 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of P01 Applications.

Date: September 12, 2000.

Time: 11 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Deborah P. Beebe, PhD, Health Scientist Administrator, Review Branch, DEA, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892, 301/435–0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NRSA Institutional Research Training Grants (T32s).

Date: October 4–6, 2000.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Roy L. White, PhD, Scientific Review Administrator, Review Branch, DEA, Rockledge 2, MSC 7924, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892, 301/435/0291.

(Catalogue of Federal domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lund Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20926 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 29, 2000.

Time: 10 am to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–433–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20925 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental health Special Emphasis Panel, August 3, 2000, 1 PM to August 3, 2000, 2:30 PM, Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD, 20892 which was published in the Federal Register on July 13, 2000, 65 FR 43379.

The meeting will now be held as a telephone conference call on August 17, 2000, from 1 PM to 2 PM. The meeting is closed to the public.

Dated: August 8, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20927 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 14, 2000.

Time: 10:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 8, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20928 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA, Review of the Laboratories of Personality & Cognition & Molecular Genetics.

Date: October 11–13, 2000.

Closed: October 11, 2000, 7 pm to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Best Western Hotel & Conference Center, Fells Point Room, Baltimore, MD 21224.

Closed: October 12, 2000, 8 am to 8:30 am.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Open: October 12, 2000, 8:30 am to 11:40 am.

Agenda: Committee Discussion.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: October 12, 2000, 11:40 am to 1 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Open: October 12, 2000, 1 pm to 4:30 pm.

Agenda: Committee Discussion.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: October 12, 2000, 4:30 pm to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: October 13, 2000, 8 am to 8:30 am.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Open: October 13, 2000, 8:30 am to 12 pm.

Agenda: Committee Discussion.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: October 13, 2000, 12 pm to 1 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Open: October 13, 2000, 1 pm to 5 pm.

Agenda: Committee Discussion.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: October 13, 2000, 5:00 pm to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Contact Person: Dan L. Logon, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, dl14q@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 10, 2000.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20929 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(O2).

Date: August 30, 2000.

Time: 11 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd., 2 Democracy Plaza, RM 653, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Phd., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB B(O3).

Date: September 7, 2000.

Time: 11:00 AM to 12:15 PM.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Boulevard, 2 Democracy Plaza, 6th Floor, Room 645, Bethesda, Maryland 20892 (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: August 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20930 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council, Agenda Available: http://www.niehs.nih.gov/dert/c-agenda.htm.

Date: September 11–12, 2000.

Open: September 11, 2000, 8:30 AM to 4:45 PM.

Agenda: Discussion of program policies and issues.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 12, 2000, 9 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, HIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20932 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee.

Date: October 19, 2000.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: American Inn, 8130 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Terri B. Pike, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–4623, tpike@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

Date: October 26–27, 2000.

Time: 8:30 am to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Terri B. Pike, BS, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–4623, tpike@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20934 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 22, 2000.

Time: 1 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 22, 2000.

Time: 1:45 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 24, 2000.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 28, 2000.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 28–29, 2000.

Time: 3 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306; Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20931 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program Center for the Evaluation of Risks to Human Reproduction; Announces an Upcoming Review of Methanol, Solicits the Nomination of Individuals Qualified To Serve on an Expert Panel, and Requests Public Input on Methanol

Background

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (**Federal Register** pg. 68782, vol. 63, No 239). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The goals of the individual assessments are to (1) interpret for and provide to the general public information about the strength of scientific evidence that a given exposure or exposure circumstance poses a hazard to reproduction and the health and welfare of children; (2) provide regulatory agencies with objective and scientifically credible assessments of reproductive/developmental health effects associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties associated with the available scientific evidence, and (3) identify knowledge gaps to help establish research and testing priorities.

Review of Methanol

Methanol (CASRN: 67–56–1) was selected for the second expert panel evaluation by the Center. Methanol is a commercially important, high production volume chemical (10.54 billion pounds, US production, 1993), with high potential for occupational, consumer, and environmental exposure. Methanol is used in chemical syntheses and as an industrial solvent. It is found in a variety of consumer products such as paints, antifreeze, cleaning solutions, and adhesives and is a by-product of sewage treatment, fermentation, and paper production. Methanol is used in race car fuels, and there is the potential for the expanded use of methanol as a vehicle fuel or fuel additive. There is a large toxicity database on reproductive and developmental effects of methanol, including a recently completed study in primates.

It is anticipated that the evaluation of this chemical will be conducted in Winter 2000, in the Washington, DC area. An expert panel of approximately 10 scientists, selected for their expertise in various aspects of reproductive and developmental toxicology and other relevant areas, will conduct the evaluation. The Expert Panel meeting will be open to the public with an opportunity scheduled for oral public comment.

Request for Individuals Qualified To Serve on the Expert Panel

The Center invites nominations from the public of qualified scientists to serve on the Methanol Expert Panel. Panelists are primarily drawn from the CERHR Expert Registry and/or other scientists who meet the criteria for listing in that registry. Criteria for the Expert Registry listing include: formal academic training and experience in a relevant field, publications in peer-reviewed journals, membership in relevant professional societies, certification by an appropriate scientific Board or other entity, and participation in similar committee activities. Scientists on the panel represent a wide range of expertise including developmental toxicology, fertility, general toxicology, genetic toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations received by October 2, 2000 will be considered for the Methanol Expert Panel and/or inclusion in the Expert Registry. Nominations should be forwarded to: Dr. John Moore, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Telephone: (703) 838–9440.

Request for Public Input

The Center invites input from the public on methanol, including toxicology information from completed or ongoing studies, and information on planned studies, as well as current production data, human exposure information, use patterns, and environmental occurrence. Written comments and submissions received by October 2, 2000 will be considered in the review. Comments should be forwarded to CERHR at the above address. An opportunity for oral public comments to the panel will be provided at the review meeting itself.

Request for Nominations for Future Reviews

Nominations of chemicals for future evaluations are also encouraged. Any individual or organization may nominate. Nominations should include the chemical name, Chemical Abstract Service registry number (if known), reason for the nomination, and references or articles on the chemical, when possible. The nominator's name, address, telephone number and e-mail address should be included with the nomination.

Nominations of chemicals can be made through the Center's web site *(http://cerhr.niehs.nih.gov)* or by mail to Dr. John Moore at the address listed above.

Further information about the NTP Center for the Evaluation of Risks to Human Reproduction can be obtained through the Center's web site, or by contacting:

Michael D. Shelby, Ph.D., Director, CERHR, NIEHS/NTP B3–09, P.O. Box 12233, Research Triangle Park, NC 27709, telephone 919–541–3455, facismile 919–541–4634

or

John A. Moore, D.V.M., D.A.B.T., Principal Investigator, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314, 708–838–9440, 703–684–2223

Dated: August 8, 2000.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 00–20923 Filed 8–16–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–53]

Notice of Submission of Proposed Information Collection to OMB Rent Schedule—Low Rent Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 18, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0012) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rent Schedule—Low Rent Housing.

OMB Approval Number: 2502–0012.

Form Numbers: HUD Form 92458.

Description of the Need for the Information and Its Proposed Use: Collection of this information is necessary for the Department to ensure project owners are not overcharging their tenants and to ensured that the rent levels approved by the Department are not being exceeded. All projects must submit HUD form 92458 when requesting an adjustment to proejct rents. HUD establishes and approves rental charges and Utility allowances on the form. The owner is responsible for notifying tenants of the approved rents.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
16,000		1		0.33		5,280

Total Estimated Burden Hours: 5,280.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 11, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–20920 Filed 8–16–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–13]

Notice of Proposed Information Collection for Public Comment for the Public and Indian Housing Drug Elimination Technical Assistance Program (DETAP) Consultant Services—Application Kit

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 16, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642 extension 4128, for copies of the proposed forms and other available documents [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of response.

This Notice also list the following information:

Title of Proposal. Public and Indian Housing Drug Elimination Technical Assistance Program (DETAP) Consultant Services—Application Kit.

OMB Control Number: 2577–0133

Description of the need for the information and proposed use: The DETAP provides not more than (30) billable days of technical assistance (TA) consultant services to assist public housing agencies (PHAs), Indian tribes and Tribally Designated Housing Entities (TDHEs), Resident Management Corporations (RMCs), Incorporated Resident Councils (RCs) and Resident Organizations (ROs) to improve the administration and effectiveness of the Public Housing Drug Elimination Program (PHDEP) grants. The program also assists eligible applicants in the elimination and reduction of drug and crime-related activities in their community. Eligible applicants submit a DETAP application, including forms, assurances, descriptive letter and certifications to HUD as outlined in the SuperNOFA published in the **Federal Register** dated February 24, 2000. HUD will accept, review, and approve accept DETAP applications on a first-come first serve basis until funds available under

this program are expended. Part 2: Skills Inventory, Form HUD–52354, Drug Elimination Technical Assistance Program, Consultant Application, is revised.

Agency form number, if applicable: HUD–52354.

Member of affected public: State, Local or Tribal Government, Not-for-profit institutions, business or other for-profit agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response: 1,500 respondents, one-time application, 20 hour average per response, 30,000 total reporting burden hours.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 11, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Drug Elimination Technical Assistance Program

Consultant Application

Public Housing Drug Elimination Technical Assistance (TA) Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0133 (exp. 6/30/2000)

Public reporting burden for this collection of information is estimated to average 8 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. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Completion of this form is voluntary, but if you wish to provide technical assistance, it will ensure that your primary areas of interest/expertise are recorded. Data collected is publicly available. The collection of this information is authorized by Sections 23(c) and (g) of the U.S. Housing Act of 1937 as amended by Section 554 of the Cranston-Gonzales National Affordable Housing Act, P.L. 101-625.

Privacy Act Statement: The U.S. Housing Act of 1937, as amended, authorizes the Department of Housing & Urban Development (HUD) to collect all the information on this form. The Housing & Community Development Act of 1987, 42 U.S.C 3543 authorizes HUD to collect Social Security Numbers (SSN). The information will used to help manage the number and quality of consultants participating in the program. Specifically, the information will allow HUD to categorize consultants by field of expertise, geographic location, check references, and determine daily fees. The SSN is used as a unique identifier. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Failure to provide the information could result in HUD's denial of proposed management or fees or cancellation of management contracts for noncompliance with HUD procedures. Providing the SSN is mandatory, and failure to provide it could affect your participation in HUD programs.

Please answer all the following questions. Part 1 asks for your name and other personal information and your business mailing address. Part 2 requests you identify from a list your specific capabilities and skills. Part 3 requests information about your references and background.

Part 1: Personal Information

Prefix	Last Name	First Name	Social Security Number

Company Name	Street Addresss	City, State & Zip Code

Business Phone (Include Area Code)	Business Fax (Include Area Code)	E-mail Address

Part 2: Skills Inventory

Please identify the types of projects you feel you would be most effective in providing technical assistance. Refer the the categories on the back of this form. These categories are refined further into specific Skill Areas. Please review the categories listed, and then list the specific Skill Areas (eg.A101, B203) which best fits your capabilities and interests in the spaces provided below: **Please choose no more than 12.**

Skill 1	Skill 2	Skill 3	Skill 4	Skill 5	Skill 6	Skill 7	Skill 8	Skill 9	Skill 10	Skill 11	Skill 12

Part 3: Work References (Please list at least 3 references)

Name and Full Street Address of Reference	City, State, and Zip Code	Phone Number (Include Area Code)
1.		
2.		
3.		

Part 4: Background

Do you have experience working with persons who(Check all that apply):

- ☐ speak only Spanish?
- ☐ are Native Americans?
- ☐ speak only Asian language(s)?

Are you fluent in any other languages other than English? If so please indicate _____

Do you have a criminal record/ Yes ☐ No ☐ Having a criminal record may not prevent you from participating in the program.

If you checked "Yes," please explain: (attach additional information if necessary.)

Have you completed all parts of this form? Yes ☐ No ☐

Have you attached your resume? Yes ☐ No ☐

Have you attached your rate justification? Yes ☐ No ☐

Incomplete applications will be returned

Previous editions are obsolete

form **HUD-52354** (6/28/2000)

[FR Doc. 00–20921 Filed 8–16–00; 8:45 am]

BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE PRT–031707

The applicant requests a permit to import one male captive born Black-footed cat (*Felis nigripes*) from the Johannesburg Zoo, Parkview, Republic of South Africa, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: University of California—Davis, Davis, CA, PRT–031804

The applicant requests a permit to import serum samples of Oriental white stork (*Ciconia ciconia boyciana*), red-crowned crane (*Grus japonensis*) and white-naped crane (*Grus vipio*) from Japan for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Mark B. Misner, Germantown, TN, PRT–031759

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Columbus Zoo, Powell, OH, PRT–028352

The applicant requests a permit to import two female Pygmy chimpanzee (*Pan paniscus*) for the purpose increasing the genetic diversity in the global population.

Applicant: National Zoological Park, Washington, DC, PRT–007870

The applicant requests a permit to import one male and one female captive-born giant pandas (*Ailuropoda melanoleuca*) from Wolong, China for the purpose of scientific research and enhancement of the survival and propagation of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 11, 2000.

Charlie Chandler,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–20975 Filed 8–16–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On June 15, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37568, that an application had been filed with the Fish and Wildlife Service by Felix G. Widlacki, Orland Park, IL, for a permit (PRT–028560) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Norwegian Bay polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 26, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32120, that an application had been filed with the Fish and Wildlife Service by Peter M. Shaw, Foristell, MO, for a permit (PRT–027207) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 26, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 22, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32120, that an application had been filed with the Fish and Wildlife Service by Samuel Francis, Goshen, KY, for a permit (PRT–027386) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on July 26, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37568, that an application had been filed with the Fish and Wildlife Service by Robert McCreary, Newaygo, MI, for a permit (PRT–028559) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 1, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36454, that an application had been filed with the Fish and Wildlife Service by George H. Brimhall, Paradise Valley, AZ, for a permit (PRT–027988) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 2, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 15, 2000,a notice was published in the **Federal Register**, Vol. 65, No. 116, Page 37569, that an application had been filed with the Fish and Wildlife Service by Douglas L. Buell, Michigan City, IN, for a permit (PRT–028561) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Norwegian Bay polar bear population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 3, 2000, as authorized by the provisions of the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36454, that an application had been filed with the Fish and Wildlife Service by Stanley S. Gulub, Chester, NJ for a permit (PRT–028044) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on August 7, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 8, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 111, Page 36454, that an application had been filed with the Fish and Wildlife Service by Gordon F. Kolling, Hermosa, SD for a permit (PRT–028044) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on August 7, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: August 11, 2000.

Charlie Chandler,

International Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–20976 Filed 8–16–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–HN–003E]

Notice of Implementation of Level 4 Fire Restrictions in Western and Central Montana; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Bureau of Land Management Montana State Director Mat Millenbach has initiated Level 4 fire restrictions, effective August 15, 2000, on the BLM lands in the Montana counties listed below. These restrictions strengthen and encompass those initiated last week on BLM lands and are in response to the regions's increasing fire potentials, the current level of fire activity, and the current scarcity of fire suppression resources.

The Level 4 fire restrictions apply to BLM lands in: Lincoln, Sanders, Flathead, Lake, Glacier, Toole, Pondera, Teton, east Lewis and Clark, Cascade, Meagher, Broadwater, Jefferson, Beaverhead, Madison, Gallatin, Park, Sweetgrass, Stillwater, and Carbon counties.

With Level 4 fire restrictions, the following activities are prohibited on BLM managed lands:

Building, maintaining, attending, or using a campfire or any open fire is prohibited (43 CFR 9212.1(h)). Petroleum fueled stoves and lanterns or heating devices are not considered fires, provided such devices meet Fire Underwriters' specifications for safety.

Smoking, except within an enclosed vehicle or building; at an improved place of habitation; at a developed, designated recreation site or campground; or while stopped in an area at least 3 feet in diameter that is cleared of all flammable material, is prohibited (43 CFR 9212.1(h)).

Use of chainsaws or other equipment with internal combustion engines for felling, bucking, skidding/wood cutting, road-building, and other high fire risk operations is prohibited. Exceptions are helicopter yarding and earth moving on areas of cleared and bare soil. Sawing incidental to loading operations on cleared landings is not necessarily restricted (43 CFR 9212.1(h)).

Welding, blasting (except seismic operations confined by ten or more feet of soil, sand or cuttings), and other activities with a high potential for causing wildland fires are prohibited (43 CFR 9212.1(h)).

A patrol is required for a period of one hour following the cessation of all work activity. The patrolperson's responsibilities include checking for compliance with required fire precautions.

Possessing or using motorized vehicles such as, but not limited to cars, trucks, trail bikes, motorcycles and all terrain vehicles off of cleared roads is prohibited except for persons engaged in a trade, business or occupation in the area. Cleared roads are defined as roads at least 12′ wide and cleared of vegetation shoulder to shoulder (43 CFR 9212.1(h)).

These restrictions are in addition to the following area closures which became effective August 5, 2000. Specific closures include: Departure Point Campground at Holter Lake T 14 N, R 3 W, Sec 23, NE¼; Sleeping Giant Area including BLM lands along the west shore of Holter Lake from Jackson Peak to the southern boundary across from Mann Gulch and east to I–15; Galena Gulch T6N, R5W, Sec 23, SE¼ and Crow Creek Campgrounds T6N, R1W, Sec 25, N½; and Spokane Hills including BLM lands on the west side of Canyon Ferry Reservoir from Canyon Ferry Dam south to the White Earth Recreation site and west to Highway 287.

Exemptions to the above prohibitions are allowed only for any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty, or persons with a permit or written authorization allowing the otherwise prohibited act or omission.

Authority for these prohibitions is pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), Sections 302(b) and 301(a); and Title 43 of the Code of Federal Regulations, Part 9210 (Fire Management), Subpart 9212 (Wildfire Prevention). These restrictions will become effective at 1 a.m., Mountain Daylight Time, Tuesday, August 15, 2000, and will remain in effect until rescinded or revoked.

Violation of this prohibition is punishable by a fine of not more than $1,000 or imprisonment for not more than 12 months, or both.

DATES: Restrictions go into effect Tuesday, August 15, 2000, and remain in effect until further notice.

ADDRESSES: Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: August 14, 2000.

Mat Millenbach,

State Director.

[FR Doc. 00–21046 Filed 8–15–00; 11:28 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Management Plan/Special Resource Study/Abbreviated Final Environmental Impact Statement Shenandoah Valley Battlefields National Historic District, VA

AGENCIES: Shenandoah Valley Battlefields National Historic District Commission and National Park Service; Department of the Interior.

ACTION: Notice of availability.

Notice: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District

Commission and the National Park Service announce the availability of a Management Plan/Special Resource Study/Abbreviated Final Environmental Impact Statement (Plan/SRS/EIS) for the Shenandoah Valley Battlefields National Historic District.

A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the Plan/SRS/FEIS.

FOR FURTHER INFORMATION CONTACT: Shenandoah Valley Battlefields NHD Commission, P.O. Box 897, 8895 Collins Drive, New Market, VA 22844, (888) 689–4545.

Dated: August 10, 2000.

Marie Rust,

Northeast Regional Director, National Park Service Director.

[FR Doc. 00–20935 Filed 8–16–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Remedial Design/Remedial Action Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Under Section 122(d) and (i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. § 9622(d) and (i), notice is hereby given that on August 4, 2000 a proposed Remedial Design/Remedial Action Consent Decree (''RD/RA consent Decree'' or ''Decree'') in *United States* v. *Gateway Forest Products, Inc. et al.,* Civil Action No. A00–225 CV was lodged with the United States District Court for the District of Alaska.

In this action, brought against Gateway Forest Products, Inc., Ketchikan Pulp Company (''KPC'') and Louisiana-Pacific Corporation (''L–P'') (collectively, ''defendants'') pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613, the United States is seeking recovery of its past response costs, performance of remedial action by the defendants, and a declaration of the defendants' liability for further response costs associated with the Ketchikan Pulp Company Superfund Site (''the Site''). The Site is located approximately three miles northeast of Ketchikan, Alaska in and along the shoreline of Ward Cove.

The RD/RA Consent Decree requires defendants to implement the remedial actions selected by EPA for both the Marine and Uplands Operable Units of the Site on March 29, 2000 and June 7, 2000, respectively. The estimated cost of implementing the remedial actions is slightly more than $6.1 million. The Decree also resolves the government's claims for past response costs by requiring KPC and L–P to reimburse the Hazardous Substances Superfund in the amount of $371,057.00. It provides further for payment of future response costs, *i.e.,* those associated with overseeing implementation of the remedial actions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the RD/RA Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Gateway Forest Products, Inc. et al.,* D.J. Ref. 90–11–3–1726.

The proposed Decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 222 West Seventh Avenue, Room 253, Anchorage, Alaska 99513–7567, and at U.S. EPA Region 10, Hazardous Waste Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the RD/RA Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy of the Decree, please enclose a check in the amount of $137.25 (25 cents per page reproduction cost) made payable to the Consent Decree Library. Alternatively, a copy exclusive of exhibits may be requested and paid for with a check in the amount of $20.75 made payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 00–20888 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed amended consent decree in *United States* v. *JMB/Urban Development Company*, S.D. Ohio, Civ. No. C2–92–976, was lodged with the United States District Court for the Southern District of Ohio on August 9, 2000. This proposed Amended Consent Decree concerns a complaint filed by the United States of America against JMB/Urban Development Company, and Land at Sawmill Place Limited Partnership, pursuant to section 301 of the Clean Water Act, 33 U.S.C. 1311, to obtain injunctive relief from the Defendants for alleged unauthorized wetland filling activities at the Sawmill Road site in Columbus, Ohio.

The proposed Amended Consent Decree requires creation and maintenance of 37.3 acres of jurisdictional wetlands, and integration of the site into a 75-acre environmental and educational area.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Daniel R. Dertke, Senior Attorney, Environmental Defense Section, Environment and Natural Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *JMB/Urban Development Company*, DJ #90–5–1–1–4097.

The proposed Amended Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Ohio, 260 U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio. In addition, the proposed Consent Decree may be viewed on the World Wide Web at http://www.usdoj.gov/enrd/enrd-home.html.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 00–20887 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on March 1, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Abpac Inc., Phoenix, AZ; Celestica Limited, Kidsgrove, UNITED KINGDOM; and Interconnection Technology Research Institute (''ITRI''),

Austin, TX; have been added as parties to this venture. Also, VLSI Technology, Inc., San Jose, CA; and Kyrel EMS Oyj, Kyroskoski, FINLAND have been dropped as parties to this venture. IMC, Linksping, SWEDEN has changed its name to Acreo.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on August 31, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20894 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advancement of In Situ Bioremediation Technologies

Notice is hereby given that, on February 14, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advancement of *In Situ* Bioremediation Technologies has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ICI, Americas, Inc., Wilmington, DE and Beak International, Inc. which since has been acquired by GeoSyntec Consultants, Inc., Boca Raton, FL have been added as parties to this venture. Monsanto Company, St. Louis, MO has been dropped as a party to this venture. Also, Ciba Geigy Corporation, Ardsley, NY has changed its name to Ciba Specialty Chemicals, Toms River, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advancement of *In Situ* Bioremediation Technologies intends to file additional written notification disclosing all changes in membership.

On December 13, 1994, Advancement of *In Situ* Bioremediation Technologies filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1995 (60 FR 7214).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20891 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

Notice is hereby given that, on March 15, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB, a party to IPACT–II, changed its name to AstraZeneca AB, Sodertalje, SWEDEN; and Rhone-Poulenc Rorer Pharmaceuticals, Inc. and Hoechst Aktiengeselschaft, each a party to IPACT–II, changed their names to Aventis Pharma AG, Frankfurt am Main, GERMANY as the result of a corporate merger between their respective holding companies. The membership interest of Fisons plc in IPACT–II also has been transferred to Aventis Pharma AG as a result of this merger.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II) intends to file additional written notification disclosing all changes in membership.

On February 21, 1991, International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on March 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20892 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFR–134a (IPACT–I)

Notice is hereby given that, on March 15, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFR–134a (IPACT–I) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB, a party to IPACT–I, changed its name to AstraZeneca AB, Sodertalje, SWEDEN; and Rhone-Poulenc Rorer Pharmaceuticals, Inc., a party to IPACT–I, changed its name to Aventis Pharma AG, Frankfurt am Main, GERMANY as a result of a corporate merger involving its holding company. The membership interest of Fisons plc in IPACT–I also has been transferred to Aventis Pharma AG as a result of the merger.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a

(IPACT–I) intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on December 3, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 19, 1998 (63 FR 8477).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20893 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum (''OIF'')

Notice is hereby given that, on March 2, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Optical Internetworking Forum (''OIF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Blaze Network Products, Dublin, CA; Centre Comunicacions Avancades Banda, Catalunya, Spain; Computer & Communications Research Labs, Hsin Chu, TAIWAN; Huawei Technologies, Shenzhen, PEOPLES REPUBLIC OF CHINA; Information & Communications University, Daejon, SOUTH KOREA; Integrated Device Technology, Santa Clara, CA; Japan Radio Co., Yokosuka, JAPAN; LAN-hopper Systems, Norcross, GA; Maker Communications, Framingham, MA; Microsoft Corporation, Redmond, WA; NASA Ames Research Center, Mountain View, CA; PhotonEx, Bedford, MA; Redfern Broadband Networks, Sydney, AUSTRALIA; Royal KPN, The Hague, NETHERLANDS; Samsung, Suwon, SOUTH KOREA; Siara Systems, Mountain View, CA; Telecom Italia, Rome, ITALY; Telefonica de Espana, Madrid, SPAIN; Telia AB, Farsta, SWEDEN; Terago Communications, Plymouth, MN; TTC, Germantown, MD; VTT Information Technology, Espoo, FINLAND; Wind, Rome, ITALY have been added as auditing members. Altera, San Jose, CA; ANDO Corporation, San Jose, CA; Conexant, Boulder, CA; Cypress Semiconductor, San Jose, CA: ETRI, Taejeon, SOUTH KOREA; Extreme Networks, Santa Clara, CA; General Dynamics, Whippany, NJ; Gore & Associates, Austin, TX; IBM Corporation, Waltham, MA; Infineon Technologies, Cupertino, CA: JDS Uniphase, Nepean, Ontario, CANADA; Korea Telecom, Seoul, SOUTH KOREA; LANCAST, Nashua, NH; Mitsubishi Electric Corporation, Kanagawa, JAPAN; Network Associates, Santa Clara, CA; Photonetics, Peabody, MA; SITA Equant, Valbonne, FRANCE; Toshiba Corporation, Tokyo, JAPAN; Transwitch Corporation, Shelton, CT; Vitesse Semiconductor, Framingham, MA have been added as principal members. Accelerant Networks, Beaverton, OR; Algety Telecom, Lannion, FRANCE; Alidian Networks, Los Altos, CA; Appian Communications, Foxborough, MA; Axsun Technologies, Billercia, MA; China Advanced Info-Optical Network, Beijing, PEOPLES REPUBLIC OF CHINA; Chip2Chip, San Jose, CA; Chromisys, Sunnyvale, CA; Cielo Communications, Broomfield, CO; Coretek, Wilmington, MA; Coriolis Networks, Foxborough, MA; Corvia Networks, Santa Clara, CA; Crescent Networks, Chelmsford, MA; CyOptics, Los Angeles, CA; Equipe Communications, Westford, MA; Extreme Packet Devices, Kanata, Ontario, CANADA; Focused Research, Madison, WI; Harris & Jeffries, Dedham, MA; Internet Research Institute, Tokoyo, JAPAN; IronBridge Networks, Lexington, MA; LightLogic, Santa Clara, CA; Luminous Networks, San Jose, CA; Multilink Technology Corporation, Santa Monica, CA; Nanovation, Miami, FL; Network Elements, Beaverton, OR; New Access Communications, San Jose, CA; NewPort Communications, Irvine, CA; Novanet, Raanana, ISRAEL; Optobahn, Torrance, CA; PentaCom, Herzliyya, ISRAEL; PicoLight, Boulder, CO; Quantum Bridge, North Andover, MA; Sirocco Systems, Wallingford, CT; Solidum Systems Corporation, Scotts Valley, CA; SpectraSwitch, Santa Rosa, CA; TELE-WORX, Garland, TX; Trellis Photonics, Carmiel, ISRAEL; US Conec, Hickory, NC; Vivace Networks, San Jose, CA; Xros, Sunnyvale, CA; Xtera Communications, Sunnyvale, CA; YAFO, Columbia, MD have been added as small principal members. Allied Signal, Morristown, NJ has changed from principal member to auditing member. Chiaro Networks, Jerusalem, ISRAEL; Dynarc, Kista, SWEDEN; and Lunx, Sunnyvale, CA have changed from auditing members to small principal members. ECI Telecom, Petah-Tikua, ISRAEL; and Fujikura, Sakura-Shi, JAPAN have changed from auditing members to principal members. Virtual Photonics, Berlin, GERMANY has changed from small principal member to auditing member. Bellcore, Red Bank, NJ has changed its name to Telcordia Technologies; Hewlett-Packard, San Jose, CA has changed its name to Agilent Technologies, Osicom Technologies, San Diego, CA has changed its name to Sorrento Networks; Ryan Hankin Kent, San Francisco, CA has changed its name to RHK. Wandel & Goltermann, Eningen, GERMANY has changed it name to Wavetek Wandel Goltermann. Argon Networks, Littleton, MA has merged into Siemens, Munich, GERMANY; Ascend Communications, Westford, MA has merged into Lucent Technologies, Holmdel, NJ; Cerent Corporation, Petaluma, CA has merged into Cisco Systems, San Jose, CA; Cimaron Communications, Andover, MA has merged into AMCC, San Diego, CA; Fore Systems, Warrendale, PA has merged into Marconi Communications, Genova, ITALY, JDS Fitel, Nepean, Ontario, CANADA has merged into JDS Uniphase, Nepean, Ontario, CANADA; Uniphase Corporation, Bloomfield, CT has merged into JDS Uniphase, Nepean, Ontario, CANADA; Lightera Networks, Cupertino, CA and Monterey Networks, Richardson, TX have merged into Cisco Systems, San Jose, CA; Nexabit, Marlborough, MA has merged into Lucent Technologies, Holmdel, NJ; and Reltec Corporation has merged into Marconi Communications, Genova, ITALY. Also, AMP, Inc., Harrisburg, PA; Applied Fiber Optics (AFO), Fremont, CA; Bandwidth Unlimited, Hayward, CA; British Telecommunications, London, UNITED KINGDOM; Giga, Thousand Oaks, CA; Indiana University, Bloomington, IN; Los Alamos National Labs, Los Alamos, NM; Mayan Networks, Sunnyvale, CA; Molecular OptoElectronics Corp., Watervliet, NY; MRV Communications, Chatsworth, CA; New Focus, Santa Clara, CA; Northchurch Communications Inc., Andover, MA; Open Networks Engineering, Ann Arbor, MI; Pipelinks, Inc., Santa Clara, CA; SDL, San Jose, CA; Stratum One Communications, Santa Clara, CA; Symmetricom, San Jose, CA; Terabit Networks, Los Altos, CA; Uniant, Santa Clara, CA; University of Kansas, Lawrence, KS; and USC-

Information Sciences Inst., Arlington, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on February 25, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28520).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20890 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Advanced Reciprocating Engine Systems (''ARES'')

In Notice document 99–13292 appearing on page 28521 in the issue of Wednesday, May 26, 1999, make the following corrections: In the second column, heading of Notice, fifth line, and in the first paragraph, seventh line, ''Reciprocal'' should read ''Reciprocating''; in the second column, first paragraph, fifth line, ''§ 301'' should read ''4301''; in the third column, after the fourth line of the first paragraph, the following two paragraphs should be added: ''This program is also funded in part by the United States Department of Energy under government Contract No. DAAE 07–95–C–R081–PS013.''

''Membership in this program remains open, and Southwest Research Institute (''SwRI''): Advanced Reciprocating Engine Systems intends to file additional written notification disclosing all changes in membership or planned activities.''

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20889 Filed 8–16–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds for Fiscal Year 2001 and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. OSHA will make available approximately $4.7 million in grant funds in fiscal year 2001 (pending enactment of the Agency's fiscal year 2001 appropriations bill) to eligible organizations for Institutional Competency Building grants under its Susan Harwood Training Grant Program.

Institutional Competency Building Grants are available to nonprofit organizations to assist them in developing and/or expanding their safety and health training, education and related assistance capacity over a three-to-five year competency building period.

Institutional Competency Building Grants will be awarded for up to five years. Annual funding in subsequent years will be dependent on the grantee's satisfactory performance and the availability of funds. There is approximately $4.7 million available for this program and an average Federal award will be $250,000. A minimum non-Federal matching share of 10% is required for the first year of the grant. The required non-Federal matching share will be increased by 5% each subsequent year of the grant.

The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice. Separate grant applications must be submitted by organizations interested in applying for more than one grant.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

DATES: Applications must be received by October 27, 2000.

ADDRESSES: Submit grant applications to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail cindy.bencheck@osha.gov.

SUPPLEMENTARY INFORMATION:

What is the Purpose of the Harwood Training Grant Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses, and particularly vulnerable workers. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its Strategic Plan, or as part of an OSHA special emphasis program.

Grantees are expected to provide occupational safety and health services, develop safety and health training and/or educational programs, recruit workers and employers for the training, and conduct the training. Grantees are also expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What are the Requirements for the Institutional Competency Building Grants?

Nonprofit organizations that serve clients nationally or in multiple states, *i.e.*, five or more states, and provide or plan to provide safety and health training, education and services are eligible to apply for these Institutional Competency Building grants. Preference will be given to organizations that can reach and serve one or more categories of workers within the target audience.

Institutional Competency Building Grants may be funded for project periods of up to five years. Grant applicants must indicate the number of years, typically three-to-five, needed to fully integrate safety and health services into their organizations. Grantee organizations will be expected to establish or expand the occupational safety and health training, education and related assistance they provide to their clients. Grantees will be expected

to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training. Organizations also will be expected to institutionalize safety and health training, education and related services in their organizations in order to assist these workers on an ongoing basis and to ensure that the services will continue after the grant funding expires.

Grant applicants must provide a detailed budget and workplan describing planned activities for the first year of their competency building grant. A summary plan outlining the future development of their safety and health program must be provided as a part of the original application. The summary plan must clearly indicate the number of years, typically three-to-five, the organization will require grant funds in order to institutionalize safety and health services into its organization, the Federal grant funding levels being requested for each of those years, information about grant goals and activities for each year, and the organization's plans for continuing safety and health activities after the grant ends. The summary plan should be approximately four pages in length.

To be eligible to apply, organizations must meet the following criteria.

- Organizations must be nonprofit and serve workers nationally or in multiple states (five or more states).
- Organizations must provide or plan to provide safety and health training, education and services to workers. Preference will be given to organizations that propose to reach and serve workers from one or more of the following target audience groups.

a. Vulnerable workers: entry-level workers, immigrants, migrants, non-English speaking workers, illiterate workers, and recently employed inner city youth.

b. Small business employers and employees. A small business has 250 or fewer workers.

c. Workers who are employed in jobs with high risk activities or hazards or who are affected by new OSHA standards.

Applicants may propose safety and health topics for their programs that will meet the needs of their target audience. However, preference will be given to applicants that propose programs addressing one or more of OSHA's Strategic Plan topics, target industries, or other agency priorities, such as ergonomics.

OSHA's Strategic Plan contains strategic goals to improve workplace safety and health for all workers, change the workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and to secure public confidence through excellence in the development and delivery of OSHA's programs and services. OSHA's intent is to reduce the number of worker injuries, illnesses and fatalities by focusing nationwide attention and Agency resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries, and the most hazardous workplaces. The Susan Harwood Training Grants Program is one of the mechanisms OSHA is using to achieve its strategic goals. Information about OSHA's Strategic Plan is available on OSHA's web site at *www.osha.gov* in the About OSHA category.

Organizations should develop relationships with OSHA Area Offices, Committees on Occupational Safety and Health (COSH), and other appropriate entities that can assist workers with safety and health problems. Applicants should describe how they will reach their target audience, their expertise in serving that audience, and how they will tailor their programs to meet the needs of their workers. Organizations should also tell us how they plan to conduct a follow-up evaluation with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

Who is Eligible To Apply for a Grant?

Any nonprofit organization is eligible to apply. State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

What can Grant Funds be Spent on?

Grant funds can be spent on the following:

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in training being conducted as a part of its grant program.

Are there restrictions on how grant funds can be spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include State and local government workers in non-State Plan States and working conditions exempted by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements are There?

1. *OSHA review of educational materials.* OSHA will review all educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review training curricula and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program will be included in this lending program. In addition, all materials produced by grantees must be

provided to OSHA in a digital format for possible publication on the Internet by OSHA.

2. *OMB and regulatory requirements.* Grantees are required to comply with the following documents.

• 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.

• OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.

• OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.

• OMB Circular A–133, which provides information about audit requirements.

3. *Certifications.* All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. *Matching share.* The program requires the grantee to provide a matching share of funds.

Institutional Competency Building Grant recipients must provide a minimum matching share of 10% of the total grant budget in the first year of the grant. This matching share may be in-kind, rather than a cash contribution, or a combination of cash and in-kind. For example, if the Federal share of the grant is $180,000 (90% of the grant), then the matching share will be $20,000 (10% of the grant), for a total grant of $200,000. The first year matching share may exceed 10%.

Grant recipients will be required to increase their non-Federal matching share by at least 5% each subsequent year of the grant. Competency building grant funding will be provided for up to five years. For example, if the grant recipient requests three years for a competency building grant, the non-Federal matching share minimum is 10% the first year, 15% the second year, and 20% the third year of the grant.

5. *Other.* In compliance with the President's Executive Orders 12876, 12900, 12928, and 13021, the grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

How are Applications Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.

OSHA will give preference to applications that:

• Address multiple safety and health subjects. For example, an application for an Institutional Competency Building Grant for the construction industry which stresses fall protection hazards as well as other safety and health issues that affect construction workers would be preferred over one that only addresses fall protection hazards.

• Train managers and/or supervisors in addition to workers.

• Serve multiple employers. OSHA is interested in reaching more than one employer with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed competency building program will provide ongoing safety and health training, education and services. Preference will be given to organizations serving one or more of the following target audiences.

i. Vulnerable workers.

ii. Small business employers and employees.

iii. Workers employed in high hazard industries and in industries affected by new OSHA standards.

b. The application describes the occupational safety and health services and training to be provided and provides a detailed plan to institutionalize those services within the organization. The first year budget and workplan is detailed and describes planned activities. In addition a summary plan indicates the number of years grant funding will be required to institutionalize safety and health services into the organization, the Federal grant funding being requested for each of those years, and information about program goals and activities for each of those years. Also, the application explains the plans the organization has to continue safety and health activities after the grant ends.

c. Organizations must serve members nationally or in multiple states (five or more states). Information about the geographical area to be served must be provided.

d. The application clearly estimates the numbers of workers and employers to be reached and/or trained, and describes the types of workers and employers to be reached and/or trained.

e. There is a plan to recruit program participants.

f. The planned activities and training are tailored to the needs and levels of the target audience.

g. If the proposal contains a train-the-trainer program, the following information must be provided:

—what ongoing support the grantee will provide to new trainers;
—the outline of the course curriculum that will be used by the new trainers to teach their students;
—a schedule of the courses to be conducted by the new trainers;
—the estimated number of students to be trained by these new trainers; and
—a description of how the new trainers will report back to the grantee about their classes and student numbers.

h. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development. There is also a plan to provide OSHA with copies of the materials developed, both in digital and hard-copy format. It is understood that these materials may be published on OSHA's Internet site.

i. There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

j. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health and/or its ability to develop and institutionalize its safety and health capacity.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects and/or in providing services to its target audience.

c. The staff to be assigned to the project have experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The proposed non-Federal matching share for the first year is at least 10% of the total budget for Institutional Competency Building Grant applications.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money is Available for Grants?

Once the fiscal year 2001 appropriations bill becomes law, approximately $4.7 million will be available for the Institutional Competency Building Grants. The average Federal award for first year activities will be $250,000. Grants will be awarded annually for competency building programs for periods of up to five years.

How Long are Grants Awarded for?

The multi-year Institutional Competency Building Grants program will fund selected organizations for a period of up to five years in order to assist them in developing their safety and health training, education and related assistance capacity. Annual refunding is dependent on the grantee's satisfactory performance, the availability of funds, and an increasing non-Federal matching share.

How do I get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at http://www.osha-slc.gov/Training/sharwood/sharwood.html.

When and Where are Applications to be Sent?

The application deadline is 4:30 p.m. Central Time, Friday, October 27, 2000.

Applications are to be sent to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications may be sent by fax to (847) 297–6636.

How will I be Told if my Application was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA may enter into discussions concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 10th day of August 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–20996 Filed 8–16–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. L–10667, et al.]

Proposed Exemptions; Kwik-Copy Corporation Employees Welfare Benefit Plan and Trust (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed

exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kwik-Copy Corporation Employees Welfare Benefit Plan and Trust (the Plan), Located in Cypress Creek, TX

[Application No. L–10667]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the cash sale by the Plan of certain recreational facilities (the Recreational Facilities) to the International Center for Entrepreneurial Development, Inc. (ICED), the parent of Kwik-Copy Corporation (Kwik-Copy),[1] the Plan sponsor, and a party in interest with respect to the Plan.[2]

This proposed exemption is subject to the following requirements:

(a) The proposed sale is a one-time transaction for cash.

(b) The fair market value of the Recreational Facilities has been determined by qualified, independent appraisers who propose to update their valuation of the Recreational Facilities on the date of the sale.

(c) On the date of the sale, the Plan receives an amount which is equal to the greater of the fair market value of the Recreational Facilities or the Plan's total acquisition costs.

(d) The Plan pays no fees or commissions in connection with the proposed sale.

Summary of Facts and Representations

1. The Plan was established by Kwik-Copy on February 25, 1983 to provide welfare benefits, such as health benefits and life insurance, to employee-participants of Kwik-Copy. The Plan constitutes a VEBA in which benefits are funded only when they are incurred. In this regard, employer contributions are immediately ''passed through'' to the Plan to pay current welfare benefits and there is no build-up of the trust corpus. As a VEBA, the Plan is exempt from taxation under section 501(c)(9) of the Code[3] and, as noted previously, it is not qualified under section 401(a) of the Code.[4]

As of January 31, 2000, the Plan had 120 participants and net assets available for benefits of approximately $313,431. The persons who have investment discretion over the Plan's assets are F. C. Hadfield, Chairman of the Board of ICED, and Stephen B. Hammerstein, President of ICED. Both Messrs. Hadfield and Hammerstein also serve as the Plan trustees (the Trustees).

2. Kwik-Copy, the Plan sponsor, is the franchiser of printing centers in various parts of the world. It conducts business under the principal trademarks ''Kwik Copy Printing'' and ''Kall Kwik Printing.'' Kwik-Copy assists individuals in acquiring and operating these printing centers. Kwik-Copy maintains its principal place of business at One Kwik-Copy Way, Cypress, Texas.

3. ICED also maintains its principal place of business at One Kwik-Copy Way, Cypress, Texas. Kwik-Copy is a wholly owned subsidiary of ICED. ICED is engaged in the business of franchising printing centers and other businesses.

4. On April 26, 1984, the Plan entered into a written agreement (the License) with Kwik-Copy which entitled the Plan to use a portion of a tract of land that is adjacent to the Kwik-Copy's offices for recreational purposes.[5] The entire tract of land is legally described as ''106.0936 acres of land out of the O.T. Taylor Survey, Abstract 759, and the Alexander Burnett Survey, Abstract 109, Harris County, Texas.'' The land is located along the west line of Telge Road at Cypress Creek in Northwest Harris County, Cypress Creek, Texas, and is owned in its entirety by Kwik-Copy. The portion of the vacant land that was allocated to the Plan for purposes of the License consisted of 0.4226 acres or 18,585 square feet.

The initial term of the License was 10 years, which commenced on May 1, 1984 and ended on April 30, 1994. On May 1, 1994, the License was extended by the parties for an additional 10 year term, which will end on April 30, 2004. The current License term may also be extended again by the parties unless the Plan gives Kwik-Copy three months advance notice of its intention to terminate the License arrangement.

Since its execution, the License has required the Plan to pay Kwik-Copy $1.00 in annual consideration each January 1. However, no such payments have ever been made by the Plan.

The License requires Kwik-Copy to keep the underlying property in good order, make all repairs and take such other actions as may be necessary or appropriate for the maintenance of such property. In addition, Kwik-Copy is required to keep the property insured and it has named both itself and the Plan as the insureds under such policy.

4. Between 1984 and 1989, the Trustees had the Recreational Facilities constructed on the parcel of land that was subject to the License. The Recreational Facilities consist of a cafeteria, swimming pool and tennis courts, and they constitute the sole assets of the Plan. The Recreational Facilities were constructed in order to provide recreational benefits to participants pursuant to applicable provisions under the Plan.[6] In this regard, section 8.16(a) of the Plan document expressly states that—

> Participants shall be entitled to the use of a recreation and vacation facility to be acquired or constructed by the Trustees within the State of Texas with Trust assets. Said facility, which shall be owned by the Trustees and subject to the Trustees' control and disposition, shall provide Participants with healthy activities of a nature tending to encourage relaxation and thus assist in combating fatigue by the Participants, thereby protecting against contingencies interrupting or impairing Participants' earning power. It is intended that said facility provide recreational benefits such as tennis

[1] Unless otherwise noted, Kwik-Copy and ICED are together referred to as the Applicants.

[2] Because the Plan is a voluntary employees' beneficiary association trust (VEBA), it is not qualified under section 401 of the Code. Therefore, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, the Department is assuming, for purposes of this proposal, that there is jurisdiction under Title I of the Act pursuant to section 3(1) of the Act.

[3] Section 501(c)(9) of the Code provides an exemption from federal taxation for a VEBA which provides for the payment of life, sick, accident, or other benefits to the members of such VEBA or their dependents or their designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

[4] Section 401(a) of the Code sets forth the qualification requirements for pension, profit sharing and stock bonus plans and prescribes special rules thereunder.

[5] In a letter dated October 17, 1983 to the Internal Revenue Service regarding the Plan's tax-qualified status, one of the former Trustees, Mr. Joe A. Lambert, confirmed that Kwik-Copy would own the underlying land since property values in the Houston area had appreciated substantially and a sale of the underlying land to the Plan would have ultimately increased the cost of the Recreational Facilities that are described herein and reduced the amount of cash needed to provide other benefits to Plan participants.

[6] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, and solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. However, in this proposed exemption, the Department expresses no opinion on whether the Plan's investment in the Recreational Facilities has satisfied the requirements of section 404(a)(1) of the Act or has otherwise violated certain fiduciary responsibility provisions of Part 4 of Title I of the Act.

courts, swimming pool(s), a fishing pond, billiard and ping-pong tables, etc.

5. The Trustees caused the Recreational Facilities to be constructed on behalf of the Plan based upon cash contributions that the Plan received from Kwik-Copy and for which Kwik-Copy took corresponding tax deductions. In this regard, Kwik-Copy contributed $505,434 to the Plan for the construction of the cafeteria building, $63,128 for the construction of the swimming pool and $22,714 for the construction of the tennis courts, thereby bringing the aggregate contribution to the Plan for the construction of the Recreational Facilities to $591,276. This total contribution for the Recreational Facilities was in addition to amounts that were contributed by Kwik-Copy to the Plan for medical and life insurance benefits.

The Plan has incurred no out-of-pocket expenses in connection with its ownership of the Recreational Facilities nor has it received any additional income. All maintenance expenses that are associated with the Recreational Facilities have been paid by Kwik-Copy.

According to the Applicants, under Texas law, the Plan's title to the Recreational Facilities has not merged into the underlying real property owned by Kwik-Copy. Therefore, the Recreational Facilities have not become fixtures.[7] Also, the Applicants represent that under applicable Treasury Regulations,[8] the Recreational Facilities cannot revert to Kwik-Copy on the Plan's termination because the assets must be expended to provide benefits to Plan participants.

6. During 1998, efforts were underway to sell either ICED or Kwik-Copy to unrelated parties. Although there was no purchaser, the Applicants believe that this transaction could resurface at any time. Therefore, in the interim, the Applicants propose to have ICED purchase the Recreational Facilities from the Plan and hereby request an administrative exemption from the Department for such transaction. The Applicants represent that the sale proceeds will be used to satisfy future health claims of the participants until such amounts have been exhausted. Then, the Applicants contemplate terminating the Plan in order to facilitate the sale of Kwik-Copy's entire business premises, including the Recreational Facilities, to an unrelated party.

7. The Recreational Facilities were initially appraised by Gary Brown, M.A.I., President of Gary Brown & Associates, Inc. of Houston, Texas. Mr. Brown is an independent fee appraiser who has been actively involved, among other things, in real property valuation, lease negotiations and rendering expert witness testimony. Mr. Brown is unrelated to Kwik-Copy, ICED and their principals.

In an appraisal report dated February 15, 1998, Mr. Brown placed the fair market value of the Recreational Facilities in an ''as is'' condition at $280,000 as of February 3, 1998. In valuing the Recreational Facilities, Mr. Brown utilized the Cost Approach to valuation due to the ''special use'' nature of the Recreational Facilities, the fact that the Recreational Facilities are not replaceable through purchase or lease, and the lack of sales of comparable properties by which to assess fair market value. Mr. Brown also determined that the ''highest and best use'' of the Recreational Facilities was their ''value in use'' and that an individual component sale would result in a ''liquidation value'' for such properties.

In an addendum to the appraisal report dated August 11, 1998, Mr. Brown again concluded that the fair market value of the Recreational Facilities was $280,000. He noted that the Recreational Facilities were an integral part of Kwik-Copy's world headquarters and that these structures could not stand alone as a separate economic unit. Therefore, Mr. Brown emphasized that the ''highest and best use'' of the Recreational Facilities was in conjunction with the other improvements comprising Kwik-Copy's property.

In a full, updated appraisal report dated November 24, 1999, Mr. Brown and his colleague, Mr. Michael E. Gentry, Associate Appraiser, also a qualified, independent appraiser with Gary Brown & Associates, Inc., indicated that they had personally inspected the Recreational Facilities, conducted required investigations, gathered necessary data and analyzed the information in order to determine the appropriate fair market value. Messrs. Brown and Gentry noted that due to the specific use and design of the Recreational Facilities, it would take approximately 18 months to market the subject improvements to a limited number of potential purchasers. Therefore, on the basis of these findings, Messrs. Brown and Gentry placed the fair market value of the Recreational Facilities at $300,000 as of November 24, 1999, again using the Cost Approach to valuation.

8. The Applicants contemplate that the proposed sales price for the Recreational Facilities will be equal to the greater of the independently appraised value of such improvements as of the date of the sale or their total acquisition cost. The consideration will be paid by ICED in cash. In addition, Messrs. Brown and Gentry will be required to update their valuation of the Recreational Facilities on the day the sale is consummated. Further, the Plan will not be required to pay any real estate fees or commissions in connection with such transaction.

Thus, based upon the foregoing, because the $591,276 total cost for the Recreational Facilities is in excess of their $300,000 current fair market value, the Applicants state that ICED will pay the Plan the greater amount for such property.

9. In summary, the Applicants represent that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed sale will be a one-time transaction for cash.

(b) The fair market value of the Recreational Facilities has been determined by qualified, independent appraisers who will update their valuation of the Recreational Facilities on the date of the sale.

(c) On the date of sale, the Plan will receive an amount which is equal to the greater of the fair market value of the Recreational Facilities or the Plan's total acquisition costs.

(d) The Plan will pay no fees or commissions in connection with the proposed sale.

[7] The Applicants explain that Texas case law and not Texas statutory law governs whether property affixed to a parcel of land by a licensee remains the property of the licensee or becomes the property of the landowner upon the termination of the license. The Applicants represent that the general rule in Texas is that property affixed to the land of another under a license from the owner remains the personal property of the licensee, unless the licensee has intended otherwise. To illustrate this principle, the Applicants cite *Wright* v. *McDonnell*, 30 SW 907 (Tex. 1895), which involved buildings affixed to land.

In addition, the Applicants note that the line of Texas cases pertaining to the issue of whether personalty has merged into the dominant estate have all involved a dispute between a landowner and a licensee as to the ownership of certain property at the end of the license. The Applicants indicate that, in the present case, there is no such dispute or claim to that effect because Kwik-Copy has agreed that it does not, and will not, own the affixed assets at the end of the License. Thus, the Applicants conclude that the intent of the parties is that the Recreational Facilities are personalty owned by the Plan.

[8] The last sentence of Treasury Regulations Section 1.501(c)(9)–4(d) generally provides that if, upon termination of a VEBA, the VEBA's assets are distributed to its contributing employer, a prohibited inurement will exist and the VEBA will fail to qualify under section 501(c)(9) of the Code.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 30 days after the publication of the proposed exemption in the **Federal Register**. Notice will be given to active employees of Kwik-Copy by hand delivery and by first class mail to each participant who is not actively working for Kwik-Copy. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments with respect to the proposed exemption are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

DuPont Capital Management Corporation, Located in Wilmington, DE

[Exemption Application Nos.: D–10744 through D–10746]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[9]

I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to certain plans (the Former DuPont Related Plans), as defined in Section II(e), below, and an investment fund in which such plans have an interest (Investment Fund), as defined in Section II(k), below, provided that DuPont Capital Management Corporation (DCMC)has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) DCMC is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total assets, including in-house plan assets (In-house Plan Assets), as defined in Section II(g), below, under its management and control in excess of $100 million and either:

(1) shareholders' or partners equity, as defined in Section II(j), below, in excess of $750,000; or

(2) payment of all its liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, is unconditionally guaranteed by—a person with a relationship to DCMC, as defined in Section II(a)(1), below, if DCMC and such affiliate have, as of the last day of their most recent fiscal year, shareholders' equity, in the aggregate, in excess of $750,000;

(b) At the time of the transaction, as defined in Section II(m), below, the party in interest or its affiliate, as defined in Section II(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate DCMC as a manager of any of the Former DuPont Related Plans' assets, or

(2) Negotiate the terms of the management agreement with DCMC (including renewals or modifications thereof) on behalf of the Former DuPont Related Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[10] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[11] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[12] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, DCMC, and either DCMC, or (so long as DCMC retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by DCMC, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of DCMC, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither DCMC nor any affiliate thereof, as defined in Section II(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in DCMC is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Former DuPont Related Plans (including a fiduciary) solely by reason of providing services to the Former DuPont Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and

(3) Is neither DCMC nor a person related to DCMC, as defined in Section II(i), below;

(i) DCMC adopts written policies and procedures that are designed to assure

[9] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[10] 46 FR 7527, January 23, 1981.

[11] 48 FR 895, January 7, 1983.

[12] 47 FR 21331, May 18, 1982.

compliance with the conditions of the exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section II(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Former DuPont Related Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by DCMC in accordance with Section I(i), above, of this exemption; and

(k)(1) DCMC or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2), below, to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of DCMC and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than DCMC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section I(k)(2), below, of this exemption.

(2) Except as provided in Section I(k)(3), below, of this exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) any fiduciary of any of the Former DuPont Related Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Former DuPont Related Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Former DuPont Related Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and,

(E) any employee organization whose members are covered by such Former DuPont Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of DCMC or its affiliates or commercial or financial information which is privileged or confidential.

II. Definitions

(a) For purposes of Section I (a) and (b), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary, within the meaning of section 402(a)(2) of the Act, of a Plan, and an employer any of whose employees are covered by the plan, will be considered affiliates with respect to each other for purposes of Section I(b), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), below, of this exemption an ''affiliate'' of DCMC includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which DCMC is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which DCMC is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) ''Former DuPont Related Plans'' mean:

(1) CONSOL Inc. Employee Retirement Plan (the CONSOL Plan);

(2) the Pension Plan for Consolidation Coal Company Local 5400 Union Employees (the CONSOL Union Plan);

(3) the Investment Plan for Salaried Employees of CONSOL, Inc. (the CONSOL DC Plan);

(4) the Thrift Plan for Employees of Conoco, Inc. (the Conoco DC Plan);

(5) any plan the assets of which include or have included assets that were managed by DCMC, as an in-house asset manager (INHAM), pursuant to Prohibited Transaction Class Exemption 96–23 (PTCE 96–23) [13] but as to which PTCE 96–23 is no longer available because such assets are no longer held under a plan maintained by an affiliate of DCMC (as defined in Section II(c), above, of this exemption); and

(6) any plan (the Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of DCMC (as defined in Section II(c), above, of this exemption); provided that: (A) The assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund) with the assets of a plan or plans, described in Section II(e)(1)–(5), above; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such Fund, as measured on the day immediately following the commingling of their assets.

(f) ''Exemption audit'' of any of the Former DuPont Related Plans must consist of the following:

(1) A review of the written policies and procedures adopted by DCMC,

[13] 61 FR 15975 (April 10, 1996).

pursuant to Section I(i), above, of this exemption for consistency with each of the objective requirements of this exemption, as described in Section II(f)(5), below;

(2) A test of a representative sample of the subject transactions in order to make findings regarding whether DCMC is in compliance with:

(A) the written policies and procedures adopted by DCMC, pursuant to Section I(i), above, of this exemption; and

(B) the objective requirements of this exemption;

(3) A determination as to whether DCMC has satisfied the requirements of Section I(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by DCMC to assure compliance with each of these requirements:

(A) the requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and shareholders' or partners' equity;

(B) the requirements of Part I and Section I(d) of this exemption, regarding the discretionary authority or control of DCMC with respect to the asset of the Former DuPont Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former DuPont Related Plans to enter into the transaction;

(C) the transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, Section I(h)(2) to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) the transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) ''In-house Plan Assets'' means the assets of any plan maintained by an affiliate of DCMC, as defined in Section II(c), above, of this exemption and with respect to which DCMC exercises discretionary authority or control.

(h) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(i) DCMC is ''related'' to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in DCMC, or if DCMC (or a person controlling, or controlled by DCMC) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) The term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term, ''shareholders' '' or ''partners'' equity,'' means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) ''Investment Fund'' includes a single customer and pooled separate account maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of DCMC) is subject to the discretionary authority of DCMC.

(l) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this exemption is published in the **Federal Register** or a renewal that requires the consent of DCMC occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

Temporary Nature of Exemption

The Department has determined that the relief provided by this proposed exemption is temporary in nature. The exemption, if granted, will be effective upon the date the final exemption is published in the **Federal Register** and will expire on the day which is six (6) years from the date of such publication. Accordingly, the relief provided by this proposed exemption will not be available upon the expiration of such six-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such six-year period for continuing transactions entered into within the six-year period. Should the applicant wish to extend, beyond the expiration of such six-year period, the relief provided by this proposed exemption to new or additional transactions, the applicant may submit another application for exemption.

Summary of Facts and Representations

1. DCMC, a wholly owned subsidiary of DuPont, is organized as a Delaware corporation with its principal office in Wilmington, Delaware. DCMC is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 1998, DCMC had total assets under its management with an aggregate market value of approximately $20.7 billion. It is represented that DCMC either has shareholders' equity in excess of $750,000 or payment of all it liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, is unconditionally guaranteed by an affiliate of DCMC, as defined in Section II(a)(1) of this proposed exemption, if DCMC and such

affiliate have, as of the last day of their most recent fiscal year, shareholders' equity, in the aggregate, in excess of $750,000.

DCMC provides investment management services to employee benefit plans, including plans sponsored by DuPont and its subsidiaries and affiliates (the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital and commodity futures). DCMC primarily utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each plan. In this regard, DCMC uses the services of investment professionals employed by DuPont Pension Fund Investment (DPFI), a division of DuPont.

2. In July of 1997, DCMC replaced DPFI as investment manager for the assets of the DuPont Pension Trust Fund (the Trust). In this regard, DCMC represents that it qualified as an INHAM, as defined in section IV(a) of PTCE 96–23, and relied on the relief provided by that class exemption in connection with its management of the assets of the Trust.[14] As of December 31, 1997, the value of the assets held by the Trust was approximately $17.7 billion.

3. It is represented that CONSOL, Inc. (CONSOL) was a member of the DuPont Group prior to November 5, 1998. At that time, the Trust held the assets of the CONSOL Plan and the CONSOL Union Plan both of which are sponsored by CONSOL. As of December 31, 1997, approximately $184 million of the assets held by the Trust related to the CONSOL Plan and approximately $759,000 related to the CONSOL Union Plan. On November 5, 1998, DuPont divested substantially all of its holdings in CONSOL. As of March 3, 1999, the CONSOL Plan and the CONSOL Union Plan had approximately 6,703 and 44 participants and beneficiaries, respectively. Based on the success of DCMC's investment strategy and the long term experience with DCMC's investment professionals, as of June 1, 1999, CONSOL determined that it was in the best interest of the CONSOL Plan and the CONSOL Union Plan for DCMC to continue to manage the assets of such plans.[15]

As a result of the divestiture of CONSOL, the relief provided to DCMC, as an INHAM, pursuant to PTCE 96–23, ceased to be available with respect to DCMC's management of the assets of the CONSOL Plan and CONSOL Union Plan, because under section IV(a)of PTCE 96–23, after the divestiture DCMC was no longer an affiliate of the employer maintaining such plans. The applicant represents that during the period since June 1, 1999, DCMC has, in managing assets of the CONSOL Plan and the CONSOL Union Plan, investigated whether counterparties to proposed transactions involving the assets of such plans were parties in interest with respect to such plans. Further, DCMC has not authorized any such transactions with counterparties that were found to be parties in interest, unless a statutory or administrative exemption (other than PTCE 84–14 or PTCE 96–23) was available.

It is represented that prior to 1999, Conoco, Inc. (Conoco), a wholly-owned subsidiary of DuPont was a member of the DuPont Group. Accordingly, at that time the Trust held the assets of a non-contributory defined benefit plan (the DuPont Pension Plan) which covered substantially all of the employees of DuPont and its subsidiaries, including Conoco. Approximately 21,763 participants and beneficiaries of the DuPont Pension Plan were attributed to employees of Conoco and their beneficiaries. In September 1999, DuPont divested substantially all of its holdings in Conoco. On July 1, 2000, assets having a value of approximately $820,000,000 were transferred from the DuPont Pension Plan to a separate trust for the Retirement Plan of Conoco Inc. (The Conoco Plan), a qualified defined benefit pension plan covering substantially all of the employees of Conoco Inc. As a result of DuPont's divestiture of Conoco, the relief provided to DCMC, as an INHAM, pursuant to PTCE 96–23, ceased to be available with respect to DCMC's management of the assets of the Conoco Plan, because under PTCE 96–23, as of September 1999, DCMC no longer is an affiliate of the employer maintaining such plan. It is represented that during the period since July 1, 2000, all steps necessary to avoid violations of the Act have been taken by the Conoco Plan.

In addition to managing pension assets held in the Trust, DPFI, prior to 1997, also managed a portion of the assets of two defined contribution plans, the CONSOL DC Plan and the Conoco DC Plan. Subsequently, DCMC assumed the management of the assets of the CONSOL DC Plan and the Conoco DC Plan. It is represented that the assets of these plans have been managed by the same investment personnel both before and after the substitution of DCMC for DPFI. The investment management activities in the case of each of these plans involved the management of assets held in a fixed income fund that was one of the investment options available to participants in these plans. It is further represented that in managing the assets of the CONSOL DC Plan and the Conoco DC Plan, DCMC and DPFI have taken all steps necessary to avoid violations of the Act.

With respect to the CONSOL DC Plan, the substitution of DCMC for DPFI did not occur until CONSOL had ceased to be an affiliate of Dupont. With respect to the Conoco DC Plan, DCMC began managing the assets of the plan at a time when Conoco was still an affiliate of DuPont. However, it is represented that the INHAM audits required, pursuant to PTCE 96–23, did not cover the Conoco DC Plan. Accordingly, DCMC never managed the assets of either the CONSOL DC Plan or the Conoco DC Plan, as an INHAM, pursuant to PTCE 96–23.

Because the CONSOL DC Plan and the Conoco DC Plan were never managed by DCMC as an INHAM, these two plans do not fit within the definition of Former DuPont Related Plans, as set forth in Section II(e)(5) of this proposed exemption, nor does either plan fit within the definition of an Add On Plan, as set forth in this proposed exemption under Section II(e)(6). Therefore, the applicant has requested that the CONSOL DC Plan and the Conoco DC Plan be specifically included under the definition of Former DuPont Related Plans by listing each plan separately by name. The applicant believes that to the extent DCMC is appointed as an investment manager of the assets of the CONSOL DC Plan and the Conoco DC Plan, DCMC should have the same degree of flexibility in managing these assets as it will have with respect to the assets of the pension plans sponsored by CONSOL and Conoco which are also under the management of DCMC.

4. DCMC seeks an exemption which would provide appropriate relief for any prospective transactions with certain

[14] The Department expresses no opinion in this proposed exemption as to whether DCMC has met, or will continue to meet, the conditions necessary for relief under PTCE 96–23 for transactions with parties in interest with respect to the Trust, or whether DCMC qualifies or has qualified as an INHAM with regard to the management of the assets in the Trust.

[15] The Vice President for Human Resources of CONSOL represents that since 1988 the long term investment performance of DCMC and its predecessor, as manager of plan assets that were part of the Trust, compares favorably with other alternatives. In addition, the Director of Investment Services of DCMC represents that investment return on the Trust has exceeded the performance benchmark for seven of the eight years during the period since 1992.

parties in interest (as described in Section I(h), above) in order to manage, after the divestiture of CONSOL, the assets of the CONSOL Plan, the CONSOL Union Plan, the CONSOL DC Plan, and after the divestiture of Conoco, to manage the assets of the Conoco Plan and the Conoco DC Plan, subject to the conditions discussed herein. Further, DCMC requests relief which would permit it to manage the assets of other Former DuPont Related Plans. In this regard, the Former DuPont Related Plans covered by this exemption include, in addition to those plans specifically mentioned above: (1) Any plan, the assets of which have been managed by DCMC, as an INHAM, but as to which PTCE 96–23 is no longer available because such plan is no longer maintained by an affiliate of DCMC; and (2) any Add-On Plan that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of DCMC; provided certain conditions, as set forth in this proposed exemption are satisfied.

Given the large number of service providers with which the Former DuPont Related Plans engage, the breadth of the definition of ''party in interest'' under 3(14) of the Act, and the wide array of investment and related services offered by DCMC, it is represented that it would not be uncommon for DCMC, as investment manager, to propose transactions that involve parties in interest to one or more of the Former DuPont Related Plans. In this regard, the transactions for which DCMC seeks an exemption include, but are not limited to, sale and exchange transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities. It is anticipated that relief will most likely be necessary where DCMC has discretion over investments in real estate, mortgages, foreign currency, futures, commodities and over-the-counter options, as there is no other class exemption which would permit DCMC, as investment manager, to purchase property from, sell or lease property to, or borrow money from most parties in interest to the Former DuPont Related Plans.

Without the requested relief, DCMC would be unable to offer the full range of investment opportunities that were available to the Former DuPont Related Plans prior to divestiture, which could substantially reduce DCMC's overall effectiveness and adversely affect the Former DuPont Related Plans' investment returns. In the absence of the exemption, it would be necessary to examine each transaction to determine whether it might involve a party in interest.[16] Such examinations could prove burdensome for DCMC because of the myriad of persons that may be parties in interest as service providers to large plans, such as the Former DuPont Related Plans. Moreover, it is represented that certain transactions which would be beneficial to the Former DuPont Related Plans might involve parties in interest and be prohibited, thereby depriving such plans of a potentially favorable investment opportunity.

5. The proposed exemption will be modeled after Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[17] which, in general, permits various parties in interest with respect to an employee benefit plan to engage in a transaction involving plan assets, if the transaction is authorized by a qualified professional asset manager (QPAM) and if certain other conditions are met. Specifically, DCMC seeks an individual exemption for transactions that are described, pursuant to Part I of PTCE 84–14.[18] In this regard, Part I of PTCE 84–14 provides relief from the restrictions of section 406(a)(1)(A)–(D) of the Act and 4975(c)(1)(A)–(D) of the Code for transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a QPAM, provided certain conditions are satisfied. One such condition (the Diverse Clientele Test), as set forth in Part I(e) of PTCE 84–14, requires that:

> The transaction is not entered into with a party in interest with respect to any plan whose assets managed by QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof * * *) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction.

DCMC represents that, as of December 31, 1998, it met the definition of a QPAM, as set forth in Part V(a) of PTCE 84–14. With respect to the capitalization requirement, DuPont has agreed to unconditionally guarantee the payment of DCMC's liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, for any year that DCMC's shareholders' equity as of the last day of its preceding fiscal year falls below $750,000. Further, DCMC represents that it is an investment adviser registered under the Investment Advisers Act of 1940. In order to be a QPAM, a registered investment adviser must, among other requirements, have as of the last day of its most recent fiscal year total client assets under its management and control in excess of $50 million. The proposed exemption would include ''In-house Plan Assets,'' as defined in Section II(g), in the calculation of total assets under DCMC's management for purposes of meeting the assets under management test required herein (see Section I(a), above). DCMC represents that it currently manages assets, including In-house Plan Assets with a value in excess of $100 million.

In the absence of an individual exemption, DCMC is uncertain whether it would be deemed to satisfy the Diverse Clientele Test, as required for a QPAM to obtain relief for party in interest transactions, pursuant to PTCE 84–14 (see Part I(e) of PTCE 84–14). DCMC is concerned that the assets for which it serves as an INHAM are not ''client assets'' for purposes of serving as a QPAM for plan assets of Former DuPont Related Plans. In this regard, although DCMC manages the assets of the CONSOL Plan and CONSOL Union Plan which in the aggregate comprise substantially less than 20 percent (20%) of the total assets under its management, the remaining assets which DCMC manages consist entirely of plan assets for which DCMC acts as an INHAM. As a result, DCMC believes that the relief provided by PTCE 84–14 may not be available for the transactions which are the subject of this exemption.[19]

6. It is represented that the conditions of the proposed exemption provide safeguards for the protection of the rights of participants and beneficiaries of the Former DuPont Related Plans. In this regard, the proposed exemption incorporates all but one of the conditions found in PTCE 84–14. Specifically, except for the Diverse Clientele Test, DCMC represents that it will comply with the remaining conditions, as set forth in Part I of PTCE 84–14. Moreover, DCMC, although it

[16] As noted above, DCMC has investigated since June 1, 1999, whether the counterparties to proposed transactions involving the assets of the CONSOL Plan and the CONSOL Union Plan were parties in interest with respect to such plans. Further, with respect to the Conoco Plan (since July 1, 2000), the CONSOL DC Plan, and the Conoco DC Plan, DCMC and DPFI have taken all steps necessary to avoid violations of the Act.

[17] 49 FR 9494 (March 13, 1984), *as amended,* 50 FR 41430 (October 10, 1985).

[18] DCMC is not requesting an administrative exemption for the transactions described in Part II, Part III, and Part IV of PTCE 84–14.

[19] The Department expresses no opinion as to whether DCMC would qualify as a QPAM for purposes of PTCE 84–14 and Part I(e) following DuPont's divestiture of CONSOL and Conoco or with respect to any of the Former DuPont Related Plans or other unaffiliated plan.

will no longer be an INHAM with respect to the assets of the Former DuPont Related Plans, will remain subject to the procedural requirements of the INHAM class exemption, as set forth in PTCE 96–23. DuPont will be required to maintain written policies and procedures designed to ensure compliance with the objective requirements of the exemption and to retain an independent auditor experienced and proficient with the fiduciary provisions of the Act to conduct an exemption audit. It is the responsibility of the independent auditor to evaluate DuPont's compliance with such policies and procedures and to report annually its findings to each of the Former DuPont Related Plans.

7. Furthermore, the proposed exemption contains several additional conditions which are designed to ensure the presence of adequate safeguards. First, the transactions which are the subject of this proposed exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest. Second, neither DCMC nor a person related to DCMC may engage in transactions with the Investment Fund. Further, a party in interest (including a fiduciary) which deals with the Investment Fund, may only be a party in interest by reason of providing services to the Former DuPont Related Plans, or by having a relationship to a service provider, and such party in interest may not have discretionary authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets.

8. DCMC represents that the requested exemption is administratively feasible because it would not impose any administrative burdens on either DCMC or the Department which are not already imposed by PTCE 84–14 or PTCE 96–23. Further, DCMC will maintain and make available certain records necessary to enable the Department, the Internal Revenue Service, and other interested parties to determine whether the conditions of the exemption, if granted, have been met.

9. The applicant represents that the proposed exemption is in the interest of the Former DuPont Related Plans and their participants and beneficiaries, because it will allow DCMC, on behalf of the Former DuPont Related Plans, to negotiate transactions with parties in interest where the transactions are beneficial to such plans. Absent the exemption, the Former DuPont Related Plans would be precluded from engaging in such transactions, even though such transactions may offer favorable investment or diversification opportunities.

The applicant states that denial of the exemption could deprive DCMC of its ability to provide a full range of investment opportunities to the Former DuPont Related Plans without undue administrative costs. Further, denial of the exemption would place DCMC in a undue competitive disadvantage in seeking to manage the assets of the Former DuPont Related Plans.[20]

10. In summary, the applicant represents that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) DCMC is an investment adviser registered under the Investment Advisers Act of 1940 that has under its management and control total assets, including In-house Plan Assets (as defined in Section II(g)), in excess of $100 million, and either has shareholders' equity, in excess of $750,000 or a unconditional guarantee of payment of liabilities in that amount from an affiliate;

(b) At the time of the transaction and during the year preceding, the party in interest or its affiliate dealing with the Investment Fund does not have and has not exercised, the authority to appoint or terminate DCMC as a manager of any of the Former DuPont Related Plans' assets, or to negotiate the terms on behalf of the Former DuPont Related Plans (including renewals or modifications) of the management agreement with DCMC;

(c) The transaction is not described in PTCE 81–6; PTCE 83–1; or PTCE 82–87;

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of DCMC, and either DCMC, or a property manager acting in accordance with written guidelines established and administered by DCMC, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(f) At the time the transaction is entered into, renewed, or modified that requires the consent of DCMC, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither DCMC nor any affiliate, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in DCMC is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of any felony, as set forth in Section I(f) of this proposed exemption;

(h) The party in interest with respect to the Former DuPont Related Plans that deals with the Investment Fund is a party in interest (including a fiduciary) solely by reason of being a service provider to the Former DuPont Related Plans, or having a relationship to a service provider, and such party in interest does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice with respect to those assets;

(i) Neither DCMC nor a person related to DCMC engages in the transactions which are the subject of this proposed exemption;

(j) DCMC adopts written policies and procedures that are designed to assure compliance with the conditions of the proposed exemption;

(k) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit on an annual basis and issues a written report to the Former DuPont Related Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by DCMC; and

(l) DCMC or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

The applicant will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement, described at 29 CFR § 2570.43(b)(2), to the investment committee or trustees of each of the Former DuPont Related Plans to inform them of the pendency of the exemption, by hand delivery or first class mailing, within fifteen (15) days of the

[20] While it is represented that DCMC receives no fees from the DuPont Pension Plan, other than reimbursement of certain expenses (to the extent permitted by the Act), no special restrictions would apply to its receipt of fees for managing assets of the Former DuPont Related Plans, once their sponsors no longer have any ownership affiliation with the DCMC, provided that the provision of such services and the receipt of fees related thereto meet the conditions necessary for relief under section 408(b)(2) and the regulations thereunder.

publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**. A copy of the final exemption, if granted, will also be provided to the CONSOL Plan, the CONSOL Union Plan, the CONSOL DC Plan, the Conoco Plan and the Conoco DC Plan. Further, DCMC will furnish a copy of the final exemption to any of the other Former DuPont Related Plans at the time the exemption becomes applicable to the management of the assets of such plan.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

General Motors Investment Management Corporation Located in New York, NY

[Exemption Application Nos.: D–10782 through D–10785]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[21]

I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, as of May 28, 1999, to a transaction between a party in interest with respect to certain plans (the Transition Plans), as defined in Section II(e), below, and an investment fund in which such plans have an interest (the Investment Fund), as defined in Section II(k), below, provided that General Motors Investment Management Corporation or its successor (collectively, GMIMCO) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) GMIMCO or its successor is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total assets, including in-house plan assets (the In-house Plan Assets), as defined in Section II(g), below, under its management and control in excess of $100 million and shareholders' or partners' equity, as defined in Section II(j), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section II(m), below, the party in interest or its affiliate, as defined in Section II(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate GMIMCO as a manager of any of the Transition Plans' assets, or

(2) Negotiate the terms of the management agreement with GMIMCO (including renewals or modifications thereof) on behalf of the Transition Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[22] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[23] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[24] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by or under the authority and general direction of GMIMCO, and either GMIMCO, or (so long as GMIMCO retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by GMIMCO, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCO, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither GMIMCO nor any affiliate thereof, as defined in Section II(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in GMIMCO is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Transition Plans (including a fiduciary) solely by reason of providing services to the Transition Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and

(3) Is neither GMIMCO nor a person related to GMIMCO, as defined in Section II(i), below;

(i) GMIMCO adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section II(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Transition Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by GMIMCO in accordance with Section I(i), above, of this exemption; and

[21] For purposes of this exemption, references to specific provisions of Title I of the Act unless otherwise specified, refer to the corresponding provisions of the Code.

[22] 46 FR 7527, January 23, 1981.

[23] 48 FR 895, January 7, 1983.

[24] 47 FR 21331, May 18, 1982.

(k)(1) GMIMCO or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GMIMCO and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than GMIMCO shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination, as required by Section I(k)(2), below, of this proposed exemption.

(2) Except as provided in Section I(k)(3), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) any fiduciary of any of the Transition Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Transition Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Transition Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and,

(E) any employee organization whose members are covered by such Transition Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of GMIMCO or its affiliates or commercial or financial information which is privileged or confidential.

II. Definitions

(a) For purposes of Section I(b) of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan, will also be considered affiliates with respect to each other for purposes of Section I(b) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who —

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), below, of this exemption an ''affiliate'' of GMIMCO includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which GMIMCO is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which GMIMCO is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) ''Transition Plans'' mean:

(1) the Delphi Retirement Program for Salaried Employees; Delphi Hourly-Rate Employees Pension Plan; Delphi Automotive Systems Corporation Personal Savings Plan, Delphi Automotive Systems Corporation Income Security Plan, Delphi Automotive Systems Corporation Savings-Stock Purchase Program, Packard-Hughes Interconnect Non-Bargaining Retirement Plan, Packard-Hughes Interconnect Bargaining Retirement Plan, Packard-Hughes Interconnect Foley-Alabama Facility Retirement Plan, and ASEC Manufacturing Retirement Program (collectively, the Delphi Plans);

(2) any plan the assets of which include or have included assets that were managed by GMIMCO, as an in-house asset manager (INHAM), pursuant to Prohibited Transaction Class Exemption 96–23 (PTCE 96–23); [25] but as to which PTCE 96–23 is no longer available because such assets are no longer held under a plan maintained by an affiliate of GMIMCO (as defined in Section II(c), above, of this exemption); and

(3) any plan (an Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of GMIMCO,(as defined in Section II(c), above, of this exemption); provided that: (A) the assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund) with the assets of a plan or plans, described in Section II(e)(1) or Section II(e)(2), above; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the commingling of their assets.

(f) ''Exemption audit'' of any of the Transition Plans must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCO, pursuant to Section I(i) of this exemption, for consistency with each of the objective requirements of this exemption, as described in Section II(f)(5), below;

(2) A test of a representative sample of the subject transactions in order to make findings regarding whether GMIMCO is in compliance with:

[25] 61 FR 15975 (April 10, 1996)

(A) the written policies and procedures adopted by GMIMCO, pursuant to Section I(i), above, of this exemption; and

(B) the objective requirements of this exemption;

(3) A determination as to whether GMIMCO has satisfied the requirements of Section I(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by GMIMCO to assure compliance with each of these requirements:

(A) the requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and shareholders' or partners' equity;

(B) the requirements of Part I and Section I(d) of this exemption, regarding the discretionary authority or control of GMIMCO with respect to the assets of the Transition Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Transition Plans to enter into the transaction;

(C) the transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, Section I(h)(2) to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) the transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) ''In-house Plan Assets'' means the assets of any plan maintained by an affiliate of GMIMCO, as defined in Section II(c),above, of this exemption and with respect to which GMIMCO exercises discretionary authority or control.

(h) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(i) GMIMCO is ''related'' to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in GMIMCO, or if GMIMCO (or a person controlling, or controlled by GMIMCO) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) The term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term, ''shareholders' or partners' equity,'' means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) ''Investment Fund'' includes a single customer and pooled separate account maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of GMIMCO) is subject to the discretionary authority of GMIMCO.

(l) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this exemption is published in the **Federal Register** or a renewal that requires the consent of GMIMCO occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

Temporary Nature of Exemption

The Department has determined that the relief provided by this proposed exemption is temporary in nature. The exemption, if granted, will be effective May 28, 1999, and will expire on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, the relief provided by this proposed exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into within the five-year period. Should the applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this proposed exemption to new or additional transactions, the applicant may submit another application for exemption.

Summary of Facts and Representations

1. GMIMCO, a wholly-owned subsidiary of General Motors Corporation (GM), is organized as a Delaware corporation with its principal office in New York, New York. GMIMCO is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 1998, GMIMCO had total assets under its management with an aggregate market value of approximately $100 billion.

GMIMCO provides investment management services to employee benefit plans and corporate clients that are not employee benefit plans. Clients include plans sponsored by GM and its subsidiaries and affiliates (the GM Group). Investments managed by GMIMCO include domestic and international equities, fixed-income securities, real estate, venture capital investments, futures, and other alternative investments. GMIMCO has been providing these services to the GM Group since 1992, [26] and is generally the

[26] It is represented that GMIMCO has been a registered investment advisor since 1992.

named fiduciary for investment purposes under the Act with respect to the pension plans sponsored by the GM Group.

2. GMIMCO manages the assets of the following U.S. employee benefit plans: (a) General Motors Hourly-Rate Employees Pension Plan, (b) General Motors Retirement Program for Salaried Employees, (c) General Motors Savings-Stock Purchase Program for Salaried Employees in the United States, (d) General Motors Personal Savings Plan for Hourly-Rate Employees in the United States, (e) Saturn Individual Retirement Plan for Represented Team Members, (f) Saturn Personal Choices Retirement Plan for Non-Represented Team Members, (g) Saturn Individual Savings Plan for Union Represented Employees, (h) Employees' Retirement Plan for GMAC Mortgage Corporation, and (i) plans participating in the General Motors Welfare Benefit Trust (collectively, the GM Plans). In this regard, GMIMCO represents that it has qualified as an INHAM, as defined in section IV(a) of PTCE 96–23, and has relied on the relief provided by that class exemption in connection with its management of the assets of the GM Plans. [27] In addition, GMIMCO manages the assets of corporate clients that are members of the GM Group, most significantly Motors Insurance Corporation for which GMIMCO has over $4 billion in assets under management.

3. On or after January 1, 1999, Delphi Automotive Systems Corporation (Delphi) and its subsidiaries sponsored the Delphi Plans for the benefit of their employees. As of April 30, 1999, the estimated number of participants in the Delphi Plans was 173,931 and the approximate aggregate fair market value of the assets of the Delphi Plans was $10,337,453,634. It is represented that Delphi was at that time a subsidiary of GM and a member of the GM Group and that the assets of the Delphi Plans were managed by GMIMCO, pursuant to PTCE 96–23.

On May 28, 1999, GM totally divested all of its holdings in Delphi. After the divestiture, Delphi requested that GMIMCO continue to act as investment manager for the assets of the Delphi Plans. However, because GM had divested itself of its holdings in Delphi, the relief provided to GMIMCO, as an INHAM, pursuant to PTCE 96–23, ceased to be available with respect to GMIMCO's management of the assets of the Delphi Plans, because under section IV(a) of PTCE 96–23, GMIMCO would not be an affiliate of the employer maintaining such plans. [28]

4. GMIMCO seeks an exemption, effective as of May 28, 1999, to continue, after the divestiture of Delphi, to manage the assets of the Delphi Plans. Further, GMIMCO requests relief which would permit it to manage the assets of other Transition Plans. In this regard, in addition to the Delphi Plans, the Transition Plans covered by this exemption include: (1) Any plan the assets of which have been managed by GMIMCO, as an INHAM but as to which PTCE 96–13 is no longer available, because such plan is no longer maintained by an affiliate of GMIMCO; and (2) any Add-On Plan that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of GMIMCO; provided certain conditions, as set forth in this proposed exemption, are satisfied.

Given the large number of service providers (particularly financial institutions) which the Delphi Plans and most large employee benefit plans engage, the breadth of the definition of ''party in interest'' under 3(14) of the Act, and the wide array of investment and related services offered by GMIMCO, it would not be uncommon for GMIMCO, as investment manager, to propose transactions that involve parties in interest to one or more Transition Plans. In this regard, the transactions for which GMIMCO seeks an exemption include, but are not limited to, sale and exchange transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities. It is anticipated that relief will most likely be necessary where GMIMCO has discretion over investments in real estate, mortgages, foreign currency, futures, commodities, and over-the-counter options, or other types of investments not covered by specific exemptions or other class exemptions which would permit GMIMCO, as investment manager, to purchase property from, sell or lease property to, or borrow money from most parties in interest with respect to the Transition Plans.

Without the requested relief, GMIMCO would be unable to offer the full range of investment opportunities that were available to the Delphi Plans prior to the divestiture, which could substantially reduce GMIMCO's overall effectiveness and adversely affect the Delphi Plan's investment returns. In the absence of the exemption, it would be necessary to examine each transaction to determine whether it might involve a party in interest. Such examinations could prove burdensome for GMIMCO, because of the myriad of persons that may be parties in interest as service providers to large plans, such as the Delphi Plans. Moreover, it is represented that certain transactions which would be beneficial to the Transition Plans might involve parties in interest and be prohibited, thereby depriving such plans of a potentially favorable investment opportunity.

5. GMIMCO has requested that the proposed exemption be modeled after PTCE 84–14, which, in general, permits various parties in interest with respect to an employee benefit plan to engage in a transaction involving plan assets, if the transaction is authorized by a qualified professional asset manager (QPAM) and if certain other conditions are met. Specifically, GMIMCO seeks an individual exemption for transactions that are described, pursuant to Part I of PTCE 84–14.[29] In this regard, Part I of PTCE 84–14 provides relief from the restrictions of section 406(a)(1)(A)–(D) of the Act and 4975(c)(1)(A)–(D) of the Code for transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a QPAM, provided certain conditions are satisfied. One such condition (the Diverse Clientele Test), as set forth in Part I(e) of PTCE 84–14, requires that:

> The transaction is not entered into with a party in interest with respect to any plan whose assets managed by QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof * * *) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction.

GMIMCO represents that, as of the effective date for the requested exemption, it met all of the requirements of the definition of a QPAM, as set forth in Part V(a) of PTCE 84–14, other than the Diverse Clientele Test. In this regard, GMIMCO represents that it has been capitalized in excess of $750,000 to meet the capitalization requirement on its own, as of the date

[27] The Department expresses no opinion in this proposed exemption as to whether GMIMCO has met, or will continue to meet, the conditions necessary for relief under PTCE 96–23 for transactions with parties in interest with respect to the GM Plans, or whether GMIMCO qualifies or has qualified as an INHAM with regard to the management of the assets of the GM Plans in such transactions.

[28] The Department expresses no opinion on whether GMIMCO qualifies or has qualified as an INHAM with regard to the management of the assets of the Delphi Plans.

[29] GMIMCO is not requesting an administrative exemption for the transactions described in Part II, Part III, and Part IV of PTCE 84–14.

of the requested relief. Further, GMIMCO represents that it is an investment adviser registered under the Investment Advisers Act of 1940 and that it currently manages in excess of $100 million in assets, including In-house Plan Assets, as defined in Section II(g), above of this proposed exemption.

However, GMIMCO is uncertain whether it would be deemed to satisfy the Diverse Clientele Test found in Part I(e) of PTCE 84–14 with respect to the Delphi Plans or other Transition Plans that might become clients of GMIMCO during the period of GMIMCO's transition from a wholly-owned in-house clientele to a full range of clients. In this regard, GMIMCO is concerned that the assets for which it serves as an INHAM are not ''client assets'' for purposes of Part I(e) of PTCE 84–14. Although GMIMCO manages assets of the Delphi Plans which comprise substantially less than 20 percent (20%) of the total assets under its management, the remaining assets which GMIMCO manages consist entirely of plan assets for which GMIMCO acts as an INHAM. As a result, GMIMCO believes that it may be precluded from acting as a QPAM with respect to the Delphi Plans and any other unaffiliated plans that might temporarily exceed the 20% limit, if the test is based solely on assets of unaffiliated plans and other non-GM related parties, even though such assets might be insignificant in relation to total assets managed by GMIMCO.[30]

6. It is represented that the conditions of the proposed exemption provide safeguards for the protection of the rights of participants and beneficiaries of the Transition Plans. In this regard, the proposed exemption incorporates all but one of the conditions found in PTCE 84–14. Except for the Diverse Clientele Test, GMIMCO represents that it will comply with the remaining conditions, as set forth in Part I of PTCE 84–14. Moreover, GMIMCO, although it will no longer be an INHAM with respect to the assets of the Transition Plans, will remain subject to the procedural requirements of the INHAM class exemption, as set forth in PTCE 96–23. In this regard, GMIMCO will be required to maintain written policies and procedures designed to ensure compliance with the objective requirements of the exemption and to retain an independent auditor experienced and proficient with the fiduciary provisions of the Act to conduct an exemption audit. It is the responsibility of the independent auditor to evaluate GMIMCO's compliance with such policies and procedures and to report annually its findings to each of the Transition Plans.

7. Furthermore, the proposed exemption contains several additional conditions which are designed to ensure the presence of adequate safeguards. First, the transactions which are the subject of this proposed exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest. Second, neither GMIMCO nor a person related to GMIMCO may engage in transactions with the Investment Fund. Further, a party in interest (including a fiduciary) which deals with the Investment Fund, may only be a party in interest by reason of providing services to the Transition Plans, or by having a relationship to a service provider, and such party in interest may not have discretionary authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets.

8. GMIMCO represents that the requested exemption is administratively feasible because it would not impose any administrative burdens on either GMIMCO or the Department which are not already imposed by PTCE 84–14 or PTCE 96–23. Further, GMIMCO will maintain and make available certain records necessary to enable the Department, the Internal Revenue Service, and other interested parties to determine whether the conditions of the exemption, if granted, have been met.

9. The proposed exemption is in the interest of the Transition Plans and participants and beneficiaries of such plans, because it will allow GMIMCO, on behalf of the Transition Plans, to negotiate transactions with parties in interest where the transactions are beneficial to such plans. Absent the exemption, the Transition Plans would be precluded from engaging in such transactions, even though such transactions may offer favorable investment or diversification opportunities.

The applicant represents that denial of the exemption could deprive GMIMCO of its ability to provide a full range of investment opportunities to the Transition Plans without undue administrative costs. Further, denial of the exemption would place GMIMCO in a undue competitive disadvantage in seeking to manage the assets of the Transition Plans.[31]

10. In summary, the applicant represents that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) GMIMCO or its successor is an investment adviser registered under the Investment Advisers Act of 1940 that has under its management and control total assets in excess of $100 million and has shareholders' equity, in excess of $750,000;

(b) At the time of the transaction and during the year preceding, the party in interest or its affiliate dealing with the Investment Fund, does not have and has not exercised, the authority to appoint or terminate GMIMCO as a manager of any of the Transition Plans' assets, or to negotiate the terms on behalf of the Transition Plans (including renewals or modifications) of the management agreement with GMIMCO;

(c) The transaction is not described in PTCE 81–6; PTCE 83–1; or PTCE 82–87;

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, GMIMCO, and either GMIMCO, or a property manager acting in accordance with written guidelines established and administered by GMIMCO, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(f) At the time the transaction is entered into, renewed, or modified that requires the consent of GMIMCO, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither GMIMCO nor any affiliate, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in GMIMCO is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of any felony, as set forth in Section I(f) of this exemption;

(h) The party in interest with respect to the Transition Plans that deals with the Investment Fund is a party in

[30] The Department expresses no opinion as to whether GMIMCO would qualify as a QPAM for purposes of PTCE 84–14 and Part I(e) with respect to the Delphi Plans after the divestiture of Delphi or with respect to any Transition Plans or other unaffiliated plans.

[31] While it is represented that GMIMCO receives no fees from the GM Plans or the Delphi Plans, other than reimbursement of certain expenses (to the extent permitted by the Act), no special restrictions would apply to its receipt of fees for managing assets of the Delphi Plans in the future or any other Transition Plans that do not have any affiliation with GMIMCO, provided that the provision of such services and the receipt of fees related thereto meet the conditions necessary for relief under section 408(b)(2) of the Act and the regulations thereunder.

interest (including a fiduciary) solely by reason of being a service provider to the Transition Plans, or having a relationship to a service provider and such party in interest does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice with respect to those assets;

(i) Neither GMIMCO nor a person related to GMIMCO engages in the transactions which are the subject of this proposed exemption;

(j) GMIMCO adopts written policies and procedures that are designed to assure compliance with the conditions of the proposed exemption;

(k) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit on an annual basis and issues a written report to the Transition Plans presenting specific findings regarding the level of compliance with the policies and procedures adopted by GMIMCO; and

(l) GMIMCO or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this proposed exemption have been met.

Notice to Interested Persons

GMIMCO will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement described at 29 CFR § 2570.43(b)(2) to the investment committee or trustees of each of the Delphi Plans to inform them of the pendency of the exemption, by hand delivery or first class mailing, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**. A copy of the final exemption, if granted, will also be provided to the Delphi Plans. Further, GMIMCO will furnish a copy of the final exemption to any other Transition Plans at the time the exemption becomes applicable to the management of the assets of such plans.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

Columbia Energy Group (Columbia) Located in Herndon, Virginia

[Application No. D–10802]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Columbia Insurance Corporation, Ltd. (CICL) in connection with an insurance contract sold by Employers Insurance of Wausau (Wausau), or any successor insurance company to Wausau which is unrelated to Columbia, to provide long-term disability benefits to participants in Columbia's Long Term Disability Plan (the Plan), provided the following conditions are met:

(a) CICL—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Columbia that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving CICL, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Wausau or any successor insurer will be similar to formulae used by other insurers providing comparable long-term disability coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and CICL will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plan should CICL be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) CICL retains an independent fiduciary (the Independent Fiduciary), at Columbia's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this proposed exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Columbia or CICL (this relationship hereinafter referred to as an ''Affiliate'');

(2) Is not an officer, director, employee of, or partner in, Columbia or CICL (or any Affiliate of either);

(3) Is not a corporation or partnership in which Columbia or CICL has an ownership interest or is a partner;

(4) Does not have an ownership interest in Columbia or CICL, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''Independent Fiduciary,'' no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or

partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Columbia, CICL, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Columbia, CICL, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction under the Act.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Columbia was organized under the laws of the State of Delaware on September 30, 1926, and is a registered holding company under the Public Utility Holding Company of 1935, as amended. Its headquarters are located in Herndon, Virginia. Columbia is one of the nation's largest integrated natural gas systems engaged in the production of natural gas and oil. Columbia is also engaged in related energy businesses including the marketing of natural gas and electricity, the generation of electricity, primarily fueled by natural gas, and the distribution of propane. Columbia derives substantially all of its revenues and earnings from the operating results of its 18 direct subsidiaries.

2. CICL is a wholly-owned subsidiary of Columbia. In November, 1996, it was formed and issued a Certificate of Authority by the Commonwealth of Bermuda permitting it to transact the business of a Class 3 insurance company. The applicant represents that a Class 3 insurer in Bermuda is authorized to write any type of business that is described in its business plan. Class 1 and Class 2 insurers are restricted in the amount of unrelated business that can be written. Besides the differences in the types of business that can be written, Class 3 insurers have higher minimum capital and surplus, and more stringent examination requirements, than either Class 1 or Class 2 insurers. ARS Management, Ltd. (ARS), an entity which is independent of Columbia and CICL, has responsibility for accounting functions, records retention and other management and administrative services for CICL. As of December 31, 1999, total capital and surplus of CICL was $1,143,635 and earned premium was $5,996,265.

3. In 1999, CICL formed a branch (Branch) which obtained a license in the State of Vermont. ARS, which is authorized to manage captives in the State of Vermont, will also handle the management functions for Branch. The applicant represents that an actuary on the staff of ARS, the management firm for CICL, has conducted reviews of the reserves held by CICL in the past. When CICL became a Class 3 insurer and established Branch in Vermont, it became subject to the laws in both jurisdictions requiring annual certification of reserves by an independent actuarial firm. Watson, Wyatt (WW), an independent, qualified international actuarial and benefits consulting firm has been retained to provide actuarial services to Branch. WW's responsibilities will include examining, on an annual basis, the reserves that will be established by Branch in connection with the employee benefit business reinsured by CICL through Branch to ensure that amounts required by the State of Vermont are met. The initial reserve study has been conducted by Christopher George, FSA, MAAA (Mr. George) of the Wellesley Hills, Massachusetts office of WW (see rep. 12, below).

4. Columbia maintains the Plan, a long-term disability program for approximately 10,000 of its employees. Prior to changes made in anticipation of implementation of the subject transaction, the Plan promised a benefit of 30 percent of salary up to the current Social Security wage base and 60 percent of salary over that threshold. However, combined disability income from all sources, including Social Security, could not exceed 70 percent of earnings, and Social Security benefits paid to family members counted towards that limitation.

5. The Plan has been historically insured with Aetna Life Insurance Company. However, at the beginning of 1999, Columbia formulated a plan to utilize CICL for the reinsurance of benefits and has made substantial improvements to the Plan in anticipation of that transaction. Specifically, the new benefit is 60 percent of salary across the board, and the reduced percentage for earnings up to the Social Security wage base has been eliminated. In addition, the 70 percent maximum now does not include Social Security benefits paid to family members. Moreover, there has been a liberalization of the definition of the term ''disability.'' The prior definition required that an employee demonstrate that he or she could not perform ''* * * any reasonable type of job.'' Under the new definition, an employee qualifies for benefits in the first two years if he or she cannot perform his or her own job, or another that pays at least 80% of the amount the employee was earning before the disability.

6. The Plan is now insured by Wausau. Wausau was recently acquired by Liberty Mutual Insurance Company (Liberty), an A+ rated (by Best's) carrier located in Boston, Massachusetts. Liberty is rated by Moody's as Aa3 (Excellent) and by Standard & Poor's as

AA–(Very Strong). Wausau is also rated A+ by Best's. The applicant represents that if the Plan chooses another insurer in the future, that insurer will carry similar ratings. It is anticipated that upon the granting of the exemption proposed herein, Wausau will enter into a reinsurance agreement with CICL, through Branch. Wausau will continue to insure the Plan, with the enhanced new benefits. However, Wausau will reinsure 100% of the risk with CICL through Branch.

The Plan will pay no more than adequate consideration for the insurance contracts with Wausau or any successor insurer. The formula used to calculate premiums by Wausau or any successor insurer [32] will be similar to formulae used by other insurers providing long-term disability coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, CICL has engaged the services of Milliman and Robertson (M&R), which is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance, as the Independent Fiduciary for the Plan. Charles M. Waldron, FSA (Mr. Waldron), a Principal and Consulting Actuary employed by M&R, has signed the Independent Fiduciary representations on behalf of M&R. M&R's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, Mr. Waldron has represented that:

(a) Neither he nor M&R is an Affiliate of Columbia, Wausau or CICL;

(b) He is not an officer, director, employee of, or partner in Columbia, CICL or Wausau;

(c) M&R is not a corporation in which Columbia, CICL or any of the other insurers involved in the proposed transaction has an ownership interest or is a partner;

(d) neither he nor M&R has an ownership interest in Columbia, CICL, or Wausau, or in any Affiliate of those firms;

(e) he was not a fiduciary with respect to the Plan prior to his appointment for this transaction;

(f) he has acknowledged in writing on behalf of M&R its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which either he or M&R has an interest that might affect their fiduciary duty;

(g) gross income received by Mr. Waldron and M&R separately and combined from Columbia, CICL, or Wausau does not exceed 5 percent of Mr. Waldron's or M&R's gross annual income from all sources for any fiscal year; and

(h) neither M&R nor Mr. Waldron has acquired any property from, sold property to, or borrowed funds from Columbia, CICL, or Wausau or their Affiliates.

9. Mr. Waldron represents that CICL is registered in Bermuda and has been conducting business in Bermuda since 1996 reinsuring property and casualty risks. CICL's reserves have been reviewed by ARS, which is a firm independent of CICL and Columbia. These reports cover the last two reporting periods prior to the proposed transaction. In addition, Mr. Waldron has received assurances from Columbia and CICL that all future reserves in the Vermont branch of CICL (*i.e.*, Branch) will be certified by a qualified actuary approved by the State of Vermont. Mr. Waldron has confirmed that CICL has undergone an examination by Arthur Andersen & Co., an independent certified public accountant, for its last completed taxable year.

10. Mr. Waldron has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plan's risks will be 100% covered by Wausau, a carrier rated A+ by Best's, even if CICL were unable or unwilling to cover the Plan's liabilities it is assuming as a result of the reinsurance agreement. Mr. Waldron represents that he has reviewed the terms of the proposed reinsurance agreement between Wausau and CICL, and it provides for the risk retained by CICL to revert back to Wausau at no further cost to the Plan should CICL be unable or unwilling to pay the benefits.

11. Mr. Waldron has represented that he reviewed the Plan benefits before the reinsurance transaction and the benefits implemented in anticipation of the reinsurance transaction. He has concluded that there is an immediate benefit to the Plan participants from the reinsurance transaction. Benefits have been increased from 30% of monthly earnings up to the Social Security wage base plus 60% of basic monthly earnings above the Social Security wage base, to 60% of the basic monthly earnings without regard to the Social Security wage base. In addition, the family benefit from Social Security will no longer be used to offset the Plan benefits if the combined benefits exceed 70% of basic monthly earnings.

12. The applicant makes the following representations concerning the determination of the initial premium to the Plan under the proposed arrangement. The Plan contacted Wausau and was quoted a rate based on Wausau's evaluation of the risk. When CICL considered reinsuring the Plan's risk, it asked its consultants, WW and ARS, to evaluate the risk and the Wausau premium based on their best estimates of expected claims and expenses, respectively. Mr. Waldron represents that M&R has reviewed the report by Mr. George of WW (see rep. 3, above), who was retained to develop the expected claims for the year 2000 based on the covered participants as of December 31, 1999. In addition, M&R had a discussion regarding that report with Mr. George to obtain more information concerning the details of the methods he used, and M&R relied on this report for its accuracy of data and calculation. With respect to ARS' evaluation of expenses, M&R reviewed the types of expenses to ensure that all types of expenses that would be expected were provided for. M&R represents that the premium developed for the Plan follows a methodology of adding to the expected claims, a small provision for adverse deviation and the estimated expenses of the Plan, including premium tax. Mr. Waldron states that this method is one of many methods used within the industry. The expected claims were estimated to be at the midpoint of M&R's claims model, relating to such claims, which was based on modifications to the 1987 Group Long Term Disability Table. The modifications were based in part on the actual historical experience of the Plan. Expenses were developed from actual costs incurred by the Plan, or by contractual agreements between the parties. Expenses include administrative costs, including claims handling expenses, fronting and placement fees, and premium taxes.

In summary, M&R represents that it has reviewed the analysis of the Wausau rate by WW and ARS, and has concluded that the rate being charged by Wausau is consistent with the actuarial projections. M&R represents that the formula used to calculate the premiums is similar to formulae used by other insurers providing long-term disability coverage under similar plans.

[32] The applicant states that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

Furthermore, it is Mr. Waldron's opinion that the premium is below the midpoint of the range of premiums charged by other insurers providing similar coverage under similar programs. The applicant represents that the independent fiduciary will confirm on an annual basis that the Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

13. M&R will represent the interests of the Plan as the Independent Fiduciary at all times.[33] M&R will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plan and of its participants and beneficiaries.

14. The applicant represents that the proposed reinsurance transaction will meet the following conditions of PTE 79–41 covering direct insurance transactions:

(a) CICL is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Columbia, which maintains the Plan;

(b) Branch is licensed to do conduct reinsurance transactions by the State of Vermont. The law under which Branch is licensed requires that all business written in a branch captive must have an annual certification by a qualified actuary;

(c) CICL has undergone an examination by the independent certified public accountant firm of Arthur Andersen & Co. for its last completed taxable year;

(d) Branch has received a Certificate of Authority from its domiciliary state, Vermont, which has neither been revoked nor suspended;

(e) The Plan will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate increase in benefits to the Plan's participants and beneficiaries; and

(f) No commissions will be paid by the Plan with respect to the reinsurance arrangement with CICL, through Branch, as described herein.

In addition, the Plan's interests will be represented by a qualified, independent fiduciary (*i.e.*, M&R or its Successor), who has initially determined that such transaction will be in the best interests, and protective, of the Plan and its participants and beneficiaries. The independent fiduciary will also confirm on an annual basis that the Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

15. In summary, the applicant represents that the proposed transaction will meet the criteria of section 408(a) of the Act because: (a) Plan participants and beneficiaries are afforded insurance protection by Wausau, a carrier rated A+ by Best's, at competitive market rates arrived at through arm's-length negotiations; (b) CICL, which through Branch will enter into the reinsurance transaction with Wausau, is a sound, viable insurance company which has been in business since 1996; (c) the protections described in representation 14, above, provided to the Plan and its participants and beneficiaries under the proposed reinsurance transaction are based on those required for direct insurance by a ''captive'' insurer, under the conditions of PTE 79–41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);[34] (d) Mr. Waldron, the Plan's independent fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plan and that there will be an immediate benefit to the Plan participants as a result thereof by reason of an improvement in benefits under the terms of the Plan; and (e) M&R will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plan and of its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

American Mutual Holding Company (AMHC)

Located in Des Moines, IA

[Application No. D–10874]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[35]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain common stock (Common Stock) issued by AMHC, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of a policyowner of AMHC (the Eligible Member), which is an employee benefit plan (the Plan), other than a Plan maintained by AMHC and/or its affiliates, in exchange for such Eligible Member's membership interest in AMHC, in accordance with the terms of a plan of conversion (the Plan of Conversion), implemented under Iowa law.

This proposed exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is subject to approval, review and supervision by the Iowa Commissioner of Insurance

[33] In this regard, the applicant makes a representation regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace M&R and Mr. Waldron, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of M&R and Mr. Waldron.

[34] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a–1).

[35] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(the Commissioner) and is implemented in accordance with procedural and substantive safeguards that are imposed under Iowa law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members of AMHC as part of such Commissioner's review of the Plan of Conversion and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Members and is not detrimental to the general public.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by AMHC.

(d) Any determination to receive Common Stock, Cash or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of AMHC and its affiliates and neither AMHC nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) After each Eligible Member entitled to receive Common Stock is allocated at least 20 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus and asset valuation reserve of AMHC, which formulas have been approved by the Commissioner.

(f) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(g) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Common Stock or Policy Credits or in connection with the implementation of the commission-free program (the Program).

(h) All of AMHC's policyholder obligations remain in force and are not affected by the Plan of Conversion.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''AMHC'' means American Mutual Holding Company and any affiliate of AMHC as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of AMHC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with AMHC. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Member'' means a person who is (or, collectively, persons who are) the owner(s) of one or more ''eligible policies'' (the Eligible Policy or Eligible Policies) on the adoption date of the Plan of Conversion. An ''Eligible Policy'' is defined as a policy that has been in force for at least one year prior to the adoption date and that remains in force on the effective date of the Plan of Conversion. A mutual member of AMHC who owns both an Eligible Policy and a policy that is not an Eligible Policy will be an Eligible Member only with respect to the Eligible Policy.

(d) The term ''Policy Credit'' means either an increase in the accumulation account value (to which no surrender or similar charge will be applied) or an increase in a dividend accumulation on a policy or contract issued by AmerUs Life Insurance Company (AmerUs Life).

Summary of Facts and Representations

1. AMHC is a mutual insurance holding company that was organized under Iowa law on June 30, 1996. AMHC was formed incident to the conversion of AmerUs Life, from a mutual insurance company to a stock life insurance company under a plan of reorganization that was approved by the Commissioner and AmerUs Life members. As required under Section 521A.14 of the Iowa Code (which governs the formation of mutual insurance holding companies), and as provided in that plan of reorganization, AmerUs Life policyowners ceased to have any membership interests in AmerUs Life and instead became mutual members of AMHC.

2. AmerUs Life was originally organized in 1896 as a mutual insurance company under the name ''Central Life Assurance Society of the United States.'' In 1902, AmerUs Life was converted to a stock company in 1902 and again reverted to a mutual company in 1919. In 1994, AmerUs Life's name was changed to American Mutual Life Insurance Company when it merged with a previously unrelated company of that name. On June 30, 1996, the insurer's name was finally changed to ''AmerUs Life Insurance Company.'' As of March 31, 2000, AmerUs Life had the following financial-strength ratings: ''A'' (by A.M. Best); ''Baa1'' (by Moody's); and ''A'' (by Standard & Poor's).

3. Currently, AmerUs Life has approximately 16,000 outstanding contracts held in connection with employee benefit plan policyowners which are members of AMHC. None of the Plans is sponsored by AmerUs Life or any AMHC affiliate.

In certain cases, AmerUs Life or one of its affiliates may provide limited administrative or recordkeeping services to the Plans. These services include the preparation of required tax forms (such as IRS Forms 1099–R and 5948), tracking of regular contributions made to Roth IRAs, and, in prior years, provision of prototype plan documents. However, neither AmerUs Life nor any of its affiliates is in the business of providing administrative, recordkeeping or fiduciary services to Plans.

As of December 31, 1999, AmerUs Life, together with its subsidiaries, had approximately $4.674 billion in assets, more than $4 billion of assets under management, and more than $33 billion of individual life insurance in force.

4. The principal products of AmerUs Life include life insurance and annuity contracts. Some of these contracts are sold to Plans that are subject to Title I of the Act or described in section 4975(e)(1) of the Code. The Plans generally include qualified plans and qualified annuity plans, described in sections 401(a) and 403(a) of the Code (including 401(k) plans and Keogh plans); individual retirement arrangements (IRAs) described in Code section 408 (including simplified employee pensions); Roth IRAs described in Code section 408A; tax-sheltered annuities described in Code section 403(b); and welfare plans. Because no employee benefit plan sponsored by AMHC or its affiliates owns a life insurance or annuity contract issued by AmerUs Life, no in-house Plans of these entities will be involved in the demutualization and merger transactions (collectively, the Restructuring) described herein.

5. As part of the 1996 reorganization, all of the capital stock of AmerUs Life was issued to AMHC. Subsequently, AMHC transferred all of that stock to its subsidiaries. At present, AmerUs Life is a wholly owned subsidiary of AmerUs Life Holdings, Inc. (AMH), a publicly-traded insurance holding company. AMH also owns Delta Life Corporation, AmVestor Financial Corporation and several non-life subsidiaries. The direct and indirect subsidiaries of AMH (other than those that are inactive or that serve only as holding companies) are all involved in the business of life

insurance or in related financial services.

AMH is approximately 58 percent owned by AmerUs Group Co. (Group), a wholly owned subsidiary of AMHC, and approximately 42 percent owned by public investors. Group also owns a number of non-life subsidiaries. Subsidiaries of AmerUs Life include CLA Assurance Company, Centralife Annuity Services, Inc. and American Vanguard Life Insurance Company.

6. An AmerUs Life policyowner's membership interest in AMHC consists of the rights to vote, to participate in the distribution of AMHC's surplus in the event of AMHC's voluntary dissolution or liquidation, and to receive consideration in the event of AMHC's demutualization. The voting rights of such members are equal, with each member having only one vote regardless of the number of policies owned by that member. In addition, members have the right to vote for the election of AMHC's Board of Directors and to vote on any proposition that the Board of Directors submits to a vote of members or that is required to be submitted to such a vote under Iowa law. A person ceases to be a member of AMHC when such person ceases to be an AmerUs Life policyowner.

7. Because the mutual holding company structure no longer agrees with the strategic business plan of AMHC and AMH, AMHC intends to convert from a mutual company to a stock company and then merge AMH into AMHC (*i.e.*, the Restructuring) in accordance with the ''Plan of Conversion of American Mutual Holding Company'' which was adopted by the AMHC Board of Directors on December 17, 1999. The principal purpose of the Restructuring is to enhance AMHC's financial flexibility. In addition, the Restructuring will provide members who are eligible to receive consideration under the Restructuring (*i.e.*, the Eligible Members) with an opportunity to receive shares of Common Stock issued by AMHC, Cash or Policy Credits, in exchange for such Eligible Member's illiquid membership interests, which will be extinguished. In this regard, Eligible Members will realize economic value from their membership interests that is not currently available to them as long as AMHC remains a mutual holding company. The proposed Restructuring will not affect the rights of AmerUs Life policyowners under their insurance and annuity contracts. All of AmerUs Life's insurance and annuity contracts will remain in force and all policyowners will be entitled to receive all benefits under their contracts to which they would have been entitled without regard to the Restructuring. In other words, the Restructuring will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of AmerUs Life to its policyowners. Policy dividends will continue to be paid as declared.

8. Accordingly, AMHC requests an administrative exemption from the Department that would cover the receipt of Common Stock, Cash or Policy Credits by Eligible Members that are Plans in exchange for such Eligible Member's existing membership interests in AMHC. As noted above, AMHC is not requesting an exemption for distributions of consideration to ''in house'' Plans maintained by it or its affiliates for their own employees because these Plans do not own life insurance or annuity contracts that are issued by AmerUs Life.

9. Under Section 521.14(b)(5) of the Iowa Code, AMHC is treated as a mutual entity and it may be converted to a stock company under chapter 508B of the Iowa Code. Chapter 508B, which applies to AMHC's Plan of Conversion, sets forth procedural and substantive requirements to ensure that the Restructuring will be fair and equitable to AmerUs Life policyowners.

Specifically, Section 508B.2 of the Iowa Code provides that a mutual life insurance company may become a stock life insurance company under a plan of conversion established and approved in the manner provided by Chapter 508B. Section 508B.2 and Section 508B.3 also provide that, in lieu of selecting a plan of conversion provided for in Chapter 508B, a mutual company may convert to a stock company pursuant to a plan approved by the Commissioner. (The Restructuring of AMHC will be conducted in accordance with these latter provisions.)

Under Section 508B.3 of the Iowa Code, the Commissioner must determine the fairness and equity of a plan of conversion with respect to policyowners of a company undergoing demutualization. More specifically, Section 508B.7 of the Iowa Code requires that the Commissioner review the plan of conversion to determine whether it complies with all provisions of law, is fair and equitable to the mutual company and its policyowners, and whether the reorganized company will have the amount of capital and surplus deemed by the Commissioner to be reasonable necessary for its future solvency. Additionally, Section 508B.7 of the Iowa Code permits the Commissioner to order a hearing on the fairness and equity of the terms of the plan of conversion after giving written notice of the hearing to the mutual company, its policyowners, and other interested persons—all of whom have a right to appear at the hearing.

Section 508B.6 of the Iowa Code requires that a plan of conversion be approved by two-thirds of the policyowners of the mutual company who are entitled to vote on the conversion. The statute requires notice to be given to the policyowners and permits voting by ballot, in person, or by proxy. The notice of meeting and election must contain a copy of the plan of conversion or a summary of the plan of conversion. Section 508B.4 of the Iowa Code defines the class of policyowners entitled to receive notice and to vote on the plan of conversion as generally including policyowners whose policies or contracts are in force on the date of adoption of the plan of conversion.

Finally, Section 508B.9 of the Iowa Code provides that, after the plan of conversion has been approved by the Commissioner and the policyowners, the reorganized company will be a continuation of the mutual company and the conversion will not annul or modify any of the mutual company's existing suits, contracts, or liabilities except as provided in light of the plan of conversion.

All rights, franchisees and interests of the mutual company in and to property, assets and other interests will be transferred to and vest in the reorganized company. The reorganized company will assume all obligations and liabilities of the mutual company.

Consistent with these requirements of chapter 508B, the Plan of Conversion provides for AMHC to file an application with the Commissioner under Section 508B.2 of the Iowa Code to reorganize as a stock holding company and to merge with AMH (with AMHC as the surviving entity). In the present case, the Commissioner will hold a public hearing on the fairness and equity of the terms of the Plan of Conversion and on whether AMHC will have the amount of capital and surplus necessary for its future solvency.

The Plan of Conversion also provides for members to comment on such Plan at the hearing and for policyowners who are entitled to vote on the Plan to do so at a special members' meeting. Further, the Plan of Conversion requires AMHC to provide notice to its members of both the public hearing and the members' meeting.

10. Thus, subject to the approval of the Commissioner and the voting members, the Plan of Conversion will include the following actions:

- Group will liquidate into AMHC.

• AMHC will convert to a stock corporation.

• AMHC will provide Common Stock, Cash or Policy Credits to Eligible Members as consideration for their membership interests.

• AMH will merge into AMHC with AMHC as the surviving corporation and with shareholders of AMH receiving stock of AMHC in exchange for their shares of AMH.

• AmerUs Life will become a wholly owned subsidiary of AMHC (which will be renamed ''AmerUs Group Co.'').[36] Shares of the successor entity will be traded on the New York Stock Exchange. Thus, there will be no initial public offering of AMHC stock as a result of the Restructuring.

On June 22, 2000, the voting members of AMHC approved the Plan of Conversion with approximately 100,000 policyowners voting on such Plan. On the same day, the shareholders of AMH approved the merger of AMH into AMHC. On June 23, 2000, the Commissioner held a public hearing on the Plan of Conversion. The Commissioner is expected to approve the Plan of Conversion during August 2000 and it is anticipated AMHC will demutualize on or before September 30, 2000.

11. Under the Plan of Conversion, all Eligible Members will receive consideration in exchange for their membership interests in AMHC.[37] The decision to vote on the Plan of Conversion and the decision to elect the form of consideration to be received by a Plan in connection with the Restructuring will be made by a Plan fiduciary which is independent of AMHC and its affiliates. In this respect, neither AMHC nor its affiliates will exercise investment discretion or render ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

The total consideration given to the Eligible Members will be equal in value to the assets of AMHC, net of its liabilities and other obligations. For purposes of allocating the total consideration among Eligible Members, each Eligible Member will be allocated (but not necessarily issued) shares of Common Stock equal to the sum of (a) a fixed component equal to 20 shares of Common Stock; and (b) a variable component of consideration equal to the portion, if any, of the ''aggregate variable component'' allocated to any variable component policy owned by the Eligible Member.[38]

12. The aggregate variable component will be allocated among variable component policies by multiplying an ''equity share'' for each variable component policy by the number of shares of Common Stock constituting the aggregate variable component. The ''equity share'' for a variable component policy will be equal to the ratio of the ''actuarial contribution'' for that policy to the sum of all actuarial contributions for all variable component policies. The ''actuarial contribution'' for a policy is the contribution that the policy has made (and is expected to make) to AmerUs Life's statutory surplus and asset valuation reserve, as calculated under the principles, assumptions and methodologies set forth in the Plan of Conversion and the actuarial contribution memorandum referred to in the Plan of Conversion.

13. After shares of Common Stock have been allocated in the manner described above, consideration will be paid to Eligible Members as follows:

• First, in the case of policies and contracts held by IRAs described in Code section 408(b) and tax-sheltered annuities described in Code section 403(b) and in the case of individual annuity contracts and individual life insurance policies issued directly to participants under qualified plans described in Code section 401(a), consideration will be paid *only* in Policy Credits.

• Second, in the case of other Eligible Members who hold policies known by AMHC to be subject to a creditor lien (other than a policy loan) or a bankruptcy proceeding or whose addresses as shown in the records of AMHC are outside the United States or are addresses at which mail is undeliverable, consideration will be paid *only* in Cash.

• Third, in the case of other Eligible Members who so elect, by making an affirmative election, consideration generally will be paid in Common Stock.

• Fourth, in all other cases, consideration generally will be paid in Cash. (In other words, an Eligible Member, who is not described in bulleted paragraph One or Two above, and who *does not make* an affirmative election to receive Common Stock, as described in bulleted paragraph Three above, will receive Cash.)

Section 6.3(d) of the Plan of Conversion provides special rules for satisfying the Cash and Common Stock preferences of Eligible Members.[39] In this regard, the Plan of Conversion limits the total amount of Cash available for payment of consideration to Eligible Members and provides for an allocation of Cash and Common Stock among Eligible Members (other than those described in the first two categories) in the event that the amount of available Cash is not adequate to meet Cash preferences. This allocation will be made as follows:

• First, Cash will be distributed to those ''Cash Preference'' Eligible Members who are allocated no more than the number of shares of Common Stock constituting the fixed component of consideration.

[36] AMHC is in the process of combining with Indianapolis Life Insurance Company (ILICo), a mutual life insurance company. AMHC expects that ILICo will be converted to a stock company under a ''sponsored demutualization'' after the Restructuring of AMHC. The sponsored demutualization of ILICo will result in certain ILICo policyowners receiving Common Stock, Cash or Policy Credits. It is anticipated that a plan of conversion for the demutualization of ILICo will be filed with the Indiana Insurance Commissioner in August 2000 and that an exemption request will be subsequently filed with the Department.

[37] AMHC represents that, consistent with section 508B.1.4 of the Iowa Code, the Plan of Conversion generally provides that the policyowner eligible to participate in the distribution of Common Stock, Cash or Policy Credits resulting from the Plan of Conversion generally is the owner of a policy as ''determined by [AMHC] on the basis of AmerUs Life's records.'' AMHC further represents that an insurance or annuity policy that provides benefits under an employee benefit plan typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, AMHC represents that it is required under the foregoing provisions of the Iowa Code and the Plan of Conversion to make distributions resulting from the Plan of Conversion to the employer or trustee as owner of the policy.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when AMHC incurs the obligation to distribute Common Stock, Cash or Policy Credits, then such consideration would constitute an asset of such Plan. Under these circumstances, the appropriate Plan fiduciaries must take all necessary steps to safeguard the assets of the Plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[38] A ''variable component policy'' is a policy eligible to participate in the divisible surplus of AmerUs Life.

[39] The special rules are intended to apply on a uniform basis without regard to whether the Eligible Member entitled to receive consideration is a Plan. The reason for the special rules is that the Plan of Conversion limits both the total number of shares of Common Stock available for distribution in connection with the Restructuring and the total funds available for distribution as Cash or Policy Credits. In this regard, the total number of shares of Common Stock available under the Plan of Conversion is 17,390,165 shares. This number is equal to the number of AMH shares currently held by AMHC. The total funds available for distribution as Cash or Policy Credits is the ''net cash proceeds'' of AMHC (*i.e.*, the cash balances of AMHC immediately prior to the effective date of the Plan of Conversion less expenses relating to the Plan of Conversion, all other expenses of AMHC accrued as of the effective date of the Plan of Conversion, and the liabilities of AMHC).

• Then, Cash will be distributed continuing to the highest level of share allocation at which Cash preferences can be satisfied.

• If Cash preferences cannot be satisfied for ''Cash Preference'' Eligible Members entitled to receive the same number of shares of Common Stock, Cash will be distributed on a *pro rata* basis to such Eligible Members (but with Cash paid only to the extent of whole shares of Common Stock).

• Any consideration not paid in Cash under the first through third bulleted paragraphs set forth above, will be paid in shares of Common Stock.

At present, AMHC anticipates that the satisfaction of Cash preferences with Common Stock will become applicable only with respect to ''Cash Preference'' Eligible Members who are allocated in excess of 100 shares of Common Stock.

14. Eligible Members who do not receive Cash consideration under the aforementioned allocation method may receive consideration in the form of Common Stock. Therefore, it is possible that Eligible Members who ''state a Cash preference,'' by not affirmatively electing to receive Common Stock, may receive Common Stock as consideration for their membership interests.

In addition, the Plan of Conversion limits the total number of shares of Common Stock available for payment to Eligible Members and provides for Cash and Common Stock to be allocated among Eligible Members in a fair and equitable manner in the event the amount of available Common Stock is not adequate to meet the Common Stock preferences.[40]

15. Where consideration is to be paid in the form of Cash or Policy Credits, the amount of Cash or Policy Credits will be determined by multiplying the number of shares of Common Stock allocated to the Eligible Member by the ''stock price'' of the Common Stock. Under the Plan of Conversion, the ''stock price'' is defined as the greater of the closing price per share of the Common Stock on the effective date of the Plan of Conversion or the average of the closing price per share of the Common Stock for each of the first ten trading days beginning with the effective date of the Plan of Conversion.

16. Where consideration is to be paid in the form of Common Stock, AMHC will issue to the Eligible Member, in book-entry form as uncertificated shares, the shares of Common Stock allocated to the Eligible Member for which the Eligible Member will not receive consideration in the form of Cash or Policy Credits and will mail notice that a designated number of shares of Common Stock have been registered in the Eligible Member's name. Upon request of the registered holder of such shares, AMHC will mail a stock certificate representing such shares. No Eligible Member will pay a brokerage commission or fee in connection with the receipt of Common Stock under the Plan of Conversion.

17. The Plan of Conversion permits AMHC to establish a commission-free program beginning within one year of the effective date of the Plan of Conversion and continuing for at least three months. Pursuant to the Program, each Eligible Member who receives not more than 99 shares of Common Stock will be entitled to sell, at prevailing market prices all such shares received under the Restructuring without paying brokerage commissions, mailing charges, registration fees, or other administrative or similar expenses.

Additionally, Eligible Members receiving fewer than 99 shares of Common Stock will be entitled to purchase, at prevailing market prices, additional shares to round-up their holdings to 100 shares without paying brokerage commissions, mailing charges, registration fees or other administrative or similar expenses. However, the decision to sell or purchase shares under the Program will be made by an independent Plan fiduciary and neither AMHC nor its affiliates will exercise investment discretion or render ''investment advice'' within the meaning of 29 CFR 2510.3–21(c).

18. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with stringent procedural and substantive safeguards that are imposed under Section 508B of the Iowa Code and will be subject to the review and supervision of the Commissioner.

(b) The Commissioner will review the terms and options that are provided to Eligible Members of AMHC as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Members (including Plans) and is not detrimental to the general public.

(c) One or more independent Plan fiduciaries will have an opportunity to vote to approve the terms of the Plan of Conversion (or to comment on such Plan), and will be solely responsible for all such decisions after receiving full and complete disclosure from AMHC.

(d) The proposed exemption will allow Eligible Members that are Plans to receive Common Stock, Cash or Policy Credits, in exchange for their membership interests in AMHC and neither AMHC nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510. 3–21(c), with respect to such decisions.

(e) All Plans that are Eligible Members will participate in the transactions and on the same basis as Eligible Members that are not Plans.

(f) No Eligible Member will pay any brokerage commissions or fees in connection with the receipt of Common Stock or Policy Credits or in connection with the implementation of the Program.

(g) All of AMHC's policyholder obligations will remain in force and will not be affected by the Plan of Conversion such that no benefits, guarantees, or other rights and interests (apart from membership in AMHC) will be compromised.

Notice to Interested Persons

AMHC will provide notice of the proposed exemption to Eligible Members which are Plans within 21 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first-class mail and will include a copy of the notice of proposed exemption, as published in the **Federal Register**, including a supplemental statement, as required pursuant to 20 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 51 days after the date of publication of this pendency notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[40] Specifically, Section 6.3(d) of the Plan of Conversion provides special rules for the limited satisfaction of Common Stock preferences with Cash. These rules apply in the event Eligible Members elect to receive consideration in the form of Common Stock in such a way that the net cash proceeds of AMHC would not be fully utilized and the shares of Common Stock issued in connection with the Restructuring would exceed 17,390,165 shares. In this event, the number of shares of Common Stock to be issued to the Eligible Members who have elected to receive Common Stock (the Stock Preference Members) will be reduced to 17,390,165 shares ''in a fair and equitable manner'' and an amount of funds necessary to reduce the undistributed net cash proceeds to zero will be distributed to Stock Preference Members ''in a fair and equitable manner.'' AMHC expects that the Common Stock preferences of all Stock Preference Members will be satisfied with shares of Common Stock so the foregoing rules will not apply in connection with the Restructuring.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of August, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 00–20741 Filed 8–16–00; 8:45 am]

BILLING CODE 4510–29–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24596; 812–9618]

XSource, Inc.

August 11, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under sections 6(c), 17(b) and 23(c) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from sections 17(a), 18(d), 21(b), 23(a) through (c), and 30 of the Act; and under section 17(d) of the Act and rule 17d-1 under the Act permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicant proposes to operate as a managerial strategic investment company (''MSIC'').

FILING DATES: The application was filed on May 31, 1995, and amended on September 25, 1995, September 4, 1996, and January 20, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless to SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 5, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549–0609. Applicant, 153 East 53rd Street, Suite 5900, New York, New York, 10022.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street N.W., Washington, D.C. 20549 0102 (telephone 202–942–8090).

Applicant's Representations

1. Applicant, a Delaware corporation, is an indirect wholly-owned subsidiary of Millicom International Cellular, S.A. (''Millicom''), a Luxembourg corporation engaged in the cellular telephone business. Applicant currently holds majority equity interests in nine companies engaged in electronics, media, providing integrated network services for telecommunication data and internet network businesses.[1] The present business of applicant dates back to 1993, when Millicom transferred substantially all of its non-cellular operations to applicant (then known as American Satellite Network, Inc., and later known as Great Universal Incorporated).

2. In 2000, upon the exercise of certain warrants, applicant no longer will be a wholly-owned subsidiary of Millicom and will become a public company. At that time, applicant states that it plans to change its business to operate as an MSIC. As an MSIC, applicant states that it will provide a long-term source of financial support and managerial assistance to public companies seeking to improve their competitiveness. Applicant will acquire long-term substantial minority equity holdings in selected public companies (''strategic portfolio companies'') and then apply applicant's experience and resources to help manage those companies. Applicant plans to be actively involved in the management of the strategic portfolio companies through board representation; by having applicant's officers and employees serve as officers or consultants to the strategic portfolio companies; and by providing direct financial assistance to the companies.

3. Applicant states that, as an MSIC, it may come within the definition of investment company in section 3(a)(1)(C) of the Act because more than 40% of applicant's holdings may consist of minority interests that constitute ''investment securities,'' as that term is defined in section 3(a)(2) of the Act. If applicant comes within the definition of investment company in section 3(a)(1)(C) of the Act, and is unable to rely on an exemptive rule under the Act, applicant will register under the Act as a closed-end management investment company.

4. Applicant states that, although it would be registered under the Act,

[1] Currently, XSource's principal holdings include 100% ownership of Get.2.Net Corporation, Integrated Systems and Internet Solutions, Inc., Basset Telecom Solutions AB, Diator Netcom Consultants AB, Multinational Automated Clearing House U.S.A. Inc., Netcom Consultants (UK) Ltd., Netcom Latin America BV, Netcom Asia BV and Praesidium Incorporated as well as a 55% interest in Savera Systems Incorporated. XSource also holds a 45% interest in Modern Cartoons, Ltd. (together with wholly-owned and majority-owned subsidiaries, ''Current Holdings'').

applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities. Rather, applicant will hold itself out as being engaged in the businesses of its portfolio companies. Applicant also states that at least 50% of its assets will consist of greater than 25% holdings in U.S. companies to which it makes available significant managerial assistance. As part of these holdings, at least 25% of applicant's assets will consist of greater than 25% holdings in its existing subsidiaries. These companies will be engaged in the types of businesses similar to applicant's current holdings. At least one officer, director, employee or other person designated by applicant will serve on the board of each company.

5. Applicant states that at least 40% of its assets will consist of (a) no more than five holdings, each greater than 10%, in publicly held U.S. companies to which applicant will make available significant managerial assistance and which applicant will hold for at least two years, and (b) other assets that are not investment securities. These companies also will be engaged in the types of businesses similar to applicant's current holdings. At least one officer, director, employee or other person designated by applicant will serve on the board of each company.

6. Applicant further states that no more than 10% of its assets will consist of investment securities other than those described above, and no more than 5% of its assets in this category will consist of equity securities. In addition, applicant will have acquired at least 50% of its holdings either in a private placement directly from the portfolio company or as a result of providing other financial assistance directly to the portfolio company.

Applicant's Legal Analysis

1. Applicant states that, when it registers under the Act as a closed-end investment company, it will need from various provisions of the Act in order to operate as an MSIC. Specifically, applicant seeks relief in order to be able to engage in certain transactions with its affiliates, provide financing to its portfolio companies, raise additional capital, and provide equity-based compensation to its employees. Thus, applicant requests an exemption under sections 6(c), 17(b) and 23(c) of the Act from sections 17(a), 18(d), 21(b), 23(a) through (c), and 30 of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions. Applicant acknowledges that, if it does not register under the Act within three years of the date the requested order is issued, the order will terminate. Applicant also acknowledges that the Commission, as a matter of normal practice, does not grant exemptive relief under the Act unless there is shown a clear present need for the relief. Applicant asserts that granting it the requested relief at this time would be appropriate in light of the unique regulatory issues presented by its proposal to operate as an MSIC.

2. Applicant believes that its activities as an MSIC will resemble those of a business development company (''BDC''). BDCs, like applicant, are publicly offered closed-end investment companies. Applicant states that the Act includes a separate set of provisions for BDCs designed to enable them to engage in such activities. Applicant thus proposes to be governed by certain provisions of the Act applicable to BDCs.[2]

Transactions With Affiliates

3. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security or other property to or purchasing any security or other property from the investment company. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; any officer, director, or employee of a person; and in the case of an investment company, is investment adviser.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person, and the transaction is consistent with the policy of each investment company and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any class of transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the company's participation in the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

5. Applicant requests relief sections 6(c) and 17(b) from section 17(a) and an order pursuant to section 17(d) and rule 17d–1 to permit transactions with certain affiliated persons of applicant that would be permitted if applicant were a BDC. Applicant proposes to be governed by certain provisions of section 57 of the Act, which establishes a framework for transactions by BDCs with affiliates. Applicant believes that complying with the provisions of the Act applicable to BDCs will provide it with needed flexibility to operate as an MSIC consistent with the protection of investors and that purposes of the Act.

6. Under section 57(a) of the Act, transactions between a BDC and entities that control the BDC (''control affiliates''), as well as transactions in which a BDC participates jointly with its control affiliates, generally are prohibited. Under section 57(b) of the Act, control affiliates include the BDC's officers, directors, and employees, the BDC's investment adviser, principal underwriter, and any shareholder that owns more than 25% of the BDC's outstanding securities. Control affiliates also include persons that control any of these entities. A BDC must seek exemptive relief from the Commission to enter into a transaction with a control affiliate. Applicant will be subject to section 57(a) of the Act, and is not seeking any relief to be able to engage in transactions with its control affiliates.

7. Under section 57(d) of the Act, transactions between a BDC and certain entities that are affiliated with the BDC (''non-control affiliates''), as well as transactions in which a BDC participates jointly with its non-control affiliates, generally are prohibited. Under section 57(e) of the Act, non-control affiliates include any shareholder that owns between 5% and 25% of the BDC's outstanding voting securities (as well as executive officers,

[2] Applicant states that it would be unable to elect status as a BDC because the Act limits the extent to which BDCs may invest in large companies.

directors, and persons controlling, controlled by or under common control with that shareholder), and any non-control affiliate of a director, officer, employee, investment adviser, or principal underwriter of the BDC.

8. Under section 67(f) of the Act, transactions between a BDC and its non-control affiliates may be permitted, provided the BDC's board of directors, including a majority of the independent directors who have no financial interest in the transaction, approves the transaction. The board of directors must determine that the terms of a proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching, and that the transaction is consistent with the policies of the investment company and the interests of shareholders. Accordingly, applicant would be able to engage in transactions with its non-control affiliates upon approval by its board of directors. Applicant states that its board of directors thus would be able to approve, for example, a consulting arrangement between a strategic portfolio company and an entity that held more than 5% of applicant's outstanding voting securities but that does not control it.

9. Section 57 does not require approval for transactions between a BDC and its ''downstream affiliates'' (*i.e.,* the BDC's portfolio companies and their affiliates). Applicant proposes, as an additional safeguard against overreaching, that its transactions with ''downstream affiliates'' will be approved in accordance with section 57(f).

10. Applicant will comply with section 57(h) of the Act which requires the directors of a BDC to adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to consummation of any transaction in which the BDC or a company controlled by the BDC proposes to participate, with respect to the possible involvement in the transaction of the persons described in sections 57(b) and (e).

11. Under section 57(m) of the Act, an executive officer of applicant would be able to provide managerial assistance to a strategic portfolio company, provided that the officer does not receive any special compensation for providing these services.

12. Applicant also will comply with section 56 of the Act which requires, among other things, that a majority of applicant's board of directors be persons who are not interested persons of applicant.

Loans to Portfolio Companies

13. Section 21(b) of the Act prohibits a registered investment company from lending money or property to any person that controls or is under common control with the investment company. Section 21(b) would prevent applicant from lending to a company that applicant controls if applicant and the controlled company are deemed to be under the common control of a person or entity that controls applicant. Applicant will have controlling interests in certain of its current subsidiaries and may control other portfolio companies. Applicant states that an important means for it to improve the competitiveness of its strategic portfolio companies would be by making loans to these companies.

14. Section 62(2) of the Act permits a BDC to make a loan to a company controlled by the BDC that is deemed to be under common control with the BDC solely because a third person controls the BDC. Applicant states that section 62(2) would not permit, for example, a loan to a company that is controlled by a BDC's affiliate through the affiliate's own holdings in the company. Applicant requests an exemption under section 6(c) from section 21(b) to permit it to make loans to companies controlled by applicant to the extent permitted under section 62(2) as if applicant were a BDC.

Issuance of Common Stock Below Net Asset Value

15. Section 23(b) of the Act prohibits a registered closed-end investment company from selling its common stock at a price below the stock's current net asset value (''NAV''), except in certain limited circumstances. This prohibition is intended to protect the shareholders of the investment company from dilution when the company issues additional securities. Applicant states that because close-end funds often trade at a discount to NAV, a fund that is unable to issue shares at below NAV may be unable to raise additional equity capital subsequent to its initial public offering.

16. Section 63(2) of the Act permits a BDC to issue common stock at less than NAV, provided that the BDC's directors and shareholders give the necessary approvals. Applicant states that the nature of its proposed operations, like those of a BDC, likely will require the ability to raise additional capital in order to acquire additional strategic portfolio companies or to provide financial assistance to the companies. Applicant thus requests an exemption under section 6(c) from section 23(b) to permit it to issue and sell its common stock at below NAV to the extent it would be permitted to do so by section 63(2) of the Act.

Incentive Compensation to Management

17. Applicant states that its management will be involved in the affairs of its strategic portfolio companies through membership on the board of directors, and by serving as officers or as monitors of the portfolio companies. Applicant's management will be compensated for their skills in facilitating the management of the strategic portfolio companies. Applicant thus believes that it will be competing in the labor market for the services not of investment advisers but rather of operating company managers. Applicant asserts that these managers routinely receive equity-based compensation such as stock options. Applicant would like to attract talented managers by offering them equity-based incentive compensation in the form of options for its stock (''Options'') and stock appreciation rights (''SARs''). Applicant believes that the use of such equity-based incentive compensation may benefit its shareholders by aligning the interests of management with the interests of shareholders.

18. Sections 18(d), 23(a) and (b) of the Act effectively prohibit a registered investment company from providing equity-based compensation to its management. Section 18(d) generally prohibits a fund from issuing rights to purchase fund shares. Section 23(a) generally prohibits a closed-end fund from issuing securities for services. Section 23(b), as noted above, prohibits a registered closed-end fund from selling common stock at below its current NAV.

19. Applicant requests an exemption under section 6(c) from sections 18(d) and 23(a) and (b) of the Act to the extent necessary to adopt an equity-based incentive compensation plan (''Plan'') for its directors, officers and employees (''Participants'') that will provide for the issuance of Options and SARs (collectively, ''Awards'').

20. Applicant states that the purpose of sections 18(d) and 23(a) and (b) is to prevent the dilution to shareholders that results from the issuance of Options or the issuance of securities for services. Applicant states that its shareholders will be protected because the Plan will have the following characteristics:

(a) The Plan would be implemented only if it is approved by applicant's board of directors, including a majority of the independent directors, and by applicant's shareholders. Proxy materials that would be submitted to

applicant's shareholders would include a concise, ''plain English'' description of the plan, including its potential dilutive effect, and would comply with Item 10 of Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act'').

(b) The Plan would be administered by a committee of at least two independent directors (the ''Committee''). The issuance of Awards would be approved as in the best interests of applicant and its shareholders by a majority of applicant's independent directors and by a majority of the directors who have no financial interest in the Plan.

(c) Awards would be issuable to independent directors under the Plan. The issuance of Awards to independent directors would be approved as in the best interests of applicant and its shareholders by a majority of applicant's independent directors and by a majority of the directors who have no financial interest in the Awards.

(d) The maximum number of shares of applicant's common stock that would be issuable under the Plan would be 10% of applicant's outstanding shares at the time the Plan is adopted. No participant would receive Awards with respect to more than 35% of the shares that may be issued under the Plan.

(e) SARs would be issued only in tandem with Options so that the exercise of the SAR cancels the Option and vice versa. SARs would expire no later than the Options to which they relate.

(f) The price of an Option would equal at least 100% of the fair market value of applicant's common stock on the date the Option is granted. SARs would not be exercised for more than 100% of the appreciation of the underlying stock.

(g) Awards would be granted within 10 years of the date the Plan is adopted or approved by applicant's shareholders, whichever is earlier. Awards would expire within 10 years after the date of grant. Awards would be nontransferable except by gift or bequest or for estate planning purposes.

(h) A Participant would be able to pay for the stock to be received upon the exercise of an Option with applicant's common stock. The aggregate fair market value of the common stock would be equal to the aggregate exercise price of any stock purchased upon the exercise of an Option with such common stock, and the fair market value would be equal, per share, to the price at which applicant's shareholders could sell a share of applicant's common stock on an exchange or over the counter. The amount payable upon the exercise of an SAR may be payable in cash or applicant's stock or both, in the sole discretion of the Committee. Applicant would pay cash or issue shares of its common stock, or a combination of both, only if and to the extent that the payment or issuance would not result in greater dilution of the interests of existing shareholders than would occur if, instead of the SARs, the Options to which they relate were exercised.

21. Section 23(c) of the Act prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers, or under other circumstances as the SEC may permit to insure that the purchase is made on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that section 23(c) effectively would prevent Participants from paying for stock to be received upon exercise of Options under the Plan with shares of applicant's common stock. Applicant thus requests an order under section 23(c) to permit it to purchase shares of its common stock from Participants in the Plan in connection with the exercise of an Option. Applicant states that the plan will be structured to prevent discrimination against applicant's shareholders because applicant will purchase its shares from a participant at the fair market value at which all other shareholders could sell their shares on an exchange or over the counter.

22. Applicant also requests an order pursuant to section 17(d) and rule 17d–1 to permit the Plan. Rule 17d–1(c) defines a joint enterprise to include any stock option or stock purchase plan. Applicant states that the Plan is in the best interests of applicant's shareholders because the Plan will help applicant attract and retain talented professionals and help align the interests of management with the interests of its shareholders.

Periodic Reporting Requirements

23. Section 30 of the Act requires each registered investment company to file certain periodic reports with the SEC in lieu of the reports required by Sections 13 or 15(d) of the Exchange Act. Section 30 reflects the determination that investors in investment companies require different types of information than investors in business corporations.

24. BDCs exempt from section 30. To qualify as a BDC, among other things, a company must have a class of its equity securities registered under Section 12 of the Exchange act or have filed a registration statement pursuant to Section 12 of the Exchange Act. As a condition to the requested order, applicant will have a class of its equity securities registered under Section 12 of the Exchange Act. Because applicant's operations will resemble those of a BDC, applicant asserts that the periodic reports required by the Exchange Act would be more useful to investors than the periodic reports required by section 30 of the Act. Therefore, applicant requests an exemption under section 6(c) from section 30 so that it may file its periodic reports as required under the Exchange Act.

Applicant's Conditions

Applicant agrees that the requested order will be subject to the following conditions:

Applicant's Assets

1. At least 50% of the value of applicant's assets will consist of greater than 25% holdings in companies to which applicant makes available significant managerial assistance (as defined in section 2(a)(47) of the Act) and which are organized under the laws of, and have their principal places of business in, any state or states; as part of such holdings, at least 25% of the value of applicant's assets will consist of greater than 25% holdings in the Current Holdings, and any other subsidiaries it held prior to its registration as an investment company under the Act.

2. No more than 10% of applicant's assets will consist of investment securities other than those described in conditions 1 and 3(a); the portion of such investment securities that will constitute equity securities will not exceed 5% of applicant's assets.

3. The remainder of applicant's assets will consist of (a) greater-than-10% investments in publicly held companies to which applicant makes available significant managerial assistance (as defined in section 2(a)(47)) and which are organized under the laws of, and have their principal places of business in, any state or states, and (b) other assets that are not investment securities. Applicant will hold no more than five such greater-than-10% investments, and will hold each such investment for a minimum of two years.

4. The companies described in conditions 1 and 3(a) (each a ''qualifying company'') will be engaged in types of businesses similar to applicant's holdings while applicant was not an investment company, and the expertise and focus of applicant's management will continue to be on such businesses.

5. At least one officer, director or employee of, or other person designated

by, applicant will serve on the board of directors of each qualifying company.

6. Applicant will have acquired at least 50% of its holdings either in private placement directly from the qualifying company or as a result of applicant providing other financial assistance directly to such qualifying company.

7. Any decision by applicant to dispose of all or a portion of its holdings in any qualifying company will not be based simply on the market value of such holdings but rather on strategic and operational considerations.

Applicant's Operations

8. Members of applicant's management will not be affiliated persons of registered investment advisers, and applicant will not be an affiliated person of a registered investment company.

9. Applicant will be engaged in the businesses of its portfolio companies and will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

10. Applicant will have a class of its equity securities registered under Section 12 of the Exchange Act.

11. Applicant will comply with sections 56, 57(a) through (i), 57(m), 57(o), 62(2), and 63(2) of the Act as if applicant were a BDC.

Incentive Compensation Plan

12. Applicant's board of directors will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on applicant's earnings and NAV per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review, and the Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have any effect contrary to the interests of applicant's shareholders. This authority will include, in addition to the authority to prevent or limit the grant of additional Awards, the authority to limit the number of Awards exercised in a given period of time should the Committee conclude that applicant's expenses, earnings or NAV might otherwise be excessively diluted. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

13. The maximum number of shares of applicant's common stock available for issuance under the Plan will be 10% of applicant's outstanding common stock on the date the Plan is adopted. No Participant will be granted Awards relating to more than 35% of the shares reserved for issuance under the Plan.

14. Awards under the Plan will be issuable only to applicant's directors, officers and employees. Awards will not be transferable or assignable, except by will or the laws of descent and distribution, or as the Committee may specifically approve to facilitate estate planning.

15. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting standards Board for operating companies and the requirements of the Commission under Item 402 of Regulation S–K, Item 8 of Schedule 14A under the Exchange Act and Item 18 of Form N–2.

16. Applicant will have amended the terms of any equity-based compensation plans adopted by applicant and grants made thereunder prior to its reliance on the requested order to bring such plans and grants into compliance with such order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20882 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43131; File No. SR–Amex–00–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Listing Additional Series of iShares MSCI Index Funds

August 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On June 12, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade a product called iShares MSCI Index Funds (formerly, ''WEBS Index Series''), under Amex rules 1000A *et seq.* (''Index Fund Shares'') based on the following Morgan Stanley Capital International (''MSCI'') Indices: Greece, Indonesia (Free), Portugal, Thailand (Free) and Turkey. The text of the proposed rule change and descriptions of the five specific indices referenced above are available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

On March 8, 1996, the Commission approved Amex's listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.*[4] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The first Index Fund Shares listed on the Exchange were seventeen series of World Equity Benchmark Shares™ (''WEBS™'') issued by Foreign Fund, Inc. based on the following MSCI indices: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia (Free), Mexico (Free), Netherlands, Singapore (Free), Spain, Sweden, Switzerland and United Kingdom. The WEBS Index Series have

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Restated 19b–4 filing marked Amendment No. 1 (''Amendment No. 1''). Amendment No. 1 changed all ''WEBS Index Series'' references to ''iShares MSCI Index Funds.''

[4] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (order approving File No. Amex–95–43).

been trading on the Amex since March 18, 1996.

On April 29, 1999, the Exchange's proposal to list an additional eleven WEBS Index Series, including the five series that are the subject of this filing, was published in the **Federal Register.**[5] On January 11, 2000, the Exchange requested that WEBS Index Series for Greece, Indonesia (Free), Portugal, Thailand (Free), and Turkey be excluded from the proposal.[6] On May 2, 2000, the Commission approved the amended proposal to list and trade WEBS Index Series based on the following MSCI indices: MSCI European Monetary Union Index; MSCI Brazil (Free) Index; MSCI South Korea Index; MSCI South Africa Index; MSCI Taiwan Index; and MSCI United States Index.[7]

As of May 15, 2000, the WEBS Index Series have been renamed iShares MSCI Index Funds. The fund that issues iShares—the WEBS Index Fund, Inc. (previously named Foreign Fund, Inc.)—has been renamed iShares, Inc. (''Fund''). The Exchange now proposes to list additional iShares MSCI Index Funds based on the following MSCI indices: MSCI Greece Index, MSCI Indonesia (Free) Index, MSCI Portugal Index, MSCI Thailand (Free) Index and, MSCI Turkey Index.[8] The methodology and procedures used to calculate the MSCI Indices on which the proposed iShares MSCI Index Funds are based are the same as those previously filed with the Commission in SR–Amex–98–49.[9]

Issuances of iShares by the Fund are made only in Creation Unit size aggregations or multiples thereof. The size of the applicable Creation Unit size aggregation will be set forth in the Funds' prospectus and varies among iShares MSCI Index Funds, but is generally substantial (*i.e.,* value in excess of $500,000 per Creation Unit). The Fund issues and sells iShares through a distributor on a continuous basis at the (''NAV'') per share next determined after an order to purchase iShares in Creation Unit size aggregations is received in proper form. Following issuance, iShares are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit size aggregations of iShares are generally issued in exchange for the ''in kind'' deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. Such deposits are made primarily by institutional investors, arbitrageurs and Exchange specialists. Redemption of iShares is generally made on an in-kind basis, with a portfolio of securities and cash exchanged for iShares that have been tendered for redemption. Issuances or redemptions could also occur for cash under specified circumstances (*e.g.,* if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times at the discretion of the Fund.

The Fund makes available on a daily basis a list of names and the required number of shares of each of the securities to be deposited in connection with the issuance of a particular iShares MSCI Index Fund in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

An iShares MSCI Index Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the iShares MSCI Index Fund during the applicable period, net of expenses and liabilities for such period.

The NAV for each iShares MSCI Index Fund is calculated by the Fund's Administrator (PFPC Inc.). After calculation, such as NAVs, are available to the public from the Fund's distributor, and are also available to National Securities Clearing Corporation (''NSCC'') participants through data made available from NSCC.

iShares are registered in book entry form through The Depository Trust Company. Trading in shares of iShares MSCI Index Funds on the Exchange is effected until 4 p.m. (New York Time) each business day. The minimum trading increment for iShares MSCI Index Funds is 1/16 of $1.00, pursuant to Amex Rule 127, Commentary .02.

a. Shares Per Creation Unit

It is anticipated that the number of iShares constituting a Creation Unit for each iShares MSCI Index Fund will be approximately 50,000 and that the value of a Creation Unit at start of trading for these series will be in excess of $500,000. The Fund will establish a minimum number of iShares per Creation Unit for each Index Fund prior to commencement of trading, which minimum number will be disclosed in the Fund's prospectus. It is further anticipated that the NAV of an individual share will initially range from $10 to $25.

Each MSCI Index on which an iShares MSCI Index Fund is based is calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in those exchange markets. For each trading day, MSCI publicly disseminates each index value for the previous day's close. MSCI Indices are reported periodically in major financial publications worldwide, and are also available through vendors of financial information.

There are two broad categories of changes to the MSCI Indices. The first consists of market-driven changes such as mergers, acquisitions, bankruptcies, etc. These are announced and implemented as they occur. The second category consists of structural changes to reflect the evolution of a market, for example due to changes in industry composition or regulations. Structural changes may occur only on four dates throughout the year: the first business days of March, June, September and December. They are pre-announced at least two weeks in advance.

As noted in the iShares prospectus for the initial seventeen iShares MSCI Index Series (Registration No. 33–97598), the investment objective of each iShares MSCI Index Fund is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices. Each iShares MSCI Index Fund utilizes a ''passive'' or indexing investment approach that attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Index Fund has the policy to remain as fully invested as practicable in a pool of securities the performance of which will approximate

[5] *See* Securities Exchange Act Release No. 41322 (April 22, 1999), 64 FR 23138 (April 29, 1999)(SR–Amex–98–49).

[6] *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division of Market Regulation, Commission, dated January 6, 2000. *See also* Securities Exchange Act Release No. 42748n. 7 (May 2, 2000), 65 FR 30155 (May 10, 2000)(order approving Amex–98–49).

[7] *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000).

[8] The Fund filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940 Act'') as amended, for the purpose of exempting the five additional WEBS Index Series (Now iShares MSCI Index Funds) referenced herein from various provisions of the 1940 Act and rules thereunder (File No. 812–10756), and the Commission granted such relief in *In the Matter of WEBS Index Funds, Inc., et al.,* Investment Company Act Release No. 23860 (June 7, 1999) and Investment Company Act Release No. 23890 (July 6, 1999).

[9] *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Katherine England, Assistant Director, Division, Commission, dated April 8, 1999 (Amendment No. 2 to SR–Amex–98–49). *See also* Securities Exchange Act Release No. 41322 n.4 (April 22, 1999), 64 FR 23138 (April 29, 1999).

the performance of the benchmark MSCI Index taken in its entirety.

b. Fund Policies Relating to Weighting of Securities and Industries

The Fund maintains several policies relating to the weighting of securities in an iShares MSCI Index Fund which serve to prevent excessive weighting in individual securities.

In order for the Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. These requirements include that, at the close of each quarter of the Fund's taxable year: (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies).

The Fund also maintains an industry concentration policy for all iShares MSCI Index Funds. With respect to the two most heavily weighted industries or groups of industries in its benchmark MSCI Index, an iShares MSCI Index Fund will invest in securities (consistent with its investment objective and other investment policies) so that the weighting of each such industry or group of industries in the iShares MSCI Index Funds does not diverge by more than 10% from the respective weighting of such industry or group of industries in its benchmark MSCI Index. An exception to this policy is that if investment in the stock of a single issuer would account for more than 25% of the iShares MSCI Index Fund, such Fund will invest less than 25% of its net assets in such stock and will reallocate the excess to stock(s) in the same industry or group of industries, and/or stock(s) in another industry or group of industries, in its benchmark MSCI Index. Each iShares MSCI Index Fund will evaluate these industry weightings at least weekly, and at the time of evaluation will adjust its portfolio composition to the extent necessary to maintain compliance with the above policy. An iShares MSCI Index Fund may not concentrate its investments except as discussed above. This policy is a fundamental investment policy and may not be changed without the approval of a majority of an iShares MSCI Index Fund's shareholders.

An iShares MSCI Index Fund does not hold all of the issues that comprise the subject MSCI Index, but attempts to hold a representative sample of the securities in the Index utilizing a technique known as ''portfolio sampling.'' Through the application of portfolio sampling, each of the iShares MSCI Index Funds is expected to contain less than all of the component stocks in its respective benchmark MSCI Index. The following table sets forth the the number of stocks contained in the Benchmark MSCI Index, and the initial number of stocks expected to be included in each corresponding iShares MSCI Index Funds (data as of December 31, 1999):

Country/Region	Number of stocks in Benchmark MSCI Index	Number of stocks in iShares MSCI Index Fund
Greece	34	33
Indonesia (Free)	41	26
Portugal	18	18
Thailand (Free)	42	37
Turkey	39	33

Each iShares MSCI Index Fund has a policy to remain as fully invested as practicable in a pool of equity securities. Each iShares MSCI Index Fund will normally invest at least 95% of its total assets in stocks that are represented in its benchmark MSCI Index except, in limited circumstances, to assist in meeting shareholder redemptions of Creation Units.In order to comply with the Internal Revenue Code, and manage corporate actions and index chances in the smaller markets, each of the Greece, Indonesia (Free), Portugal Thailand (Free) and Turkey iShares MSCI Index Funds will at all times invest at least 80% if its total assets in such stocks and at least half of the remaining 20% of its total assets in such stocks or in stocks included in the relevant market, but not in its benchmark MSCI Index.

The Exchange believes that these requirements and policies prevent any iShares MSCI Index Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in a particular iShares MSCI Index Fund could become a surrogate for trading in unregistered securities.

As noted in the prospectus for the iShares MSCI Index Funds, it is expected that, over time, the ''expected tracking error'' of a iShares MSCI Index Funds relative to the performance of the relevant iShares MSCI will be less than 5%. The expected tracking error applies to all five of the iShares MSCI Index Funds proposed herein. An expected tracking error of 5% means that there is a 68% probability that the net return on the asset value for he Index Funds (including dividends and without reflecting expenses) will be between 95% and 105% of the return of the subject MSCI after one year without rebalancing the portfolio composition. While no particular levels of tracking error is assured, the Fund's Advisor (Barclays Global Fund Advisors) monitors the tracking error of each Index Series on an ongoing basis and seeks to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund disclose tracking errors over the previous six month periods, and in the event that tracking errors exceeds 5%, the Fund Board of Directors will consider what action might be appropriate.

c. Criteria for Initial and Continued Listing

iShares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. For each of the five iShares MSCI Index Funds, it is anticipated that a minimum of two Creation Units will be required to be outstanding at the start of trading. The minimum number of shares of each iShares MSCI Index Funds required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading for each iShares MSCI Index Fund is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of a specified MSCI Index.

d. Dissemination of Indicative Optimized Portfolio Value

As noted above, MSCI disseminates values for each MSCI Index once each trading day, based on closing prices in the relevant exchange market. In addition, the Fund causes to be made available on a daily basis the names and required number of shares of each of the

securities to be deposited in connection with the issuance of iShares in Creation Unit size aggregations for each iShares MSCI Index Fund, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such iShares MSCI Index Fund. This information is made available by the Fund's Advisor to any NSCC participants requesting such information. In addition, other investors can request such information directly from the Fund's distributor. The NAV for each iShares MSCI Index Fund is calculated daily by the Fund's Administrator.

In order to provide updated information relating to each iShares MSCI Index Fund for use by investors, professionals and persons wishing to create or redeem iShares,[10] the Exchange disseminates through the facilities of the Consolidated Tape Association (''CTA'') an updated ''indicative optimized portfolio value'' (''Value'') for each of the seventeen iShares MSCI Index Funds currently traded as calculated by Bloomberg L.P. The Exchange will also disseminate a Value for the proposed five new iShares MSCI Index Funds over CTA facilities (Network B) as calculated by Bloomberg (''Value calculator''). The Value will be calculated by Bloomberg in the same manner utilized by Bloomberg to calculate the Value for iShares MSCI Index Funds that are currently trading. The Value is disseminated on a per iShare basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. New York time. The equity securities values included in the Value are the values of the designated portfolio of equity securities (''Deposit Securities'') constituting an optimized representation of the benchmark MSCI foreign index for each iShares MSCI Index Fund, which is the same as the portfolio that is to be utilized generally in connection with creations and redemptions of iShares in Creation Unit size aggregations on that day. The equity securities included in the Value reflect the same market capitalization weighting as the Deposit Securities in the optimized portfolio for the particular iShares MSCI Index Fund. In addition to the value of the Deposit Securities for each iShares MSCI Index Fund, the Value includes a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value does not reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each iShares MSCI Index Fund at a particular point in time. Therefore, the Value on a per iShare basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated once a day. While the Value disseminated by the Amex at 9:30 a.m. is generally very close to the most recently calculated Fund NAV on a per iShare basis,[11] it is possible that the value of the portfolio of securities held by the Fund for a particular iShares MSCI Index Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio. Following calculation of the NAV by the Fund's Administrator as of 4 p.m. New York time, the Value on a per iShare basis can be expected to be the same as the NAV of the Fund on a per iShare basis.

However, during the trading day, the Value can be expected to closely approximate the value per iShare of the portfolio of securities for each iShares MSCI Index Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in an iShares MSCI Index Fund at the same time by the Fund Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per iShare of the actual portfolio of an Index Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each iShares MSCI Index Fund that is not otherwise available to the public and is useful to professionals and investors in connection with iShares trading on the Exchange or the creation or redemption of iShares.

1. Greece, Indonesia (Free), and Thailand (Free) MSCI Indices

For Greece, Indonesia, and Thailand (Free), there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for each Index Series, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the iShares portfolio, and convert the price to U.S. dollar. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable cash component for each iShares MSCI Index Fund.

2. Portugal and Turkey MSCI Indices

For Portugal and Turkey, which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close. The Value will also include the applicable estimated cash component for each Index Fund.

e. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of iShares MSCI Index Funds is $5,000 per iShares MSCI Index Fund (*i.e.,* $25,000 for the five iShares MSCI Index Funds listed above). In addition, the annual listing fee applicable to iShares MSCI Index Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all iShares MSCI Index Funds, including the existing series and the additional funds proposed herein.

f. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated

[10] iShares cannot be redeemed individually but must be redeemed in Creation Unit size aggregations applicable to the specific iShares MSCI Index Funds.

[11] A slight difference between the Value disseminated at 9:30 a.m. and the most recently calculated Fund net asset value can be expected because the Value will include an estimated cash amount consisting principally of any dividend accruals for the Deposit Securities going ''ex-dividend'' on that day.

Index Fund Shares, including iShares, as eligible for this treatment.[12]

Amex Rule 190

Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

h. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, that investors purchasing iShares will be required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein.

i. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to: (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[13] In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

j. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the specific fund and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

k. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

l. Surveillance

Exchange surveillance procedures applicable to trading in the proposed iShares MSCI Index Funds are the same as those applicable to iShares currently trading on the Exchange.

(2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission requests comments on the market capitalization of the proposed iShares MCSI Index Funds. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. Amex–00–29 and should be submitted by September 7, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20886 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43146; File No. SR–Amex–00–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending the Alternative Listing Criteria of Section 101(b) of the Amex Company Guide

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[12] *See* Securites Exchange Act Release No. 29063 note 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31 regarding Exchange designation of equity derivative securities as eligible for treatment under Amex Rule 154, Commentary .04(c)).

[13] *See* Amex Rule 918C.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the alternative listing criteria of Section 101(b) of the *Amex Company Guide*, to change the operating history criterion from three years to two years. The text of the proposed rule change is as follows. Deletions are in brackets; additions are in italics.

Criteria for Original Listing (§§ 101–118)

Sec. 101

* * * * *

(b) Alternate Listing Criteria

* * * * *

Numerical Criteria:

(1) History of Operations—[Three] *Two* years of operations.

(2) Size—Stockholders' equity of at least $4,000,000.

(3) Distribution—See Section 102(a).

(4) Aggregate Market Value of Publicly Held Shares—$15,000,000.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 101 of the *Amex Company Guide* sets forth numerical guidelines applied by the Exchange in considering the eligibility of issuers to list on the Exchange. Section 101(b) provides alternate listing criteria that the Exchange may apply in place of the regular listing criteria of Section 101(a). The alternate criteria currently include a three-year history of operations, stockholders' equity of at least $4 million, the distribution criteria of Section 102(a) of the *Amex Company Guide* (which includes, among other criteria, a minimum of 800 public shareholders together with a minimum public distribution of 500,000 shares, or a minimum of 400 public shareholders together with a minimum public distribution of 1,000,000 shares), and a $15 million aggregate market value of publicly held shares. The Exchange proposes to reduce the operating history timeframe in Section 101(b) from three to two years.

Section 101 provides that the Exchange will consider the numerical guidelines in Sections 101(a) and (b) in evaluating a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, financial integrity, demonstrated earning power and future outlook. Certain relatively new companies, particularly in high growth industries such as technology, biotechnology, and the Internet, may be attractive candidates for Exchange listing and trading when assessed under the provisions of Section 101 and the alternate criteria of Section 101(b) but may lack a three-year operating history. The Exchange believes a reduced minimum timeframe will provide the Exchange with greater flexibility in considering companies for listing, particularly in high growth industries where it is possible for a company to demonstrate promising and attractive prospects over a relatively short time period. The Exchange notes that Nasdaq Rule 4420(b) provides a two-year operating history standard for issuers that can be designated for the Nasdaq National Market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) [3] of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–00–31 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20954 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43134; File No. SR–CBOE–00–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Standards for Trust Issued Receipts

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 30, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change. [3] On July 31, 2000, the CBOE submitted Amendment No. 2 to the proposed rule change. [4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt listing standards to allow the Exchange to list and trade trust issued receipts. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is proposing to adopt new listing standards to allow the Exchange to list and trade trust issued receipts. Upon approval of the listing standards, the CBOE intends to trade, whether by listing or pursuant to unlisted trading privileges (''UTP''), Holding Company Depositary Receipts (''HOLDRs''), a type of trust issued receipt, that are currently listed and traded on other securities exchanges.

i. Trust Issued Receipts Generally

Trust issued receipts are negotiable receipts that are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold interests in a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents beneficial ownership in the deposited securities. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. Holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts. They will receive reports, proxies, and other information distributed by the issuers of the deposited securities to their security holders and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

Trust issued receipts will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts. Conversely, an investor may deposit the necessary securities and receive trust issued receipts in return.

ii. Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing criteria currently used by the American Stock Exchange (''Amex''), the Chicago Stock Exchange (''CHX''), and the Boston Stock Exchange (''BSE'').[5]

If trust issued receipts are to be listed on the CBOE, the Exchange will establish a minimum number of receipts that must be outstanding at the time trading commences on the Exchange, and such minimum number will be included in any required submission to the Commission. In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, a series of trust issued receipts when any of the following circumstances arise: (1) the trust has more than 60 days remaining until termination and their have been fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1 million; or (4) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. These flexible criteria will allow the Exchange to avoid delisting trust issued receipts (and possibly terminating the trust) due to relatively brief fluctuations in market conditions that may cause the number of holders to vary. However, these delisting criteria will not be applied for the initial 12-month period following formation of a trust and commencement of trading on the Exchange.

In addition, if the number of companies represented by the deposited securities drops to fewer than nine, and each time the number of companies is reduced thereafter, the Exchange will consult with the staff of the Division of Market Regulation to confirm the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE withdrew the portion of the proposed rule change that would have permitted the Exchange to trade trust issued receipts pursuant to Rule 19b–4(e). *See* Letter to Heather Traeger, Attorney, Division of Market Regulation (''Division''), SEC, from Angelo Evangelou, Attorney, Legal Division, CBOE, dated June 29, 2000 (''Amendment No. 1'').

[4] In Amendment No. 2, the CBOE added a description of how HOLDRs, a type of trust issued receipt, will trade on the CBOE as well as other salient characteristics of HOLDERs. *See* Letters to Heather Traeger, Attorney, Division, SEC, from Angelo Evangelou, Attorney, Legal Division, CBOE, dated July 28, 2000 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 41892 (September 21, 1999) 64 FR 522559 (September 29, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the Amex); Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (approving listing and trading of trust issued receipts and Internet HOLDRs on the CHX pursuant to UTP); and Securities Exchange Act Release No. 42347 (January 18, 2000), 65 FR 4451 (January 27, 2000) (approving listing and trading of trust issued receipts and Internet HOLDRs on the BSE pursuant to UTP).

appropriateness of continued listing of the trust issued receipts.

iii. Exchange Rules Applicable to the Trading of Trust Issued Receipts

Trust issued receipts are considered ''securities'' under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of CBOE Rule 30.76 (Trade-Throughs), which prohibit Exchange members from initiating trade-throughs for ITS securities. The trust issued receipts are also subject to CBOE's rules governing equity margin, priority, parity and precedence of orders, market volatility related trading halt provisions, and responsibilities of Market-Makers and Designated Primary Market-Makers.[6]

Trust issued receipts are currently traded on the Amex, CHX and BSE at minimum variations of 1/16th of $1.00 for trust issued receipts selling at or above $.25 and 1/32nd of $1.00 for those selling below $.25. The CBOE is proposing the same minimum fractional increments for the trading of trust issued receipts on the Exchange, until decimal pricing is implemented for trust issued receipts.

The Exchange's surveillance procedure for trust issued receipts will be similar to the procedures used for index portfolio receipts (''IPRs'') and other equity non-option products traded on the CBOE and will incorporate and rely upon existing CBOE surveillance systems.

Prior to the commencement of trading in trust issued receipts, the Exchange will issue a circular to members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable. In addition, the circular will inform members of Exchange policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in CBOE Rule 6.3B have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include: (1) whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

iv. Disclosure to Customers

The Exchange will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipts.

v. Trading of HOLDRs

Upon approval of the CBOE's listing standards for trust issued receipts, the Exchange intends to begin trading the HOLDRs that are currently trading on other securities exchanges, pursuant to UTP. Specifically, the Exchange may seek to trade Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs. The following section contains information about HOLDRs generally. This information is based upon descriptions included in the various HOLDRs prospectuses and depositary trust agreements, the Amex submissions relating to its trust issued receipt listing proposal and the Commission's order approving the Amex proposal.

Each of the companies represented by the securities in the portfolios underlying the aforementioned HOLDRs trusts were required to meet the following minimum criteria when they were selected: (1) each company's common stock was registered under Section 12 of the Exchange Act;[7] (2) the minimum public float of each company included in the portfolio was at least $150 million; (3) each security was either listed on a national securities exchange or traded on Nasdaq and was a reported national market system security; (4) the average daily trading volume for each security was at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period was at least $1 million. The initial weighting of each security in the portfolio was based on its market capitalization; however, if on the date such weighting was determined, a security represented more than 20% of the overall value of the receipt, then the amount of such security was to be reduced to no more than 20% of the receipt value.

vi. Trading Issues for HOLDRs

A round lot of any of the above trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of deposited securities for each round lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Because trust issued receipts may be acquired, held or transferred only in round lots of 100 receipts or round lot multiples, orders for less than a round lot will be rejected, while orders for greater than a round lot, but not a round lot multiple, will be executed to the extent of the largest round lot multiple, rejecting the remaining odd lot.[8]

The CBOE believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust, because the arbitrage process should promote correlative pricing between the trust issued receipts and the deposited securities. If the price of the trust issued receipt deviates enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity would be created, allowing the arbitrageur either: (1) to buy the trust issued receipts at a discount, exchanging them for shares of the underlying securities and selling those shares at a profit; or (2) to sell the trust issued receipts short at a premium, buying the securities underlying the trust issued receipts, depositing them in exchange for the trust issued receipts, and delivering against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

vii. Maintenance of HOLDRs Portfolio

Except when a reconsitution even occurs, as described below, the securities represented by a trust issued receipt will not change. According to the prospectuses of the HOLDRs product, under no circumstances will a new company be added to the group of issuers of the underlying securities, and weightings of component securities will

[6] However, the Exchange's rules relating to odd lot executions will not apply, because trust issued receipts are traded only in round lots or round lot multiples. Additionally, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a–1 under the Act, 17 CFR 240.10a–1, for transactions in securities issued under the HOLDRs program. The CBOE will issue a notice to its members detailing the terms of the exemption. *See* Letter to Claire P. McGrath, Vice President and Special Counsel Derivative Securities, Amex, from James A. Brigagliano, Assistant Director, Division, SEC, dated November 3, 1999.

[7] 15 U.S.C. 781.

[8] For example, an order for 50 trust issued receipts will be rejected, while an order for 1,050 trust issued receipts, will be executed in part (1,000) and rejected in part (50).

not be adjusted after they are initially set.[9]

viii. Reconstitution Events of HOLDRs

As described in the aforementioned HOLDRs prospectuses, the securities underlying the trust issued receipts will be automatically distributed to the beneficial owners of the receipts in four circumstances:

(1) If the issuer of the underlying securities no longer has a class of common stock registered under Section 12 of the Act,[10] then its securities will no longer be an underlying security and the trustee will distribute the securities of that company to the owners of the trust issued receipts;

(2) If the Commission finds that an issuer of underlying securities should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the shares of that company to the owners of the trust issued receipts;

(3) If the underlying securities of an issuer cease to be outstanding as a result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of the trust issued receipts, unless the acquiring company's securities are already included in the trust issued receipt as deposited securities, in which case such additional securities will be deposited into the trust; and

(4) If an issuer's underlying securities are delisted from trading on a national securities exchange or Nasdaq and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.

As described in the prospectus, if a reconstitution event occurs, the trustee will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

ix. Issuance and Cancellation of HOLDRs

The trust will issue and cancel—and an investor may obtain, hold, trade or surrender—HOLDRs only in round lots of 100 or in round lot multiples. While investors will be able to acquire, hold, transfer and surrender a round lot of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by either purchasing them on an exchange or by delivering to the trustee the underlying securities evidencing a round lot of trust issued receipts. The trustee will charge an issuance and cancellation fee of up to $10.00 per 100 trust issued receipts. Lower charges may be assigned for bulk issuances and cancellations. An investor may cancel trust issued receipts and withdraw the deposited securities by delivering a round lot or round lot multiple of the trust issued receipts to the trustee, during normal business hours. According to the prospectus, the trustee expects that, in most cases, it will deliver the deposited securities within one business day of the withdrawal request.

x. Termination of a HOLDRs Trust

The trust shall terminate upon the earlier of: (1) the removal of the receipts from listing on a national securities exchange of Nasdaq if they are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the receipts are delisted; (2) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (3) 75% of the beneficial owners of outstanding trust issued receipts (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (4) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that is it designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–23 and should be submitted by September 7, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of proposed Rule Change

A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the previous orders approving the listing and trading of trust issued receipts,[13] that CBOE's proposal establishing listing standards for trust issued receipts will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by

[9] However, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the deposited securities, and the relative weightings among the deposited securities may change based on the current market price of the deposited securities.

[10] 15 U.S.C. 781.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 5.

providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions is securities, removed impediments to and perfect the mechanism of a free and open market system, and, in general, to protect investors and the public interest. Moreover, the proposal is not designated to permit unfair discrimination between customers, issuers, brokers, or dealer.[14]

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale or trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[15] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading and other issues.

B. Trading of Trust Issued Recepits—Listing and UTP

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP and meets all of the specific criteria and listing standards that the Commission approved in earlier orders.[16] This finding specifically extends to the CBOE's intention to trade certain of the HOLDRs type of trust issued receipt, currently limited to Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs.[17] Trust issued receipts are equity securities that will be subject to the full panoply of CBOE rules governing the trading of equity securities on the CBOE, including, among others, rules governing margin, the priority, parity and precedence of orders, responsibilities of the specialist, and operational and regulatory trading halts.[18]

Moreover, in approving this proposal, the Commission notes the CBOE's representation that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The CBOE represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Finally, the CBOE will apply surveillance procedures for trust issued receipts that incorporate and rely upon existing CBOE surveillance procedures governing equities. The Commission believes that these surveillance procedures will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the CBOE's proposal will ensure that investors have sufficient information to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The CBOE will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipt. The Commission also notes that upon the initial listing of any trust issued receipts, the CBOE will issue a circular to its members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable.

D. Accelerated Approval

CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. As noted above, the Commission has approved the listing and trading of trust issued receipts, including the aforementioned series of HOLDRs which the CBOE intends to trade pursuant to UTP, on other exchanges, under rules that are substantially similar to those in CBOE's proposal. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[19] The Commission believes that trading of this product raises no novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.[20]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CBOE–00–23), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20885 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

[14] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] The Commission has concerns about continued trading of the trust issued receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may not longer adequately reflect a cross section of the selected industry. Accordingly, the CBOE has agreed to consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each loss of a security thereafter.

[16] *See supra* note 5.

[17] *See infra* note 20.

[18] Trading rules pertaining to the availability of odd lot trading do not apply because trust issued receipts only can be traded in round lots.

[19] *See supra*, note 5.

[20] However, the Commission notes that, notwithstanding approval of the listing standards for trust issued receipts and, specifically, Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs, other similarly structured products; including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. In addition, the CBOE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43144; File No. SR–CBOE–00–24]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 22, 2000, the Chicago Board Options Exchange, Inc. (''CBOE '' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(1).

[2] CFR 240.19b-4.

(''Commission'') the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to (i) make certain fee changes and (ii) renew and amend the Exchange's Fee Reduction Program and Index Customer Larger Trade Discount Program. The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes (i) to make certain fee changes and (ii) to renew and amend the Exchange's Prospective Fee Reduction Program and Index Customer Large Trade Discount Program. The fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and are effective as of July 1, 2000.

The Exchange is increasing the following fees. First, the index option market-maker transaction fee will be increased from $.15 per contract to $.19 per contract, to equal the rate charged to equity market-makers. Second, the index option non-facilitation order fee will be increased from $.15 per contract to $.19 per contract, to equal market-maker rates. Third, the S&P 100 (''OEX'') facilitation fee will be increased from $.06 per contract to $.10 per contract, to equal the facilitation rates of all other indexes. fourth, the equity option facilitation fee will be increased from $.06 per contract to $.10 per contract, to equal the index facilitation rates. Fifth, the ILX trading floor booth terminal rental fee will be increase from $350 per month to $400 per month. Sixth, the Access fees will be increased form $100 to $110 for floor Managers, and from $50 to $55 for Clerks. Seventh, the monthly fee for certain booths that may be used to flash signals to the OEX pit will be increased from $150 to $500, equaling the rate charged for S&P 500 and Nasdaq-100 phone positions. The booths subject to this increased monthly fee are a subset of the perimeter booths category on the Exchange's fee schedule. Eighth, the Dow Jones monthly booth fee will be increased from $300 to $500. Finally, registration fees will be increased from $35 to $45 for initial applications; and will be increased from $30 to $40 for annual and transfer applications. Registration maintenance fees will be increased from $30 to $40 for registered representatives, registered options principals, and financial/operations principals. The Exchange proposes to amend Rule 2.22(b) to reflect the increase in the registration fees.

The Exchange also proposes to implement two new fees. First, the Exchange proposes to implement a Firm FOCUS Minimum Monthly Fee to supplement its existing Firm Designated Examining Authority (''DEA'') Fee, which is current $.40 per $1,000 of gross revenue. This new minimum fee will be $1,000 for clearing member firms and $250 for non-clearing member firms.[3] The purpose of this fee is to help the Exchange more closely cover the costs of regulating certain member firms that previously were assessed little or no fees in this area. Second, the Exchange proposes to establish a monthly Designated Primary Market Maker Facilities Fee that would be either $300, $600 or $900 depending on the size of the trading station utilized. This fee is similar to facilities usage fees charged to specialists on other exchanges.

In addition to implementing the two fees described above, the Exchange proposes to reinstate its transaction fee of $.19 per contract for broker-dealer marketable orders of 30 contracts or less routed via the Exchange's Order Routing System, which the Exchange had previously waived. The Exchange is also proposing to reinstate transaction fees for FLEX equity options (''E–FLEX''), by applying the Exchange's listed equity options fee schedule to E–FLEX options. These fees had also been waived by the Exchange. There will continue to be no transaction fee for customer E–FLEX options orders. The Exchange believes that reinstating these fees is necessary to make the Exchange's options transaction charges more consistent with those of other options exchanges.

The Exchange also proposes to renew its Prospective Fee Reduction Program. The program currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-year basis exceeds certain predetermined volume thresholds, the Exchange's market-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The Exchange proposes to raise the volume thresholds and renew the Program for one year, beginning July 1, 2000 and ending June 30, 2001. Trading volume in the fourth quarter of fiscal year 2000 will be used to determine the discount applied in the first quarter of fiscal year 200.1

Specifically, the CBOE proposes to raise the volume thresholds as follows: (i) the threshold volume at which a $.01 fee reduction applies will be raised from 850,000 to 1,050,000 contracts; (ii) the threshold volume at which the $.02 fee reduction applies will be raised from 900,000 to 1,100,000 contracts; (iii) the threshold volume at which a $.03 fee reduction applies will be raised form 950,000 to 1,200,000 contracts; and (iv) the threshold volume at which a $.04 fee reduction applies will be raised from 1,000,000 to 1,300,000 contracts. The Exchange is also proposing to establish two new thresholds for further fee reductions as follows: (i) a $.05 fee reduction for 1,400,000 to 1,499,999 contacts; and (ii) a $.06 fee reduction applies for 1,500,000 contracts and above.

The Exchange also proposes to renew and modify its Index Customer Large Trade Discount Program. This Program provides discounts on the transaction fees that CBOE members pay with respect to customer index orders for 500 or more contracts. Currently, for any month that the Exchange's average contract volume per day exceeds certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to customer index orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The program is scheduled to terminate on June 30, 2000 at the end of the Exchange's 2000 fiscal year. The Exchange proposes to renew the Program for one year, beginning on July 1, 2000 and ending on June 30, 2001. The Exchange is also proposing to eliminate the volume thresholds and to provide that for trades of 500 contracts

[3] The Firm FOCUS Minimum Monthly Fee will apply to those clearing member firms and non-clearing member firms whose DEA Fee would not otherwise exceed the thresholds of $1,000 and $250, respectively. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 20, 2000).

and above, regardless of monthly volume, transaction fees will be reduced by 30% in all index products.

In addition, the Exchange proposes to eliminate all booth variable fees. These fees have significantly declined in recent years, mostly due to firm consolidations and increased volume.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program and the Exchange's Index Customer Large Trade Discount Program will terminate at the end of the Exchange's 2001 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 2002 fiscal year and may renew these Programs in the same modified form for the 2002 fiscal year.[4]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes our changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–00–24 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20955 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change pursuant to Section 19(b) of the Act before renewing or modifying these programs. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 20, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(34)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43143; File No. SR–NYSE–00–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Floor Conduct and Safety Guidelines

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2000, the New York Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to the Exchange's Floor Conduct and Safety Guidelines (the ''Guidelines'') with respect to policies and procedures on: employment of clerical personnel, entering or crossing the Trading Floor, surrender of Exchange-issued Visitor's passes, handling violations of the Guidelines, and harassment. The Guidelines are a ''stated policy, practice or interpretation'' concerned with the administration of Exchange Rules 35 and 37.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Exchange's Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and to not jeopardize the safety or welfare of others. The proposed rule change enables the Exchange to keep its Guidelines consistent with current and new Exchange policy and procedures.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

a. Employment of Clerical Personnel

The proposed rule change provides that temporary floor employees are subject to the same registration and clearance requirements as all other Floor employees. The current standard applicable to temporary clerks employed less than six weeks, which requires obtaining an access control card for the period requested from the ID Card Office, has been deleted.

In addition, the proposed rule change provides that members and member organizations that permit an employee to work on the floor using a visitor's badge may also be subject to disciplinary action by the Exchange. Visitor's badges are not acceptable identification cards for temporary Floor employees. The above changes will conform the Guidelines to Exchange Rule 35. Failure to comply with the above requirements will subject the member or member organization to a $1,000 fine.

b. Entering or Crossing Trading Floor

The proposed rule change conforms the Guidelines to Exchange Rule 35.20. The latter states that ''Floor employees of members and member organizations are not allowed to be upon or to cross the trading area of the Floor for any purpose during the period between ten minutes preceding the opening of the market and five minutes following the close of the market.'' The current Guidelines permit Floor employees to be upon or to cross the trading area of the Floor during the period between fifteen (15) minutes prior to the opening and five (5) minutes after the close of business.

c. Surrender of Exchange-issued Visitor's Pass

The proposed amendments establish a single, consistent category of officials qualified to grant Floor access to visitors to include Officers of the Exchange, Senior Floor Officials, Floor Governors, and Floor Directors. ''Senior Floor Officials'' have been included since they are all former Floor Directors or Floor Governors.[3] The current Guidelines require approval from either a Floor Director or a Governor in order for a visitor to gain access to the Floor between 10 a.m. and 3:30 p.m.

In addition, the current Guidelines indicate that Members ''should'' accompany their guest throughout their entire visit to the Floor and ''should avoid all active crowds.'' The proposed amendments would require that a ''Member or properly designated Listed Company Relations person or Customer Relations person *must* accompany them [visitors] throughout their visit taking particular care to avoid escorting them through highly active areas (including active crowds and fringe area of activity).''

The proposed amendment also adds a caveat to the Guidelines that failure to comply with them may subject a member to a fine or other disciplinary action.

An additional proposed amendment to the Guidelines indicates that 30 minutes prior to and after the opening and 30 minutes prior to closing, an Exchange Officer's or a Floor Director's (or Senior Floor Official or Floor Governor in Floor Directories' absence) approval must be obtained in order for visitors to be admitted to the Floor. The current Guidelines indicate that approval of a Floor Director or Senior Floor Governor in Floor Directors' absence is required to bring guests onto the Floor during this time period.

d. Procedures for Handling Violations

The proposed amendments clarify that the reporting of routine violations of the Guidelines should now be made to Market Surveillance via the White Phone or to the new Trading Floor Liaison Unit. The White Phones enable Floor Officials to directly contact management of Market Surveillance who can then expeditiously respond to requests for rule interpretations. The current Guidelines indicate that the Market Surveillance Division should be contacted by telephone to report the violation.

e. Exchange Policy Concerning Harassment

The proposed amendments reflect the broader Exchange policy concerning harassment adopted by the Exchange in December 1998. The current Guidelines discuss what behavior constitutes sexual harassment. The proposed amendment broadens the definition of harassment to include verbal or physical conduct that denigrates or shows hostility or aversion toward an individual based on the following characteristics: race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, citizenship, predisposition to, or status as a carrier of, a genetic condition, or any other chacteristic protected by law. In addition, the harassment must (a) have the purpose or effect of creating an intimidating, hostile, or offensive work environment; (b) have the purpose or effect of unreasonably interfering with an individuals' work performance; or (c) otherwise adversely affect an individuals' employment.

The proposed amendments to the current Guidelines also prohibit retaliation against any person who makes a report of harassment or discrimination, or who participates in an investigation of such a report. Furthermore, the amended Guidelines would apply to all Exchange employees, other persons on Exchange premises (Exchange members), employees of Exchange members and member organizations who work on the Trading Floor, persons whose services are temporarily utilized by the Exchange, a member or member organization, and persons not directly related to the Exchange who may visit the trading Floor (*i.e.,* a vendor, consultant, customer or guest.)

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The revisions to the Guidelines support these goals by promoting the efficient, undisrupted conduct of business on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change will take effect immediately on filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act.[5] This proposed rule change is a ''stated policy, practice or interpretation'' concerned with the administration of Exchange Rules 35 and 37. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily

[3] Under separate cover, the Exchange proposed an amendment of Rule 37 (''Visitors'') consistent with the above. *See* Securities Exchange Act Release No. 42990 (June 28, 2000), 65 FR 42052 (July 7, 2000).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–29 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20884 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43145; File No. SR–PHLX–00–35]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in the Maximum Size of Options Orders Eligible for Delivery Through the Automated Options Market System

August 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to change the text of Phlx Rule 1080(b)(ii) to reflect an increase in the maximum order size for the delivery of option orders through its Automated Options Market (''AUTOM'') System. Currently, orders up to 500 contracts are permissible for delivery through AUTOM. The Exchange is proposing to increase the maximum order size to 1,000 contracts.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

AUTOM is the Exchange's electronic order routing, delivery, execution and reporting system for equity and index options. Orders are routed from member firms directly to the appropriate specialist on the Exchange's trading floor. AUTOM orders of 50 contracts or fewer are currently eligible for AUTO–X, the automatic execution feature of AUTOM. These AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Those orders that are not eligible for AUTO–X are handled manually by the specialist. The current proposal does not affect AUTO–X order size eligibility.

The Exchange proposes to increase the maximum eligible size of AUTOM orders from 500 to 1,000 contracts. This change is intended to extend the use of the AUTOM system to larger sized orders, which would provide more efficient order handling and processing for those orders. The Exchange notes that the maximum AUTOM order size has remained the same since 1995, when it increased from 100 to 500 contracts.[3]

In light of the Phlx's experience with AUTOM over the past five years, during which the maximum AUTOM order size has been 500 contracts, the Exchange believes that it is appropriate, at this time, to increase the maximum size of the option orders eligible for routing and delivery through AUTOM to 1,000 contracts. The Phlx states that the AUTOM system has the capacity to operate with a maximum order size of 1,000 contracts without adversely affecting the functioning of AUTOM and AUTO–X.

2. Statutory Basis

The Phlx believes that the proposal is consistent with Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTOM, including prompt and efficient order handling, to orders for up to 1,000 contracts. The Phlx believes that the proposal should also further increase efficiency through automation from order delivery to execution to reporting, as these orders may currently be delivered by floor brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b-4(b)(f)(6) thereunder[6] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does

[3] *See* Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 109 (June 7, 1995).

[4] 15 U.S.C. 78f(b)(5)

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b-4(f)(6).

not impose any significant burden on competition; (3) by its terms, does not become operative until 30 days after the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and (4) the Phlx has provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–35 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20883 Filed 8–16–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before October 16, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jane Palsgrove Butler, Associate Administrator, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 8300, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Stephen Kucharski, Financial System Specialist 202–205–7551 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''SBA Loan Application.''
Form No: 4M.
Description of Respondents: Participating Lenders, Certified Development Companies, and Small Businesses.
Annual Responses: 60,000.
Annual Burden: 10,000.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 00–20871 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Novus Ventures II, L.P.

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Novus Ventures II, L.P., 20111 Stevens Creek Blvd., Suite 130, Cupertino, California 95014, a Federal Applicant under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). Novus Ventures II, L.P. proposes to provide equity financing to Taviz Technologies, Inc. (''Taviz''), 1121 San Antonio Rd., B101, Palo Alto, California 94303. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Novus Ventures I, L.P., an Associate of Novus Ventures II, L.P. currently owns greater than 10 percent of Taviz Technologies, Inc. and therefore Novus Ventures I, L.P. is considered an Associate of Novus Ventures II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: August 9, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–20868 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9I06]

State of Alaska

The Regional Education Attendance Areas (REAAs) of Bering Straits (#2), Lower Yukon (#3), Lower Kuskokwim (#4), Kuspuk (#5), Iditarod (#11), Yukon-Koyukuk (#12), Yukon Flats (13), and Yupiit (#23), as well as the contiguous Boroughs of Bristol Bay, Denali, Fairbanks North Star, Kenai Peninsula, Lake and Peninsula, Matanuska Susitna, North Slope, and Northwest Arctic, and the contiguous REAAs of Alaska Gateway (#16) and Kashunamiut (#22) constitute an economic injury disaster area as a result of a fishery resource disaster, as determined by the Secretary of Commerce, due to extremely low salmon returns beginning in 1997 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on May 9, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 9, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–20875 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3278]

Commonwealth of Pennsylvania (and Contiguous Counties in New Jersey)

Bucks County and the contiguous Counties of Lehigh, Montgomery, Northampton, and Philadelphia in the Commonwealth of Pennsylvania, and Burlington, Hunterdon, Mercer, and Warren in the State of New Jersey constitute a disaster area as a result of damages caused by flash flooding that occurred July 30 through August 2, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 10, 2000 and for economic injury until the close of business on May 8, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 327806 for Pennsylvania and 327906 for New Jersey. For economic injury the numbers are 9I0700 for Pennsylvania and 9I0800 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 8, 2000.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 00–20874 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance for Women's Business Centers (WBC) Sustainability Pilot Program To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: U.S. Small Business Administration.

ACTION: Program Announcement No. OWBO–2001–016.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2001–016 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. Eligible applicants are nonprofit organizations that have received financial assistance from SBA under its WBC Program. To be eligible the applicant must be either in the final year of its WBC 5-year project or have completed a WBC project financed by SBA which continues to provide assistance to women entrepreneurs. Funds will be provided to continue business training, counseling and technical assistance to women for an additional 5-year period. The authorizing legislation to establish this 4-year pilot program is the Women's Business Center Sustainability Act and the Small Business Act, §§ 2(h) and 29, 15 U.S.C. §§ 631(h) and 656. SBA Headquarters must receive applications/proposals by 4:00 p.m., Eastern Standard Time, on the closing date of the application period. SBA will select successful applicants using a competitive process. Applications will be reviewed and awarded simultaneously with other applications for first-time WBCs submitted under Program Announcement No. OWBO–2001–015.

Service and assistance areas must include financial, management, marketing, loan packaging, eCommerce and government procurement/certification assistance. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, women who are veterans, women with disabilities, women with home-based businesses, women in agribusiness, or women in rural or urban areas. SBA will require award recipients to provide content and support to the SBA-funded Online Women's Business Center, *(www.onlinewbc,org)* and provide training on the business uses of the Internet. Applicants' technical proposal must contain information about its current status and past performance, and a 5-year plan for service delivery, fund-raising, training and technical assistance activities. A center may receive financial assistance up to three years (this is the second year of the four year pilot program) during the pilot's authorization period, however, the award will be issued annually to conduct a 12-month project.

The non-Federal match requirement is one non-Federal dollar for each Federal dollar in years 1 through 5 of the project. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

DATES: The application period will be from late September 2000 to mid-November 2000.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–7080.

Sherrye P. Henry,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 00–20872 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance for Women's Business Center (WBC) Program To Provide Financial Counseling and Other Management and Technical Assistance to Women

AGENCY: U.S. Small Business Administration

ACTION: Program Announcement No. OWBO–2001–015

SUMMARY: The Small Business Administration (SBA) plans to issue program announcement No. OWBO–2001–015 to invite applications from eligible nonprofit organizations to conduct Women's Business Center projects. The authorizing legislation is the Small Business Act, §§ 2 (h) and 29, 15 U.S.C. §§ 631 (h) and 656. SBA Headquarters must receive applications/proposals by 4 p.m., Eastern Standard Time, on the closing date of the application period. SBA will select successful applicants using a competitive process. The successful applicants will receive an award to provide long term training and other technical assistance to women who want to start or expand businesses.

Service and assistance areas must include financial, management, marketing, loan packaging, eCommerce and government procurement/certification assistance. Applicants must plan to include women who are socially

and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, women who are veterans, women with disabilities, women who have home-based businesses, women in agribusiness, or women in rural or urban areas. SBA will require award recipients to provide content and support to the SBA-funded Online Women's Business Center, *(www.onlinewbc,org)* and provide training on the business uses of the Internet. Each applicant must submit a five-year plan that describes proposed fund-raising, training and technical assistance activities. A center may receive financial assistance up to five years, however, the award will be issued annually to conduct a 12-month project.

Award recipients must provide non-Federal matching funds as follows: one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4 and 5. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

DATES: The application period will be from late September 2001 to mid-November 2001.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–7080.

Sherrye P. Henry,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 00–20873 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m. on Monday, September 18, 2000, located at the Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, (860) 240–4700.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–20869 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting at 4 p.m. on Tuesday, September 12th at the Caribou Hotel & Conference Center to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8378.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–20870 Filed 8–16–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3348]

Bureau of Economic and Business Affairs; Advisory Committee on International Communications and Information Policy Notice of Committee Renewal

Renewal of Advisory Committee

The Department of State has renewed the Charter of the Advisory Committee on International Communications and Information Policy. This advisory committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The duties of the Advisory Committee shall include performance of the following functions:

(a) To provide information and advice on both public and private aspects of current foreign affairs issues in these areas;

(b) To provide advice in the formulation of United States communications and information policy, positions and proposals for multilateral and bilateral consultations, and negotiations on communications and information policy issues; and

(c) In furtherance of the objectives noted in paragraphs (a) and (b), through subcommittees and working groups, to provide information and advice, and to carry out special studies and research in particular areas of information and communications policy as may be deemed advisable.

The objective of the Committee is to bring to the Department a source of expertise, knowledge and insight, not available within the Department or elsewhere in the Government, on these issues and problems.

For further information, please contact: Timothy C. Finton, EB/CIP, U.S. Department of State, <fintontc@state.gov>.

Dated: August 11, 2000.

Timothy C. Finton,

Executive Secretary, Advisory Committee on International Communications and Information Policy, Department of State.

[FR Doc. 00–20979 Filed 8–16–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for a Public Collection of Information for Competition Plans Under the Passenger Facility Charge (PFC) and Airport Improvement Program (AIP)

AGENCY: Federal Aviation Administration (FAA) (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on a public information collection which will be submitted to OMB for approval.

DATES: Comments must be submitted on or before October 16, 2000.

ADDRESSES: Comments may be mailed or delivered to FAA, at the following address: Ms. Judith Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on the following new collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of

burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of collection. The following is a synopsis of the information collection activity which will be submitted to OMB for review and approval:

Section 155 of the ''Wendell H. Ford Aviation Investment and Reform Act for the 21st Century'' (AIR 21) requires that, beginning in fiscal year 2001, a covered airport must submit a written competition plan to the Secretary/Administrator in order to receive approval to impose a PFC or to receive a grant under the AIP. A covered airport is further defined as a medium or large hub airport at which one or two air carriers control more than 50 percent of the passenger boardings. As of the time of the publication of this notice, there were 41 covered airports identified by the Secretary/Administrator. These airports would file such a plan annually to the Secretary/Administrator. However, the burden associated with subsequent annual submittals is expected to be substantially less than with the initial submittal.

As specified by AIR 21, the competition plan is required to include information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, patterns of air service, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels compared to other large airports. In addition to this information, the Secretary/Administrator is required to review any such plan to ensure it meets these requirements and review the implementation of the plan at each covered airport.

Although the information needed to prepare such a plan should be readily available to the airports, it will be necessary for each airport to coordinate, compile, and produce the information in the form of a competition plan. At 41 submittals in the first year at a 120 hour rate = 4,920 hours. Costs associated with meeting this requirement for the 41 submittals at the 120 hour rate = 4,920 hours × $30 per hour = $147,600. Subsequent plan submittals at 41 submittals per year at a 30 hour rate would equal 1,230 hours. Costs associated with meeting this requirement for the 41 submittals at the 30 hour rate = 1,230 hours × $30 per hour = $36,900.

In addition, each covered airport must keep sufficient records for the Secretary/Administrator to make these determinations. Time for recordkeeping associated with this requirement at 41 locations per year at the 25 hour rate = 1,025 hours. Costs associated with meeting this requirement for the 41 submittals at the 25 hour rate = 1,025 hours × $30 per hour = $30,750.

The total reporting and recordkeeping burden for the first year is estimated to be 5,945 with a corresponding estimated cost of $178,350. The total reporting and recordkeeping burden for subsequent years is estimated to be 2,255 hours with a corresponding estimated cost of $67,650.

The information collected from this form allows the FAA to approve the collection of PFC revenue and issue grants-in-aid under the AIP for projects which preserve or enhance safety, security, or capacity of the national air transportation system; or which reduce noise or mitigate noise impacts resulting from an airport; or furnish opportunities for enhanced competition between or among air carriers.

It is also noted that 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. When assigned by OMB, the control number will be published in the **Federal Register.**

Issued in Washington, DC on August 9, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100

[FR Doc. 00–20945 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver Of Aeronautical Land-use Assurance Aurora Municipal Airport, Aurora, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that a portion of the airport (a portion of Parcel E, 0.239 acres located along the north side of U.S. Highway 30 and east the intersection of U.S. Highway 30 and the airport entrance road, presently used as open land for control of FAR Part 77 surfaces and compatible land use) is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. Parcel E was acquired on January 10, 1962, under FAA Project Number 9–11–029–5901. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The release of this portion of Parcel E will provide additional right-of-way for the construction of a deceleration and left turn lane on US Highway 30 at the entrance to the Aurora Municipal Airport. The improvements are for the benefit of the Aurora Municipal Airport to improve safety for left hand turns into the airport.

DATES: Comments must be received on or before September 18, 2000.

FOR FURTHER INFORMATION CONTACT: Denis Rewerts, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7195/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location or at Aurora Municipal Airport, Aurora, Illinois.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Aurora Municipal Airport, Aurora, Illinois. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Des Plaines, Illinois on August 4, 2000.

Pene A. Beversdorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 00–20999 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lovell Field Airport, Chattanooga, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lovell Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd, Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Hugh Davis, president of the Chattanooga Metropolitan Airport Authority at the following address: 1000 Airport Road, Suite 14, Chattanooga, Tennessee 37421.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Chattanooga Metropolitan Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Cager Swaunicy, Program Manager, Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, Tennessee 38116–3841 (901) 544–3495. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lovell Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Chattanooga Metropolitan Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 24, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–03–C–00–CHA.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: January 1, 2015.

Total estimated net PFC revenue: $23,427,223.

Brief description of proposed project(s): Acquisition of Land for current and future Runway Protection Zone and Airport Development, Relocation of Taxiway ''A'', Roadway Improvements, Obstruction Removal, Levee Improvements, and Part 150 Land Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: The Authority intends to request that those air carriers operating under Part 135, nonscheduled, whole-plane-charter basis, *i.e.,* Air Taxis/Commercial Operators (''ATCO'') which file form 1800–31, at the Airport to be exempt from collecting the PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chattanooga Metropolitan Airport Authority.

Issued in Memphis, Tennessee, on August 10, 2000.

LaVerne F. Reid,

Manager, Memphis Airports District Office Southern Region.

[FR Doc. 00–20943 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at San Luis Obispo County Airport-McChesney Field, San Luis Obispo, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Luis Obispo County Airport-McChesney Field under the provisions of the aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Klaasje Nairne, Airports Manager, San Luis Obispo County Airport, 903–5 Airport Drive, San Luis Obispo, CA, at the following address: 903–5 Airport Drive, San Luis Obispo, CA 93401. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of San Luis Obispo under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to use the revenue from a PFC at San Luis Obispo County Airport-McChesney Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 25, 2000, the FAA determined that the application to use the revenue from a PFC submitted by the County of San Luis Obispo was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 2000.

The following is a brief overview of the application No. 00–06–U–00–SBP:

Level of proposed PFC: $3.00.

Charge effective date: July 1, 1997.

Proposed charge expiration date: July 1, 2012.

Total estimated PFC revenue: $6,820,830.

Brief description of the proposed project: Existing and Future Terminal Development and Construction.

Class or classes of air carriers which the public agency has requested not be required to collect PCFs: Unscheduled Part 135 Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31 and Commuters or Small Certified Air Carriers filing DOT form 298–CT1 and E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of San Luis Obispo.

Issued in Hawthorne, California, on July 25, 2000.

Herman C. Bliss,

Manager, Airports Division Western, Pacific Region.

[FR Doc. 00–20946 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–1999–5382]

Implementation Guidance and Selection Criteria for Interstate Maintenance Discretionary Program Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final selection criteria for Fiscal Year (FY) 2001 and beyond.

SUMMARY: The FHWA adopts as final the selection criteria to be used for evaluating candidate projects for Interstate Maintenance Discretionary (IMD) Program funds for FY 2001 and beyond as published on Friday, April 23, 1999, at 64 FR 20048. These are the same general selection criteria that have been used by FHWA for several years to evaluate candidates for this discretionary program. The FHWA Division Offices in each State will use these selection criteria to solicit candidate projects from State transportation agencies for FY 2001 and beyond. Also, this notice responds to the public comments to this docket.

FOR FURTHER INFORMATION CONTACT: Cecilio Leonin, Office of Program Administration, (202) 366–4651; or Harold Aikens, Office of the Chief Counsel, (202) 366–0764; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office?s database at *http://www.access.gpo.gov/nara.* Internet users may also access the written comments on the interim guidance [FHWA Docket No. FHWA–1999–5382] received by the U.S. DOT Dockets by using the universal resource locator (URL): *http://www.dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

The solicitation memorandum will be available each year of the program on the FHWA web site at: *http://www.fhwa.dot.gov/discretionary.*

Background

On April 23, 1999, at 64 FR 20048, the FHWA solicited comments on the selection criteria to be used by the FHWA for evaluating candidate projects for the IMD program for FY 2001 and beyond. These are the same general selection criteria that the FHWA has used for several years to evaluate candidates for this discretionary program.

Discussion of Comments

Comments in response to the April 23, 1999, notice were received from two State transportation departments.

The Florida Department of Transportation proposed that a donor State be given priority for the IMD Program funds over States that are receiving a more equitable balance between Federal funds collected and Federal funds apportioned. Section 118(c)(3) of title 23, U.S. Code, provides the statutory criteria for priority consideration of the following: (1) Any project the cost of which exceeds $10 million, and (2) a project on any high volume route in an urban area, or high truck-volume route in a rural area. The more important non-regulatory criteria considered are the expeditious completion of large-scale viable projects and the transportation benefits and advantages that will be derived upon completion of the project, notably, easing of traffic congestion and enhancement of safety to the motoring public. It was never the intent of this program to be an equity adjustment for donor States.

The Illinois Department of Transportation (ILDOT) submitted the following two recommendations: (1) That preference be given to projects with relatively high ratio of cost of project to a State's annual Interstate Maintenance (IM) apportionment since such IM projects impose a financial burden on the State's available Federal funds, and (2) that preference be given to projects that have relatively large volumes of truck traffic in urban areas, as well as in rural areas.

In regard to the ILDOT's first recommendation, the FHWA believes that the congressional intent is to give priority to viable large-scale projects to expedite their completion where available apportionments are insufficient to allow such projects to proceed on a timely basis. Section 118(c)(3) of title 23, U.S. Code, requires that priority consideration be given to projects which exceed $10 million regardless of the amount of a State's annual apportionment of IM funds. Regardless of the size of this annual apportionment, 23 U.S.C. 118(c)(2)(A) requires that the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments of IM funds to be eligible for IMD funds except an amount that, by itself, is not sufficient to pay the Federal share of the cost of a requested project.

In response to the ILDOT's second recommendation, the law explicitly provides that preference be given to projects as follows: (1) For urban areas, the total traffic volume should be considered; (2) while in rural areas, truck traffic volume should be taken into account. See 23 U.S.C. 118(c)(3). The FHWA believes that the congressional intent is to consider urban areas, which have heavier volumes of mixed vehicular traffic, separately from rural areas. Rural areas by their very nature have less traffic volume, but usually have a high percentage of truck traffic. Thus, when the FHWA considers candidate projects in rural areas, preference is given to projects that have relatively large volumes of truck traffic.

Based on the comments received, the FHWA will make no changes and will continue to use the same basic selection criteria for FY 2001 and beyond for the IM discretionary program. A selection criterion may be added for any individual year that reflects a special emphasis area but, for the most part, the selection criteria will remain unchanged. Accordingly, the FHWA hereby adopts as final the selection criteria to be used for evaluating candidate projects for IMD program funds for FY 2001 and beyond as published at 64 FR 20048 on Friday, April 23, 1999.

Authority: 23 U.S.C. 118 and 315; and 49 CFR 1.48.

Issued on: August 10, 2000.

Walter L. Sutton, Jr.,

Federal Highway Deputy Administrator.

[FR Doc. 00–20940 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2000–7635]

Highway Motor Fuel Reporting Reassessment; Public Workshop

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; public workshop; request for comments.

SUMMARY: The FHWA presents this statement of proposed policy regarding the methodology to be used by the FHWA for estimating Highway Trust Fund (HTF) receipts attributable to the States. This motor fuel attribution process is used in determining the distribution of Federal-aid highway funds in three large highway programs and the minimum guarantee. The purpose of this policy announcement is to provide information on the FHWA's proposed changes to reporting of motor fuel data from the States to the FHWA, and to gather comments on potential changes to the reporting procedures. Also, a one-day workshop will be held to assist individuals who wish to know more about the procedures and to discuss this subject matter.

DATES: Comments on the proposed policy must be received on or before October 30, 2000. The public workshop will be held on October 5, 2000, from 8:30 a.m. to 5 p.m., e.t., Washington, DC 20590–0001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

The workshop location is the Capitol Hill Holiday Inn, 550 C Street SW., Washington, DC. For details on registration and hotel accommodation information, and to make reservations to attend this meeting, please contact Ms. Gina Burge of Harrington-Hughes and Associates, Inc. at (202) 347–3511 by September 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Howard, Office of Highway Policy Information, (202) 366–0170; or Ms. Gloria Hardiman-Tobin, Office of the Chief Counsel, HCC–32 (202) 366–1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

The ''Guide to Reporting Highway Statistics,'' is available for review at the URL: *http://www.fhwa.dot.gov/ohim/ghwystat.htm.* Additional information on the Internal Revenue Service (IRS) projects Excise Files Information Retrieval System (ExFirs) and Excise Summary Terminal Activity Reporting System (ExSTARS) may be found at the URL: *http://www.taxadmin.org/fta/mf.*

Background

Under the Transportation Equity Act for the 21st Century (TEA 21)(Public Law 105–178, 112 Stat. 107(1998)), motor fuel data are used in the apportionment of Federal Surface Transportation Program (STP) funds, National Highway System (NHS) funds, Interstate Maintenance (IM) funds, and the minimum guarantee program funds. About $11.3 billion annually are apportioned based on State-reported motor fuel data. The following shows these factors for fiscal year (FY) 2000:

- Highway Trust Fund payments to the highway account are used as a 35 percent factor for distributing about $5.4 billion in FY 2000 STP funds.
- Diesel fuel used on highways is used as a 30 percent factor for distributing about $4.6 billion in FY 2000 NHS funds.
- Commercial vehicle contributions to the highway account are used as a 33.3 percent factor for distributing about $3.8 billion in FY 2000 IM funds.
- The minimum guarantee, under which each State is guaranteed that its share of apportionments and funding for highway priority projects will be at least 90.5 percent of its share of contributions to the highway account of the Highway Trust Fund, is estimated to be about $6.7 billion in FY 2000.

The current process for attributing motor fuel data was formulated in 1985. In the policy statement published on June 21, 1985, under FHWA Docket No. 85–13, at 50 FR 25812, FHWA established highway use of motor fuel as its attribution basis, and defined a new method to attribute the non-fuel truck taxes (the tire, truck and trailer retail excise, and heavy vehicle use taxes), using special fuels as the attribution factor. Prior to this change, truck vehicle registrations had been used as the attribution factor for these taxes. These changes were in response to the Surface Transportation Assistance Act of 1982 (Public Law 97–424, 96 Stat. 2097) which created a Federal-aid program funding category that relied on attribution, and in which truck taxes were raised significantly. Since June 1985, no policy changes have been made to the attribution process.

Recognizing the increasing importance of accurate, timely reporting of motor fuel and related attribution data in determining State funding shares, the FHWA, with expert support from the American Association of State Highway and Transportation officials (AASHTO) and the Federation of Tax Administrators (FTA), initiated a review of the motor fuel data reporting system. As part of the review, the FHWA is evaluating the attribution process to determine the continued quality of the attribution methodology, and to identify where improvement can be made. Experts on motor fuel taxation and reporting from several State departments of revenue and transportation and the FHWA field offices met with the FHWA, the AASHTO, and the FTA, and provided technical expertise and feedback to the review. Two meetings were held in

December 1998 and September 1999. While not announced, minutes of these two meeting are available from Mr. Tom Howard, Office of Highway Policy Information, FHWA, at (202) 366–0170.

Three public workshops were held in association with the reassessment process on December 7, 1999, in Atlanta, GA; January 27, 2000, in Philadelphia, PA: and February 24, 2000, in Denver, CO. (65 FR 2222, January 13, 2000). Minutes of these meetings are available from Mr. Tom Howard, Office of Highway Policy Information, at (202) 366–0170.

The attribution process was one of the subjects of review in a General Accounting Office (GAO) study dated June 29, 2000, ''Highway Funding; Problems with Highway Trust Fund Information Can Affect State Highway Funds'' (Report No. RCED/AIMD–00–148 (15pp.) Plus 7 appendices (47 pp.)). This report is available from the URL: *http://www.gao.gov* and click on ''GAO Reports.''

Overview

In general, the FHWA found that the existing motor fuel reporting and basic attribution process is serving adequately, but it needs to be better documented to maintain its credibility, and updated to continue to meet the attribution requirements of accuracy and equity. These requirements are even more important because of the increased amount of money dependent on this data.

The existing methodology that relies on motor fuel use as the basis for attributing Highway Trust Fund receipts continues to be consistent with the basic principals of highway user fees. However, the process can be improved in three areas: (1) Reporting, (such as losses, special fuels, alternative fuels, and International Fuels Tax Agreement (IFTA), (2) treatment of motor fuel data in attribution, (such as public use of diesel, and special fuels), and (3) process management (process oversight and documentation).

The FHWA is developing an ''action plan'' to address the issues and concerns raised by the reassessment process. At this point in time, action items include the following:

- Fully document FHWA's data preparation and attribution process, providing explanation and rationale of the data flow and analyses throughout the attribution steps;
- Ensure that State's motor fuel data is subject to detailed independent verification;
- Write instructions to implement the proposed changes listed in this **Federal Register** notice (after comments have been received and evaluated), and rewrite FHWA reporting instructions to clarify selected items;
- Identify States with high risk of reporting shortcomings, and perform in-depth reviews with these States;
- Develop ''smart-forms'' (with appropriate data editing capabilities) for State motor fuel data submission to simplify reporting, and internal processing through the FHWA evaluation process, to minimize errors and data handling;
- Document results of FHWA's annual analysis to Divisions and States for comment and revision, if necessary;
- Develop training for data providers;
- Review statistical models and other procedures used by the FHWA to estimate missing information and fund research to update these procedures.
- Conduct an independent review of the FHWA's motor fuel data preparation and attribution process.

Availability of the detailed action plan will be announced in the final **Federal Register** policy statement.

Purpose

The primary purpose of this notice is to provide the opportunity for public comment on proposed policy modifications to the existing process. The proposed modifications are significant in that they will improve equity and simplify reporting, but are not expected to have large impacts on a State's share of the TEA–21 funds in the attribution process.

Discussion of Proposed Changes

Issue: Reporting of Public Use of Diesel Fuel

Background

Current FHWA instructions to the States in the ''Guide to Reporting Highway Statistics'' (Guide), call for the inclusion of private and commercial on-highway diesel gallons, and the exclusion of public diesel gallons. In the past, public diesel was not generally taxed by States, and it was typical for States to tax non-public diesel at the retail pump. With taxes collected at the retail pump, it was most likely that the fuel would be used on the highway by private and commercial vehicles. Under these circumstances, it was reasonable to request States to report non-public (i.e., private and commercial) diesel. However, with the efforts to combat tax evasion initiated in the past 15 years, diesel fuel is now generally taxed higher up the fuel distribution chain, making it more difficult to differentiate public and private uses. These changes in the tax collection process impact the existing attribution and formula fund distribution process.

Current Situation

The TEA–21 language specifies that the NHS program fund distribution is partly based on diesel gallons by State, which includes public, private, and commercial uses. It also specifies that the IM program is partly based on commercial vehicle contributions, which does not include motor fuel used in public vehicles. Most States cannot separately identify public use of diesel motor fuel, and therefore are reporting public diesel as part of private and commercial diesel. The reasons this situation exists are the lack of a tax mechanism in many States that separately identifies the publicly used fuel (no State legislation for exemption or refunds), and the complexity of State reporting from many subjurisdictions (such as counties or school districts reporting to the State). Only about seven States currently separate all public diesel from other uses.

Improvements

The FHWA proposes to require the reporting of all on-highway diesel fuel (therefore including public diesel, as well as private and commercial diesel) for all States. This will resolve current inequities and remove inconsistencies in the current procedures related to the public diesel data issue. This solution serves the purposes of equity, minimal State reporting burden, and congressional intent.

Implementation

The FHWA proposes to begin including on-highway public diesel with on-highway private and commercial diesel for data year 2002, which will impact Federal funds attribution in FY 2005.

Issue: Accounting for Motor Fuel Losses

Background

Motor fuel inventory losses for tax accounting purposes include occurrences such as storage tank leakage, destruction by fire or other means, spillage, meter faults, and measurement differences due to temperature and evaporation (often called shrinkage, but could be a gain in volume).

Federal (IRS) regulations do not recognize losses of highway motor fuel. Under these regulations, fuel lost or destroyed through spillage, fire or other casualty, cannot be treated as fuel used in an off-highway business use, and a refund from highway taxes cannot be claimed. At the State level, about ten States allow a flat percentage loss for

gasoline, and some States allow for actual losses for tax accounting inventory.

Current Situation

For those States that allow a flat percentage for gasoline losses, the FHWA caps the loss at one percent of gross gasoline reported. The reasoning behind capping losses at one percent is the concept that the gallons above the one percent threshold are actually consumed on the highway. While a State may choose to allow a tax break to wholesalers and distributors, the gallons represented by this paper transaction are not actually lost, they are just not taxed by the State. Diesel losses are not considered in the FHWA Guide instructions on the assumption that shrinkage and evaporation of diesel fuel is not significant.

Improvements

The FHWA proposes to modify its process and to accept only actual losses as reported by the States. The FHWA proposes to eliminate the one-percent loss allowance cap, and to discontinue the reporting of any State percentage loss allowances. The FHWA also proposes to treat diesel losses the same as gasoline losses, *i.e.,* allowing the reporting of actual diesel losses.

Implementation

The FHWA will revise the Guide, worksheets, and tables to eliminate the reporting and analysis of percentage losses beginning with data year 2002. The FHWA will continue to request the reporting of actual losses for gasoline, and will begin accepting and incorporating actual diesel losses reported by States.

Issue: Oversight of State-Reported Data

Background

For decades, State-reported motor fuel data collected through State tax authorities has been reported to the FHWA for statistical record keeping purposes. Within the last two decades, however, the Congress has increasingly used this data for purposes related to distributing highway funds to the States. With this trend, the quality of the data being reported has been increasingly questioned. The FHWA is considering whether additional oversight actions might be needed to assure the quality of this data.

Current Situation

Currently, the FHWA Division Offices conduct motor fuel reviews on a three-year cycle. These reviews address key reporting issues, help the FHWA evaluate the quality of the data being submitted by the States and identify problem areas. The GAO has concluded that the FHWA needs to ensure that State data is independently verified.

Several options are available to address this recommendation, including:

- Certification of the State data by a high-level State official;
- Certification by State official with periodic, independent, in-depth reviews;
- Periodic multi-State/FHWA peer reviews; or
- In-depth reviews by FHWA staff on a periodic basis.

Implementation

The FHWA is soliciting comments on the best way to ensure State data validity. FHWA use of the IRS ExFIRS data base, being developed to combat tax evasion (by IRS with FHWA funding), will likely provide additional verification functions when it is available. ExSTARS, the tracking system of ExFIRS, is projected to be available by October 2000. The FHWA will also pursue further investigation of using ExFIRS for additional verification of State data when ExFIRS becomes available.

Issue: Special Fuel Versus Diesel Fuel as an Attribution Issue

Background

Historically, the FHWA has allowed States to report gallons of diesel fuel together with small amounts of other special fuels, and has called the combined total ''special fuels.'' These other special fuels include, in order of prevalence (most to least prevalent) liquefied petroleum gases (LPG), compressed natural gas (CNG), and liquefied natural gases (LNG), 85 percent alcohol mixtures, and any other alternative fuels. Kerosene, another alternative fuel historically not used as a motor fuel, is now occasionally mixed with diesel fuel in cold weather to improve running characteristics; this is generally treated as a diesel fuel and is not reported separately.

Current Situation

The TEA–21 directs that the NHS component be apportioned as follows: ''30 percent in the ratio that total diesel fuel used on highways in each State bears to the total diesel fuel used on highways in all States.'' Note that this language does not include LPG and the other fuels. However, because the amounts of other special fuels are estimated to be very small (less than 2 percent), and about one-half of the States do not—or cannot—separately identify them, existing FHWA procedures combine all ''special fuels'' with diesel fuel. Hence, current attribution procedures currently include LPG and other special fuels.

Improvements

Two options to address special fuels as an attribution factor exist:

- Use only diesel fuel as the NHS attribution factor; or
- Maintain the combined category special fuels as the NHS attribution factor.

One problem with excluding special fuels is how to deal with States which may have reportable gallons of the these fuels, but cannot document them separately (*e.g.,* two fuels may have the same tax rate, and the State revenue department reduces reporting burden on the taxpayer by not requiring separate reporting of the fuels). The FHWA does not have a procedure for identifying and removing special fuel gallons from gross reported diesel gallons for States that report aggregated data. Taking the special fuel gallons out of the data of States who report it separately would be inconsistent treatment when compared with those States who report aggregated special fuel gallons. Given these circumstances, the FHWA is proposing not to require separation of diesel and special fuels.

Implementation

The FHWA proposes to retain its current reporting requirement and not require States to split diesel and special fuels. For those States that can readily provide information on a variety of alternative fuels, the FHWA will request that they report that information so that the FHWA can monitor the use of special fuels.

Issue: Reporting of Alternative Fuels

Background

''Alternative fuels''—such as 85 percent ethanol (E85), 85 percent methanol (M85), LPG, LNG, and CNG—are currently a very small portion of motor fuel used for highways but may be a growing segment of the motor fuel industry. Over the long term, alternative fuel growth could significantly skew motor fuel data as it is currently reported.

In the attribution of motor fuel data, gallons have been the traditional unit of measure of motor fuels, but some alternative fuels are compressed gases which must be measured in other units. The energy content of the alternative fuels, and their variance from traditional motor fuel energy content, also causes concern for motor fuel attribution.

Several States do not tax alternative fuels on a per gallon basis. These States typically charge annual alternative-fueled vehicle registration fees, often depending on vehicle weight or distance of travel, and provide for the issuance of decals to these vehicles. While this fee is a highway-related tax, it is not reportable as on-highway motor fuel use. Receipts associated with these decals are reported to the FHWA as State revenue, but no gallons of highway use are reported to the FHWA, or shown in the FHWA consumption and attribution tables.

Current Situation

At the Federal level, these fuels pay applicable motor fuel taxes if the fuels are consumed in on-highway vehicles. At the State level, these fuels usually pay applicable motor fuel taxes if consumed in on-highway vehicles, although some States substitute registration fees as discussed above.

The FHWA instructions in the Guide request the States to report gallons of E85 and M85 with State-reported gallons of gasoline. Likewise, CNG and compressed natural gas are to be reported as LPG. The reported amounts of these fuels are therefore used in the attribution process and reported in FHWA statistical tables.

Improvements

The FHWA is proposing to on revise the method of reporting alternative fuels. The FHWA proposes to instruct States to use standard conversion rates for equating the energy content of alternative fuels to diesel (to ensure all States will use consistent conversion factors), and to report these energy equivalent gallons to the FHWA by each alternative fuel type.

The FHWA also proposes to develop a mechanism for the reporting of motor fuel gallons that pay registration fees in lieu of per unit motor fuel taxes. The FHWA proposes working with the States to develop a common method of estimating gallons consumed in States that have a registration fee in lieu of per gallon taxes on alternative fuels.

Implementation

After evaluating the comments, the FHWA will work with States to develop a procedure, provide the opportunity for public comment, and develop appropriate procedures. The FHWA will also revise the Guide to provide instructions for the above improvements. Revised reporting is proposed to begin in calendar year 2002.

Issue: Accounting for International Fuel Tax Agreement Procedures

Background

The IFTA is a motor fuel accounting process that became mandatory for all States (and Canadian Provinces) on September 31, 1996. Under IFTA, motor carriers report the distances their trucks travel in all States (and Provinces) in which they operate, and pay the motor fuel taxes due in each State in one transaction to their base State (typically the State where the carrier's business headquarters is located). On a quarterly basis, the States adjust the motor carrier tax revenues among themselves to allocate motor fuel taxes to the State in which the travel actually took place.

The FHWA requires State reporting of IFTA gallons on a net basis—that is, adding in credits for gallons (and revenues received) from other States, and subtracting out credits for gallons (and debiting out receipts) sent to other States. To ensure proper crediting in FHWA tables and attribution procedures, State's must correctly report IFTA motor fuel gallons and receipts.

Current Situation

The IFTA organizational agreements have procedures to insure that base State reporting responsibilities are properly carried out and that procedures (such as peer reviews) and sanctions are available to remedy deficient conditions.

Improvements

To increase the understanding of States on the importance of reporting adjusted IFTA data to the FHWA, the FHWA proposes to review and document State practices in the reporting of IFTA data to the FHWA. This document will describe how States collect IFTA revenue, how States separate out revenues not related to the gallons of motor fuel and direct motor fuel gallon taxes, how they calculate net gallons and revenues, the time required to process IFTA data and report to the FHWA, and will suggest alternatives for IFTA calculations if full data are not available. An abbreviated version of this report will be incorporated as an appendix to Chapter Two of the Guide.

Implementation

The FHWA is soliciting comments on IFTA reporting issues, such as, timing of data submissions and processing, difficulties in data handling and processing, difficulties in incorporating revised data, the FHWA's proposed improvements (above), and any other issues related to developing accurate IFTA data. The FHWA proposes to incorporate these comments into its evaluation of the relation between the IFTA and the FHWA's motor fuel reporting procedures and to develop additional guidance on IFTA reporting.

(Authority: 23 U.S.C. 315; sections 1103 and 1104, Pub. L. 105–178, 112 Stat. 107 (1998); and 49 CFR 1.48).

Issued on: August 10, 2000.

Walter L. Sutton, Jr.,

Federal Highway Deputy Administrator.

[FR Doc. 00–20941 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6021; Notice 2]

Explorer Van Company, Grant of Application for Decision of Inconsequential Noncompliance

Explorer Van Company (Explorer), a division of the Bodor Corporation, is a corporation organized under the laws of the State of Indiana and is located in Warsaw, Indiana. Explorer has determined that it manufactured conversion vans that are in noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, Tire selection and rims for motor vehicles other than passenger cars, and 49 CFR Part 567, Certification, and has filed a report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Explorer has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliances are inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on September 14, 1999, in the **Federal Register** (64 FR 49836). NHTSA received no comments on this application during the 30-day comment period.

First, from February 1, 1998 to May 31, 1998, Explorer manufactured approximately 2,416 conversion vans that do not meet certain requirements of FMVSS No. 120. The certification label affixed to these Explorer units pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and the failure of Explorer to separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120.

Second, from January 1998 to August 1998, Explorer manufactured

approximately 187 conversion vans whose certification labels specify that the tires on the rear axle have an inflation pressure of 41 psi, while the maximum inflation pressure indicated on the tires is 35 psi. Explorer explained that this occurred due to a programming error. The vans have P255/70R15 tires installed, but the label recommends P235/75R15XL tires. FMVSS No. 120 permits a manufacturer to install tires on a vehicle that do not match the recommended tire size listed on the certification label. NHTSA chose this approach in the mid-70's to assure the public would get information about an appropriate tire size, while accommodating the then-common practice of changing tires and rims after a new vehicle had been shipped to a dealer. However, the label on the 187 explorer vans recommends a rear axle tire inflation pressure of 41 psi, which is more than the P255/70R15 sidewall maximum inflation pressure of 35 psi.

Third, from 1997 to 1999, Explorer manufactured approximately 68 conversion vans that do not meet the requirements stated in Part 567. Section 567.4(g)(3) requires that the Gross Vehicle Weight Rating (GVWR) be not less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the designated seating capacity. The GVWR on the vehicle was specified to be 7,000 pounds. NHTSA weighed one of the 68 vans with portable scales, and, using calculated full load conditions with the appropriate fuel and occupant loads, found the van's weight to be 7,214 pounds, without including rated cargo load. This weight exceeds the specified GVWR.

Explorer supported its application for inconsequential noncompliance with the following statements:

1. METRIC AND ENGLISH INFORMATION: ''All certification labels now in use by Bodor Corporation's Explorer Vans correctly specify the weights and pressures in metric and English, as required. There were a small number of ''old style'' labels remaining in inventory which were to have been destroyed and were inadvertently used by the production staff during a short period when the error was discovered * * * the language is inconsequential to motor vehicle safety and should be exempted.''

2. TIRE PRESSURE INFORMATION: ''Due to a programming error, not more than 187 vehicles may potentially have incorrect tire pressure. The tires are each individually clearly marked with the tire pressure information.''

3. GVWR LABELING: ''Bodor Corporation undertook an materials weight reduction program, and, further, no longer utilizes the [Ford] E–150 chassis for high-top conversions, favoring instead the E–250 model with an initial higher weight GVWR. The E–250 was previously not made available in [a] large enough quantity by Ford Motor Company for conversion purposes.''

The agency has reviewed Explorer's petition and associated arguments. The purpose of labeling requirements in S5.3, Label information, of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating, and rims of appropriate size and type designation. Paragraph S5.3. specifies by example the correct information labeling requirements. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format.

Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) makes it the policy of the United States that the metric system of measurement is the preferred system of weights and measures for U.S. trade and commerce. On March 14, 1995, NHTSA published in the **Federal Register** (60 FR 13693) the final rule that metric measurements be used in S5.3 of FMVSS No. 120. The effective date for this final rule was March 14, 1996.

The agency agrees with Explorer that the label on these vans whose only deficiency is the failure to provide metric information is likely to achieve the safety purpose of the required label. The vehicle user will have the correct safety information, but without the metric conversion, in the prescribed location. First, all the correct English unit information required by FMVSS No. 120 is provided on these certification labels. Second, the information contained on the label is of the correct size. Third, the information contained on the label is in the prescribed format, except for metric values.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the metric noncompliance portion of this petition is inconsequential to motor vehicle safety. Accordingly, we grant its petition on this issue.

With respect to the second issue raised by Explorer, the certification labels on the vehicles specify an inflation pressure of 41 psi for the tires on the rear axle, while the maximum inflation pressure indicated on the tires is 35 psi. FMVSS No. 120 requires a vehicle manufacturer to specify, either on the certification label or on a separate label, the tire size designation (not necessarily for the tires on the vehicle) and the recommended cold inflation pressure for those tires (emphasis added), such that the sum of the load ratings of the tires at the specified pressure is appropriate for the GAWR. Thus, the tire size and inflation pressure operate as a pair in this requirement. The tire size and inflation pressure displayed on the certification labels of the affected vehicles are appropriate for the GAWR. Therefore, Explorer's vehicles meet this requirement. Notwithstanding there is no regulatory requirement, Explorer stated that it intended to display the tire size actually on the vehicle on its certification labels and has subsequently done so voluntarily.

We note that the inflation pressure specified for the tire size listed by Explorer (but not on the vehicles), 41 psi, is greater than the maximum inflation pressure that the tire manufacturer recommends for the tires that Explorer actually installed on the vehicles, 35 psi, which is molded into the tire sidewall. While the difference between the pressure specified on the label and the maximum pressure specified on the tire could lead to overinflation, which could have adverse safety consequences, it does not constitute a noncompliance with a Federal motor vehicle safety standard. Therefore, Explorer is not statutorily required to conduct a recall campaign, and its petition for an inconsequentiality exemption is moot.

NHTSA contacted Explorer to share our safety concerns with the manufacturer. In a June 28, 200 letter to the agency, Explorer agreed to voluntarily provide certification labels with correct tire inflation pressure for the 187 vehicles in question.

With respect to the third issue raised by Explorer, Section 567.4(g)(3), requires that the Gross Vehicle Weight Rating (GVWR) of a vehicle shall not be less that the sum of the unloaded vehicle weight, the rated cargo load, and 150 pounds times the designated seating capacity. The GVWR for the Explorer van inspected by NHTSA was 7,000 pounds. With the additional 150 pounds for each of the seven designated seating positions and 183 pounds of gasoline to fill the fuel tank, the estimated weight of the van was 7,214 pounds, which exceeds the GVWR by 214 pounds, even without any cargo. While this overweight condition violates Part 567, it does not create a noncompliance with any Federal motor vehicle safety standard. Therefore, Explorer is not

required by statute to conduct a recall campaign, and its petition for an inconsequentiality exemption is moot.

However, overloading does raise safety concerns, since it can result in premature failures, many times without warning. Components that can be affected by overloading include tires, rims, frame, axle, hubs, steering linkage, brakes, and other suspension parts. Therefore, this matter will be referred to NHTSA's Office of Defects Investigation for further review and for whatever action is deemed appropriate. In addition, the matter will be referred to the Office of Chief Counsel for consideration of possible civil penalty action.

According to Explorer, the manufacturing and labeling processes have been extensively reviewed, the causes of these issues have been isolated, and changes in the processes have been instituted to prevent any future occurrences. In addition, the noncompliances are limited to the vehicles addressed in this notice, and Explorer must ensure that all of its future products comply with the requirements of FMVSS No. 120.

In summary, Explorer's petition is granted in part and dismissed in part. Explorer is exempted from the duty to conduct a notification and remedy campaign with respect to its failure to provide Metric and English information. With respect to the other two issues, the petition is dismissed on the basis that the actions of Explorer, while raising potential safety concerns, did not create noncompliances with Federal motor vehicle safety standards.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 14, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–21000 Filed 8–16–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 208X)]

The Cincinnati, New Orleans and Texas Pacific Railway Company—Abandonment Exemption—in Cumberland and Roane Counties, TN

On July 28, 2000, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 to abandon a line of railroad known as the Crab Orchard Line, between milepost 141.5–H at Crab Orchard and milepost 156.9–H at Rockwood, a distance of 15.4 miles in Cumberland and Roane Counties, TN. The line traverses U.S. Postal Service Zip Codes 37723, 37842, and 37854, and includes the stations of Crab Orchard, Daysville, Ozone, and Rockwood.

In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). In support, CNOTP contends that exemption from these provisions is necessary to permit conveyance of the line to the sole shipper on the line, Franklin Industries, for continued operation as a private industrial lead track. CNOTP also requests expedited effectiveness of the exemption on service of the final decision. CNOTP avers that expedited effectiveness is needed here so that ownership of the line may be promptly transferred to the shipper for necessary maintenance and rehabilitation of the right-of-way. These requests will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in CNOTP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 15, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 6, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 208X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191. Replies to the CNOTP petition are due on or before September 6, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 10, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–20977 Filed 8–16–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–53]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the **Federal Register**.

Port	Name	License No.
Cleveland	David E. Morgan	15751
Cleveland	Robert J. McElroy	15740
Los Angeles	Sheung Yip Lee	12365
Dallas	Sandra L. Smith	14314
Houston	Wanda M. Jeffcoat	10307
Houston	Robert Bruce Warner	05531
Houston	Darrell J. Sekin, Sr	03278
Houston	Jillian Macy	10982
Houston	D'Anne L. Brown	05575
Houston	Patrica L. Blasdel	05625
Houston	Michael W. Bruzga	06942
Houston	Paul Robert Goltz	05825
Houston	Pete Vela Fuentes	05866
Houston	Teresa Hendrix	13200
Houston	Laura Ann Lee	14469
Houston	Pamela Kay Brooke	06847
Houston	Gary L. Elkins	06986
Houston	Johnnie Hill	11077
Houston	Rodalfo Barraza	07398
Houston	Christina Schurig	12821
Houston	Judy Piercy	12266
Houston	Kenneth R. Mahand	06999
Houston	James R. Ewert, Jr	07431
New Orleans	Karl Schneider	11853

The above licenses are valid.

Dated: August 7, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–20896 Filed 8–16–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–54]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' Licenses Cancellations.

I, as Assistant Commissioner of Customs, Office of Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers licenses due to the deaths of the license holders.

Name	Port	License No.
Zoe E. Stittsworth	Nogales	11816
Russ Hamblin	Nogales	15406
Gilbert E. Partida	Nogales	03550
William F. Joffroy	Nogales	05864
Arthur Trust, Sr.	Laredo	05652
Martin Strauss	New York	02701
John H. Todd	New York	03922
Donna Carapezza	New York	14124
Douglas A. LaMonte	New York	06892
Howard H. Maslow	New York	06453
Albert G. Grasher	Seattle	02709
Richard M. Short	San Francisco	02216
Rachel T. Chun	San Francisco	03573
Kirby Bentsen	Houston	05321
Scott Brenner	Detroit	16487

Dated: August 7, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–20895 Filed 8–16–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public

comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility to education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0154'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for VA Education Benefits, VA Form 22–1990.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract: In order to receive VA educational assistance allowance, veterans and members of the selected reserve must complete VA Form 22–1990, Application for Education Benefits. The information on the application is used to determine the applicant's eligibility to education benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 73,554 hours.

Estimated Average Burden Per Respondent: 35 minutes.

Frequency of Response: Only once.

Estimated Number of Respondents: 126,093.

Dated: August 1, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–20863 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0465'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the information to determine the student's continued entitlement to benefits. The form serves as proof of continued enrollment. It obtains certification of actual attendance by the student and verification of that student's continued enrollment before VA releases payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,000 hours.

Estimated Average Burden Per Respondent: 4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 365,000.

Estimated Number of Responses: 2,190,000.

Dated: July 19, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–20865 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an

opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the number of interments conducted at State veterans' cemeteries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2000.

ADDRESSES: Submit written comments on the collection of information to Joycelyn Hearn, National Cemetery Administration (402B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0559'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Joycelyn Hearn at (202) 273–5181 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Cemetery Data, VA Form 40–0241.

OMB Control Number: 2900–0559.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 40–0241 is used to collect information regarding the number of interments conducted at state veterans' cemeteries each year. This information is necessary for budget and oversight purposes.

Affected Public: Individuals or households and State, Local or Tribal Government.

Estimated Annual Burden: 65.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 65.

Dated: August 1, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–20866 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0017.''

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers:

a. Court Appointed Fiduciary's Account (legal size), VA Form 21–4706.

b. Federal Fiduciary's Account, VA Form 21–4706b.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c.

d. Account Book, VA Form 21–4718.

OMB Control Number: 2900–0017.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information is used to audit accounts of fiduciaries and monitor estate supervision issues to include the need for suspension of benefits when warranted.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published December 2, 1999 at pages 67626–67627.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden:

a. VA Form 21–4706—2,628 hours.

b. VA Form 21–4706b—3,933 hours.

c. VA Form 21–4706c—2,808 hours.

d. VA Form 21–4718—13,140 hours.

Estimated Average Burden Per Respondent:

a. VA Form 21–4706—30 minutes.

b. VA Form 21–4706b—27 minutes.

c. VA Form 21–4706c—30 minutes.

d. VA Form 21–4718—2 hours and 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents:

a. VA Form 21–4706—5,256.

b. VA Form 21–4706b—8,740.

c. VA Form 21–4706c—5,616.

d. VA Form 21–4718—5,256.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0017'' in any correspondence.

Dated: July 21, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–20858 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0073.''

SUPPLEMENTARY INFORMATION:

Title: Enrollment Certification, VA Form 22–1999. (NOTE: A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 unless otherwise specified. VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 contain the same information as VA Form 22–1999.)

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions and job training establishments use VA Form 22–1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. The information collected on VA Form 22–1999 is used by VA to determine the amount of educational benefits payable to the trainee during the period of enrollment or training and to determine whether the trainee has requested an advanced payment of benefits. Without the information, VA would not have a basis upon which to make payment.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2000 at pages 19433–19434.

Affected Public: Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Government.

Estimated Annual Burden: 120,967 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion (The number of responses per respondent will vary according to the number of trainees who receive VA benefits at the educational institution or job training establishment during a 12-month period).

Estimated Annual Responses: 725,802.

Estimated Number of Respondents: 7,514.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0073'' in any correspondence.

Dated: July 19, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–20859 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0178.''

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d. (NOTE: A reference to VA Form 22–6553d also includes VA Form 22–6553d–1 unless otherwise specified. VA Form 22–6553d–1 contains the same information as VA Form 22–6553d.)

OMB Control Number: 2900–0178.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by trainees and employers to report the number of hours worked in on-the-job training programs and apprenticeships, and to report terminations of training in such programs. VA uses the information to determine whether a trainee's education benefits are to be continued, changed or terminated, and the effective date of such action. VA is authorized to pay education benefits to veterans and other eligible persons pursuing approved programs not leading to a standard college degree under Title 38, U.S.C., Chapters 32 and 35, Title 10, U.S.C., Chapter 1606, and Public Law 96–342, Section 903. Benefits are authorized monthly based upon the number of hours worked by the trainee and verified by the training establishment. Unscheduled terminations result in termination of the award of benefits. Reduction of hours worked to less than a full-time work schedule results in reduction of benefits. The form is completed by the trainee and the training establishment to report to VA the number of hours worked and/or to report the date of termination.

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 **Federal Register** Notice with a 60–day comment period soliciting comments on this collection of information was published on March 17, 2000 at pages 14648–14649.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 15,975 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 10,650.

Number of Responses Annually: 95,850.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

Dated: July 19, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–20860 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0445]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0445.''

SUPPLEMENTARY INFORMATION:

Title: VAAR Subpart 819.70, Veteran-Owned and Operated Small Business, (Exceptions to SF 18 and SF 129).

OMB Control Number: 2900–0445.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information will be used by VA to identify veteran-owned businesses and to ensure eligible veteran-owned firms are given an opportunity to participate in VA solicitations for goods and services. Without this information there would be no way to properly monitor this program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 30, 2000 at pages 17006.

Affected Public: Businesses or other for-profit.

Estimated Annual Burden: 4,727 hours.

Estimated Average Burden Per Respondent: Additional burden imposed on Standard Forms 18 and 129 is 5 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,403,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0445'' in any correspondence.

Dated: July 25, 2000.

By direction of the Acting Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–20861 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0466]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0466.''

SUPPLEMENTARY INFORMATION:

Title: Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 27–4718a.

OMB Control Number: 2900–0466.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: Fiduciaries are required to obtain certifications that the balances remaining on deposit in financial institutions as shown on accountings are correct. The form is completed by a certifying official at a financial institution who must also affix the financial seal or stamp. An Estate analyst reviews the information provided on this form when auditing accounting to determine the veracity of the information supplied by fiduciaries. The purpose is to prevent fiduciaries from supplying false certification, embezzling funds, and possibly prevent and/or identify fraud, waste, and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published May 4, 2000 at page 25978.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 1,185 hours.

Estimated Average Burden Per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 23,700.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0466'' in any correspondence.

Dated: July 19, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director Information Management Service.

[FR Doc. 00–20862 Filed 8–16–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 160

Thursday, August 17, 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 RP00-283-001]

Questar Pipeline Company; Notice of Compliance Filing

Correction

In notice document 00–18000 appearing on page 44034,in the issue of Monday, July 17, 2000, in the third column, the docket line should read as set forth above.

[FR Doc. C0–18000 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2425]

Petitions for Reconsideration and Clarification of Action Rulemaking Proceedings

Correction

In notice document 00–18188 appearing on page 44786 in the issue of Wednesday, July 19, 2000, make the following correction:

In the first column, in the fourth paragraph, ''*Number of Petitions Filed:* 21.'' should read ''*Number of Petitions Filed:* 1.''.

[FR Doc. C0–18188 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42930; File No. SR-CBOE-99-51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Increase the Maximum Order Size Eligible for Automatic Execution

Correction

In notice document 00–15616 beginning on page 38618 in the issue of Wednesday, June 21, 2000, the docket line should read as set forth above.

[FR Doc. C0–15616 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42954; File No. SR-NYSE-00-08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Exchange's Price-Based Continued Listing Standards

Correction

In notice document 00–16026 beginning on page 39459 in the issue of Monday, June 26, 2000, the docket line should read as set forth above.

[FR Doc. C0–16026 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42988; File No. SR-BSE-00-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to Index Fund Shares

Correction

In notice document 00–17148 beginning on page 42041 in the issue of Friday, July 7, 2000, make the following correction:

On page 42046, in the second column, in the first and second lines, '' [insert date 21 days from date of publication]'' should read ''July 28, 2000''.

[FR Doc. C0–17148 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43011; File No. SR-Phix-00-28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Divide Its Allocation, Evaluation and Securities Into Two Separate Committees

July 5, 2000.

Correction

In notice document 00–17597 beginning on page 43069 in the issue of Wednesday, July 12, 2000, the heading is corrected by adding the date '' July 5, 2000.''.

[FR Doc. C0–17597 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43026; File No. SR-GSCC-00-07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to GSCC's Fee Structure With Respect to Minimum Monthly fees and Additional Accounts Fees

July 12, 2000.

Correction

In notice document 00–18088 beginning on page 44555 in the issue of Tuesday, July 18, 2000, in the second column, the heading is corrected by adding the date ''July 12, 2000.''.

[FR Doc. C0–18088 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43044; International Series Release No. 1228; File No. SR-NYSE-00-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Share of Celanese AG

Correction

In notice document 00–18741 beginning on page 45808 in the issue of Tuesday, July 25, 2000, make the following correction:

On page 45810, first column, last three lines of **III. Solicitation of Comments** ,''[insert date 21 days from the date of publication]'' should read ''August 15, 2000''.

[FR Doc. C0–18741 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43052; File No. SR-CBOE-00-16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

Correction

In notice document 00–18743 beginning on page 45805 in the issue of Tuesday, July 25, 2000, in the third column (on that page), the release number has been corrected as shown in the docket line above.

[FR Doc. C0–18743 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–9]

Amendment to Class D and Class E5 Airspace, Greenwood, MS

Correction

In rule document 00–15950 beginning on page 39081 in the issue of Friday, June 23, 2000, make the following corrections:

§71.1 [Corrected]

1. On page 39082, in the first column in §71.1, under the heading **ASO MS D Greenwood, MS [Revised]**, remove ''Sidon VORTAC (Lat. 33°27′50″, long. 90°16′38″)''.

2. On page 39082, in the first column, under the heading **ASO MS E4 Greenwood, MS [Revised]**, add the following after the second line:

Sidon VORTAC
(Lat. 33°27′50″, long. 90°16′38″).

[FR Doc. C0–15950 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

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

In rule document 00–11901 beginning on page 33753 in the issue of Thursday, May 25, 2000, make the following correction:

§1.1502–3 [Corrected]

On page 33756, in the third column, in paragraph (d)(4)(i), 26 lines from the top, ''9(b)(1)(ii), (iii), and (iv)'' should read ''9A(b)(1)(ii), (iii), and (iv)''.

[FR Doc. C0–11901 Filed 8–16–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 17, 2000

Part II

Environmental Protection Agency

40 CFR Parts 261 and 266

Project XL Site-Specific Rulemaking for US Filter Recovery Services, Roseville, MN, and Generators and Transporters of USFRS XL Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[FRL–6848–8]

Project XL Site-Specific Rulemaking for US Filter Recovery Services, Roseville, Minnesota, and Generators and Transporters of USFRS XL Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and draft final project agreement.

SUMMARY: The Environmental Protection Agency (EPA) is proposing this rule to implement a project under its Project XL (which stands for eXcellence and Leadership) program that would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the US Filter Recovery Services (USFRS) facility located at 2430 Rose Place, Roseville, Minnesota, 55113 and approved Minnesota generators and transporters of wastes to encourage the use of waste water treatment ion exchange resins. The principal objective of the USFRS XL Project is to pilot a flexible, performance-based system for managing waste waters from electroplaters, metal finishers and similar industries who by virtue of their using USFRS water treatment ion exchange resins generate electroplating sludges which are regulated hazardous wastes. To achieve this objective, this proposed rule would replace existing requirements for approved generators and transporters with a comprehensive program designed and implemented by USFRS to properly store and transport the USFRS water treatment ion exchange resin wastes. The overall terms of this XL Project are contained in the draft Final Project Agreement (FPA) of which EPA is also requesting comments. The draft FPA is available for public review and comment at the RCRA Docket in Arlington, Virginia, in the EPA Region V library, at USFRS, and on the world wide web at http://www.epa.gov/projectxl/. Following a review of the public comments and appropriate changes, the FPA would be signed by delegates from the EPA, the Minnesota Pollution Control Agency (MPCA), the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, USFRS and each participating generator and transporter.

DATES: Public Comments: Comments on the proposed rule and/or FPA must be received on or before September 7, 2000. All comments should be submitted in writing to the address listed below.

Public Hearing: Commenters may request a public hearing by August 24, 2000 during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by August 31, 2000, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be noticed through a **Federal Register** notice or by contacting Mr. Robert Egan at the Region V office.

ADDRESSES: Request to Speak at Hearing: Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2000–FRSP–FFFFF. A copy should also be sent to Mr. Robert Egan, EPA, Region V. Mr. Egan may be contacted at the following address: U.S. Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, (DRP–8J), 77 West Jackson, Chicago, Illinois, 60604, (312) 886–6212.

Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2000–FRSP–FFFFF. A copy of the comments should also be sent to Mr. Egan at U.S. EPA, Region V, Waste, Pesticides and Toxics Division (DRP–8J), 77 West Jackson, Chicago, Illinois 60604.

Viewing Project Materials: A docket containing the proposed rule, draft FPA, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–2000–FRSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region V, Waste, Pesticides and Toxics Division, 77 West Jackson, Chicago, Illinois 60604 during normal business hours. Persons wishing to view the duplicate docket at the Chicago location are encouraged to contact Mr. Robert Egan in advance, by telephoning (312) 886–6212.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Egan, U.S. EPA, Region V, Waste, Pesticides and Toxics Division, 77 West Jackson, Chicago, Illinois 60604. Mr. Egan may be contacted at (312) 886–6212. Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION:

Electroplaters, metal finishers and other industries use large volumes of water to wash and rinse materials during the manufacturing process. In many manufacturing processes this wash and rinse water is used once then directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a surface water body or a local publicly owned treatment works (POTW).

To minimize the use of potable water in the manufacturing process USFRS has developed a water treatment system that uses an ion exchange resin (''resin''). USFRS estimates that one gallon of its resin can treat anywhere from 500 to 2,000 gallons of process waste waters. The resins are contained in a canister. USFRS pays between $300 and $4,000 per canister (for the larger ones) and they expect to use each canister for approximately 20 years. The process waste waters are directed to the canisters. The resins within the canisters collect the metals and other chemical contaminants that are otherwise contained in the process waste waters. Exiting the canister is cleaned water.

USFRS anticipates that the cleaned water could be returned to the process thus avoiding or reducing the use and treatment of potable water in the manufacturing process. However, the collection of the chemical contaminants on the resins results in the resins being characterized as a listed hazardous waste—i.e., F006, waste water treatment sludges from electroplating operations. The resins may also exhibit a characteristic of hazardous waste as a result of the operations of a particular

manufacturer. The characterization of the resin wastes as a listed hazardous waste operates as a disincentive to a potential customer to use the USFRS waste water treatment system since that customer must handle, store and transport the resins according to the hazardous wastes requirements contained in 40 CFR parts 260–265, 268, 270, 273 and 279.

The purpose of the USFRS XL Project would be to determine whether substitute requirements imposed on USFRS and approved generators and transporters would remove this disincentive, as well as encourage increased use of the USFRS waste water treatment system, a decrease in the energy associated with use of potable water in the manufacturing process, and a decrease in the amount of hazardous chemicals discharged to POTWs. The development and implementation of the USFRS XL Project would be piloted at USFRS and at approved generators and transporters of USFRS resin wastes. The approved generators and transporters would handle, store and transport the resin wastes in accordance with specific standards contained in proposed new part 266, subpart N of Title 40 of the Code of Federal Regulations (''subpart N''). These requirements would operate in lieu of the requirements imposed under parts 261–265, 268, 270, 273 and 279 of Title 40 of the Code of Federal Regulations. As a result, it is anticipated that the generators will reduce their discharge of process waste waters to local POTWs. USFRS will handle the resin wastes as hazardous waste and in accordance with subpart N and its hazardous waste permit. The proposed rule would impose on USFRS additional reporting and handling requirements in exchange for the regulatory flexibility provided to the generators and transporters. All other hazardous wastes generated by these generators and USFRS would continue to be subject to current RCRA regulations.

The USFRS XL Project is intended to test the effectiveness of an integrated, flexible, performance-based approach for managing hazardous waste to determine whether this approach promotes a reduction in the amount of hazardous chemicals which are discharged to the local POTWs and the amount of water used in the manufacturing process.

EPA is proposing to implement the USFRS XL Project by providing the generators and transporters with a ''temporary deferral'' from the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279 for USFRS XL waste. The deferral is temporary in that it is only applicable for the period of time that the waste is at the generator or during its transport to USFRS. Additionally, the deferral is temporary in that the deferral is applicable only during the time that this XL Project is effective—5 years from the effective date of subpart N.

The deferral consists of designating the resin wastes by a waste code different from those identified in 40 CFR part 261 while the waste is at the approved generator and during its transport. To accomplish this the proposed rule contains a new definition of ''USFRS XL waste'' and provides it with a unique EPA waste code (XL001). USFRS XL wastes will be limited to used water treatment resin canisters and their contents from USFRS XL waste generators located in the state of Minnesota. The USFRS XL waste will include the resins, the wastes contained on or within the resins and any other wastes contained within the water treatment resin canisters. These wastes include only those wastes generated from processes subject to the RCRA F006 hazardous waste listing.[1] USFRS and its generators or transporters will use the waste code XL001 when the wastes are at the generator or in transport.

The deferral would also require the approved generators and transporters and USFRS to comply with new part 266, subpart N in lieu of 40 CFR parts 261–265, 268, 270, 273 and 279. If the approved generator, transporter or USFRS fails to comply with the new requirements then it will have violated RCRA and may be subject to enforcement action for such violations. Proposed new subpart N includes specific requirements for the management of the USFRS XL wastes in a manner which ensures protection of human health and the environment while providing some flexibility to encourage chemical reuse and waste minimization. They are enforceable in the same way as current RCRA standards are enforceable to ensure that handling of the USFRS XL wastes would be protective of human health and the environment.

EPA has agreed to provide USFRS and approved generators and transporters with this regulatory flexibility to determine if the proposed regulatory approach would result in superior environmental performance and significant cost savings to USFRS or its customers.

Today's proposed rulemaking, and the state actions described in sections V.A & F of this preamble, will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on this rulemaking. EPA will publish responses to comments in a subsequent final rule. The USFRS XL Project will enter the implementation phase after EPA promulgates the final federal rule, the state of Minnesota adopts the required state legal mechanisms and the participants sign the FPA. EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, USFRS and the approved generators and transporters will sign the FPA. At the present time USFRS has only identified itself and Pioneer Transport (a potential participating transporter) for this XL Project. USFRS has not identified any generators as participants in this XL Project.

The FPA may be modified at any time during this XL Project to add generators or transporters to this XL Project. A generator or transporter who wants to participate in this XL Project in the future will be subject to specific requirements and an approval process described below prior to being accepted into this XL Project. Only generators and transporters who have met the approval process conditions may participate in this XL Project. Consequently, implementation of this XL Project and the proposed rules will occur for a specific generator or transporter only after the appropriate state and federal legal mechanisms are in place and the generator or transporter has signed the FPA.

Outline of Today's Document

The information presented in this preamble is organized as follows:

IV. Comparison of USFRS XL Project with Current RCRA Regulations

A. XL Waste Defined
B. Substitute Requirements
1. Waste Identification and Characterization
2. EPA Identification Numbers
3. Uniform Hazardous Waste Manifest
4. Pre-transport and Transportation Requirements

[1] A solid waste may be a hazardous waste if it is listed or demonstrates a characteristic as defined by 40 CFR part 261, subparts C and D. Certain solid wastes are considered listed hazardous wastes because they are generated as a result of specific manufacturing processes. Such solid wastes may also be considered characteristic hazardous waste depending on the chemical composition of the wastes. This XL Project is focused on the resin wastes generated from process waste waters associated with the F006 hazardous waste listing. It is possible that for some manufacturers the resin wastes may also be characterized as a characteristic hazardous waste. This is acceptable for participation in the USFRS XL project provided the waste waters were from processes associated with the F006 hazardous waste listing.

5. Accumulation and Storage Prior to Shipment
6. Reporting and Recordkeeping Requirements
7. Additional Requirements Imposed on USFRS

V. How the USFRS XL Project will result in Superior Environmental Performance?

A. What Regulatory Changes will be Necessary to Implement this Project?
1. Federal Regulatory Changes
2. State Regulatory Changes
B. Why is EPA Supporting this New Approach to USFRS XL Waste Management?
C. How Have Various Stakeholders Been Involved in this Project?
D. How Will this Project Result in Cost Savings and Paperwork Reduction?
E. How Will EPA Ensure the Integrity of the USFRS XL Project?
F. How Will the Terms of the USFRS XL Project and Proposed Rule be Enforced?
G. How Long Will this Project Last and When Will it be Completed?

VI. Additional Information

A. How to Request a Public Hearing
B. How Does this Rule Comply With Executive Order 12866?
C. Is a Regulatory Flexibility Analysis Required?
D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?
F. Applicability of Proposed Subpart N under the Minnesota RCRA Authorized Hazardous Waste Program.
1. Applicability of Rules in Authorized States
2. Effect on Minnesota Authorization
G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
H. How Does this Rule Comply with Executive Order 13132: Federalism?
I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
J. Does this Rule Comply with the National Technology Transfer and Advancement Act?

I. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, and 6974).

II. Overview of Project XL

The draft FPA sets forth the intentions of EPA, MPCA, Pioneer Transport, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington,[2] Minnesota and USFRS with regard to a project developed under Project XL. Project XL is an EPA initiative to allow regulated entities an opportunity to achieve better environmental results at less cost.

EPA announced Project XL—''eXcellence and Leadership''—on March 16, 1995. It is a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Under Project XL EPA provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the environment and the economy.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

XL Criteria

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the USFRS XL Project addresses the XL criteria, readers should refer to the USFRS draft FPA available from the EPA RCRA docket or Region 5 library for this action (see **ADDRESSES** section of today's preamble).

XL Program Phases

Development of a Project has four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider as an XL pilot; the second phase where the

[2] These counties are identified signators to the FPA since the State has given them certain responsibilities over hazardous waste generators, transporters and facilities within their jurisdiction.

project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the FPA and legal mechanisms. The XL pilot proceeds into the implementation phase and evaluation phase after promulgation of the required federal, state and local legal mechanisms and after the designated participants sign the FPA.

Final Project Agreement

The FPA is a written agreement between the project sponsor, participants and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of EPA that this XL Project will meet those criteria. The FPA identifies performance goals and indicators (monitoring schedules) which will enable USFRS to clearly illustrate the baseline quantities and compare them to quantities derived after implementation of the pilot. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The draft FPA for the USFRS XL Project is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the USFRS XL Project

EPA is today requesting comments on the draft FPA and proposed rule. These items are key provisions to implement the USFRS XL Project. Today's proposed rule would facilitate implementation of the draft FPA and the USFRS XL Project. After receiving and reviewing comments on the draft FPA and proposed rule EPA will decide whether to proceed with final approval of the USFRS XL Project. If EPA decides to proceed with such final approval then EPA, MPCA , the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Transport and USFRS will sign the final FPA. Additionally, EPA will finally promulgate the rules proposed today. The regulatory relief provided in the final EPA rules, however, will not be federally effective in Minnesota until the state has made changes similar changes to its hazardous waste management program and, as necessary, EPA has approved of those changes as part of the authorized hazardous waste program. See section V.A & F below for a more detailed discussion of the manner in which the state may make such changes and the consequences of such actions.

A. Scope of the USFRS XL Project

The USFRS XL Project is limited in scope to USFRS and approved generators and transporters and to only USFRS XL wastes from the approved generators.

EPA and MPCA will have to approve of any generator or transporter who is added to this XL Project. If the generator's principal place of business is located within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota then the approval of the environmental agencies located within these counties is also required (''county environmental agencies'' or ''county agencies.'') EPA's approval will focus primarily on the compliance and enforcement history of the generator or transporter. In addition to this enforcement screen, USFRS will conduct a preliminary evaluation of the generator or transporter.

USFRS' preliminary evaluation of a proposed generator will ensure that the proposed generator is within the electroplating, metal working and circuit board manufacturing industrial sectors, has a complete USFRS application form and has a storage area which meets the standards specified in subpart N. USFRS will conduct a waste analysis to determine the chemical constituents anticipated in a potential generator's waste stream and to determine such wastes' compatibility with USFRS' resin process and canisters. If a company passes USFRS' preliminary evaluation, USFRS may propose to EPA, MPCA and, as appropriate, the county agencies to add it to the USFRS XL Project. EPA, MPCA, and as appropriate, the county agencies must approve of the company before it can be added to the USFRS XL Project. After such approvals are received, USFRS may notify the company of its acceptance. At that time, the company must sign the FPA and a certification that they understand the training which USFRS provided on the proper handling of the USFRS XL waste. USFRS will assign a unique USFRS Client Number to the company and will also assign a unique USFRS Waste Profile Number to the waste stream(s) that contribute to the company's generation of the resin wastes.

USFRS' preliminary evaluation of a proposed transporter will consist of determining whether the transporter has a current satisfactory safety rating from the United States Department of Transportation (USDOT), an EPA hazardous waste identification number, and a Minnesota Uniform Hazardous Materials Registration (Minnesota registration). USFRS will report on the results of this preliminary evaluation to EPA, MPCA and, as appropriate, the County Agencies. USFRS may propose a transporter who is not a licensed hazardous waste carrier or does not have an EPA identification number. USFRS may propose to EPA, MPCA and, as appropriate, the county agencies to add to the USFRS XL Project any transporter, even a common carrier, who has a current satisfactory rating from USDOT. EPA, MPCA, and as appropriate, the county agencies must approve of the transporter before it can be added to the USFRS XL Project. After such approvals are received, USFRS may notify the transporter of its acceptance. At that time, the transporter must sign the FPA and certify that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under new part 266, subpart N.

The procedures for obtaining state and local approval of a transporter or generator may be different than the federal procedures outlined above. USFRS must obtain the approval of EPA and MPCA in all instances before it may add a company as a generator or transporter to the USFRS XL Project. For potential generators and transporters whose principal place of business is located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington Counties, Minnesota. USFRS will have to obtain the approval of the appropriate county agencies. In all instances USFRS will have to complete the preliminary evaluations identified above prior to proposing to EPA, MPCA or the county agencies the addition of a company to the USFRS XL Project.

The federal procedures for approving a company as a participant in the USFRS XL Project as a generator or transporter are detailed in the proposed rule. In summary, if a company passes USFRS' preliminary evaluation, USFRS will notify EPA in writing of its desire to add this company to the USFRS XL Project. EPA will have twenty one days to veto such company's participation in the USFRS XL Project. EPA anticipates that it will exercise this veto authority based in part on the environmental compliance and enforcement history of the company. If USFRS does not receive a written disapproval from EPA within the twenty one days, the company is deemed to have EPA approval.

USFRS must also obtain the approval of the MPCA and county agency, as appropriate. EPA anticipates that USFRS will seek the approval of MPCA and the appropriate county agency at the same time that it seeks EPA approval. MPCA and the appropriate county agency will perform a compliance and enforcement screen. If the potential generator or transporter passes this screen, MPCA will provide written notice to the company and notify it of its duties and responsibilities.

After USFRS has received the approval of EPA, MPCA and the appropriate county agency it may proceed with the next step in the federal process for adding a generator or transporter to the USFRS XL Project. That step will consist of USFRS notifying the potential generator or transporter that it has received the required agency approvals. At that time, USFRS will obtain the company's signature to FPA and the appropriate certification. Upon request, USFRS will forward a copy of the signed documents to EPA, MPCA and the appropriate county agency.

On the date USFRS receives the signed FPA and certification, the potential generator or transporter is considered part of this USFRS XL Project. This date may be referred to as the generator or transporter ''effective date.'' The generator or transporter must handle its USFRS XL waste generated on or after the effective date in accordance with the requirements of part 266, subpart N. The generator or transporter must handle USFRS XL waste generated prior to the effective date according to the RCRA regulations applicable at that time. Proposed new subpart N does not apply retroactively to these wastes.

The transportation of USFRS XL waste is strictly controlled and monitored by USFRS. The generator must contact USFRS whenever it has a shipment for pick-up. USFRS in turn will contact an approved transporter to arrange for pick-up of the waste. The approved transporters will be the sole transporters of these wastes. USFRS will provide the generator with the Transportation Tracking Document prior to the date the transporter arrives to pick-up the wastes. The generator will ensure that the information on the Transportation Tracking Document is correct. The generator will provide the Transportation Tracking Document to the transporter. The transporter will then carry the wastes to USFRS' Roseville, Minnesota facility for treatment.

The USFRS Roseville facility will handle the USFRS XL wastes as a hazardous waste and consistent with its hazardous waste permit.[3] USFRS' treatment of the wastes will consist of treatment to regenerate the resins and make them amenable for reuse in another canister. USFRS will handle any residual wastes from the resin regeneration process according to the RCRA hazardous waste code designation it would have had if it were not subject to the XL001 designation (*i.e.*, F006 and any other appropriate waste codes). USFRS will ensure that this hazardous waste is legitimately recycled through metal recovery.

This XL Project is limited to USFRS water treatment resin canisters and their contents after use by a generator. The wastes include the resins, the wastes contained on or within the resins and any other wastes contained within the canisters. The wastes include only those wastes which are generated from processes subject to the RCRA F006 hazardous waste listing.

B. What Problems Has USFRS Identified?

The present RCRA regulatory structure may act as a disincentive for certain manufacturers to reduce their consumption of potable water. In particular, electroplaters, metal finishers and other similar industries use large volumes of water to wash and rinse materials during the manufacturing process. In most manufacturing processes today, wash and rinse water is used once, then discarded. This ''single-use'' waste water is usually directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a POTW or surface waters. This single-use of water is very wasteful. A great amount of effort and cost is expended to produce potable water for this single use. Additional costs are incurred in treating these waste waters prior to discharge.

To minimize single water use and to encourage recycling of rinse waters, USFRS has developed a water treatment system that uses a resin. The resin is contained within a cylindrical canister which can be integrated into a company's existing processes. One gallon of resin can treat between 500 to 2,000 gallons of waste waters. The regenerated water can then be directed back to the manufacturing process and reused. This reduces the amount of potable water that is needed in the manufacturing process. The resins contained within the canisters can be regenerated and reused at USFRS' Roseville, Minnesota facility. This regeneration process produces a regenerated resin and residual wastes containing metals, such as copper, nickel and zinc (''sludges''). The regenerated resin may be reused again in water treatment systems. The residual wastes from USFRS's regeneration process may be recycled to recover the metals contained within them.

As part of this XL Project USFRS has proposed that it will arrange for the recycling of the sludges through metal reclamation. USFRS anticipates that this recycling will be done by another company. USFRS projects that the recycling of sludges will provide another environmental benefit since it will result in less wastes being landfilled. Furthermore, USFRS suggests that the metals that are recovered may reduce the energy and environmental impacts from mining and manufacturing of virgin ores.

The proposed new subpart N requires USFRS to recycle the sludges through metal reclamation. It also requires USFRS to have its recycling in place prior to initiation of this XL Project. Since USFRS does not recycle these sludges itself its ability to implement this XL Project is restricted to the availability of legitimate off-site recyclers who are willing to accept the sludges. USFRS has indicated that there presently are not many companies who are willing or able to do such recycling. It has also indicated that it is committed to finding such a company and will continue to explore such options.

This XL Project may provide sufficient environmental benefit without the sludge reclamation requirement. The benefits may derive from the anticipated increase in the use of the USFRS resins and the resultant anticipated reduction in the use of potable water for industrial processes, reduction in discharges to the POTWs and reduction in the use of chemicals for water treatment. Consequently, EPA may modify or delete the sludge reclamation requirements in new subpart N based on the public comments and information submitted during that period.

The use of water reuse systems such as USFRS's ion exchange system by electroplaters, metal finishers and similar industries often results in the resins and canisters being considered a listed hazardous waste (F006) once the resins have been spent at the manufacturing plant. However, these resins and the canisters can be

[3] The conditions in proposed new subpart N must be incorporated into USFRS' hazardous waste permit by the State of Minnesota. This must be accomplished in time to allow USFRS to have the revised permit before it installs the resin canisters at its first generator approved by the agencies.

regenerated at USFRS' Roseville, Minnesota facility. Since the resins and the canisters may be a RCRA hazardous waste, the manufacturer incurs additional obligations under RCRA that it would not necessarily incur if it had not implemented the water reuse system. The additional regulatory obligations may act as a disincentive to a company's use of a water reuse system and thus increases the use of potable water.

C. What Solutions Are Proposed by the USFRS XL Project?

To encourage water and waste reduction and recycling, USFRS proposes that the canisters and resins be temporarily deferred from the RCRA regulatory requirements contained in 40 CFR parts 261–265, 268, 270, 273 and 279. This temporary deferral would be implemented through a proposed regulation which designates these wastes by a waste code different from those identified in 40 CFR part 261 while the waste is at the approved generator and during its transport to USFRS. This deferral is premised on the fulfillment of five general requirements. First, the generator would handle the waste in accordance with specific standards required by the proposed rule. Second, the waste is transported only to USFRS' Roseville, Minnesota facility and only by approved transporters. Third, the generators and transporters are limited to companies located in Minnesota who pass a preliminary evaluation by USFRS and are approved by EPA, MPCA and the appropriate county agencies. Fourth, USFRS handles the waste according to the waste code designation it would have had but for this proposed rule (*i.e.*, F006 and any other appropriate waste code). Finally, USFRS will recycle, through metals recovery, any metals contained in these wastes. Presented below is a more detailed discussion of these elements of the proposed rule and draft FPA.

IV. Comparison of USFRS XL Project With Current RCRA Regulations

A. XL Waste Defined

A definition of ''USFRS XL waste'' is proposed for 40 CFR 266.301. ''USFRS XL waste'' consists of the USFRS used water treatment resin canisters and their contents from approved USFRS generators within the State of Minnesota. The USFRS XL wastes include the ion exchange resins, the wastes contained on or within the ion exchange resins and any other wastes contained within the water treatment resin canisters. Spills of USFRS XL wastes by the generator or transporter are considered USFRS XL waste provided the generator or transporter handles the spill in accordance with the spill requirements of proposed 40 CFR 266.308(e) and 266.311. The USFRS XL wastes are limited to wastes which result from processes which would be subject to the RCRA F006 hazardous waste designation at the point of generation (*i.e.* waste water treatment sludges from specified electroplating operations). This definition of USFRS XL wastes includes only those ion exchange resin canisters which result in reuse of substantially all of the treated waste waters in the industrial process. These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. This definition does not include those ion exchange resins canisters which result in the disposal of the treated waste waters, without any reuse of the treated waste waters in the industrial process. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste while at an approved generator and during transport shall be identified by the waste code XL001. The XL001 waste designation applies only to USFRS XL wastes generated by approved USFRS XL waste generators.

An approved USFRS XL waste generator is a company located in Minnesota who: has properly identified its wastes and processes; has passed a preliminary evaluation by USFRS; has not been excluded by EPA, MPCA and appropriate county agencies; has received notice of approval from USFRS; and has signed the FPA, and a certification that it has taken and understood the specific training required by subpart N.

USFRS will assign to approved generators a USFRS Client Number and USFRS Waste Profile Number for USFRS XL wastes.

B. Substitute Requirements

The RCRA regulations identify specific requirements for persons who generate, transport, treat, store or dispose of hazardous waste (40 CFR parts 261–266, 268, 270, 273 and 279). Generators of hazardous waste are subject to different requirements depending upon the quantity and type of hazardous waste that they generate or accumulate in a calendar month (40 CFR 261.5, 262.10(b) and 262.34). The RCRA regulations also have specific provisions for the management of certain recyclable materials (40 CFR 261.6). USFRS and approved generators and transporters of USFRS XL waste must comply with new part 266, subpart N instead of the regulations contained in 40 CFR 261.5, 261.6(a)(1), parts 262–265, 268, 270, 273 and 279. Additionally, the USFRS XL waste generator may exclude the amount of USFRS XL waste it generates when it is determining whether it is subject to 40 CFR 261.5 or part 262. Presented below is a summary of the substitute requirements for USFRS and the approved generators and transporters.[4]

1. Waste Identification and Characterization

RCRA Requirements. Generators of hazardous waste are required to properly characterize their wastes as hazardous waste, (40 CFR 262.11). For listed hazardous waste the generator must determine if it is listed in subpart D of 40 CFR part 261. For characteristic hazardous waste the generator may accomplish this characterization either by testing the waste or applying specific knowledge of the hazardous characteristics of the waste considering the materials or the processes used.

XL Project Requirements. USFRS XL waste would normally be considered a listed hazardous waste (F006) and, depending on the processes, may be considered a characteristic hazardous waste. In order to determine all of the wastes codes appropriate for a particular waste stream it would be necessary for a generator to test the waste or have specific knowledge. In lieu of having this responsibility fall solely on the generator, this XL Project proposes that USFRS and the customer will share certain responsibilities.

Pursuant to § 266.306, prior to being accepted into this XL Project, the customer/potential generator company would properly identify its processes and chemicals contributing to the water proposed for treatment in the USFRS resin canisters. It may only identify those waste streams which meet the F006 listing. The customer will accomplish this by completing and submitting to USFRS a USFRS XL waste application form. After being accepted into this XL Project, the customer shall provide USFRS with prior notification of any changes in its processes. USFRS will perform a chemical profile analysis, of the customer's waste stream(s) and processes contributing to the water treated within the ion exchange resin canisters. USFRS will conduct this analysis in accordance with the test

[4] Unless otherwise specified, the discussion that follows on the RCRA requirements focuses on the requirements for large quantity generators. The USFRS XL Project and proposed new subpart N, however, applies to all generators, regardless of the quantity of waste that they generate.

methods identified in its waste analysis plan contained in its RCRA hazardous waste permit. This waste stream analysis will substitute for an analysis of the resins after use in the canisters. The analysis will also ensure that the waste waters are compatible with the ion exchange resin process and that the wastes are compatible with maintaining the integrity of the canisters. USFRS will conduct the waste stream analysis once for each customer prior to accepting a customer into this XL Project. Once a customer is accepted into the XL Project, USFRS will repeat the analysis whenever a customer provides it with notice that it has changed its processes contributing to the USFRS XL waste.

The USFRS XL waste designation will only apply to those water treatment resin canisters and their contents for processes identified by the customer, evaluated by USFRS and approved by EPA, MPCA and appropriate county agencies.

2. EPA Identification Numbers

RCRA Requirements. Persons who generate, transport, treat, store or dispose of hazardous waste must obtain an EPA identification number, (40 CFR 262.12 and 263.11).[5] Generators and transporters receive an identification number by completing and submitting to EPA a Notification of Hazardous Waste Activity Form (EPA form 8700–12). The notification form generally requires the generator or transporter to identify its name, address, contact person, regulatory status (*e.g.*, large quantity generator, small quantity generator, transporter, treatment, storage or disposal facility, *etc.*). For a generator, the type and estimated quantity of hazardous wastes it generates also must be identified. Generally, it identifies the wastes by specific EPA wastes codes (''D'', ''F'', ''K'', ''P'' or ''U''). It also requires the generator to sign the form and certify that the information it is providing is true, accurate and complete.

XL Project Requirements. Some of the USFRS XL waste generators and transporters may have an EPA identification number or submitted an EPA notification form. These are not required for participation in this XL project. Instead, USFRS XL transporters and generators will be given a unique USFRS XL client identification number. Additionally, each generator's USFRS XL waste will be given a unique waste profile number.

This XL Project has the biggest potential impact on the number of generators added to the RCRA universe. Some of the potential generators may have an EPA identification number due to other hazardous waste activities that they conduct. USFRS anticipates, however, that a large number of new generators may be added. These generators would not have an EPA identification number except for their participation in this XL Project.

USFRS proposes that instead of requiring these generators to submit a notification form and obtain an EPA identification number, EPA would accept the USFRS XL waste application form and its unique customer and process waste stream number. The procedures for adding generators and transporters to this XL Project are contained in new proposed §§ 266.302 and 266.303. USFRS will require all potential generators to complete a USFRS XL waste application form. The USFRS XL waste application form will contain information similar to that required on the Notification Form, except that it will identify the wastes by the ''XL001'' designation in addition to the EPA waste codes. Additionally, USFRS will assign to each approved generator a unique client number instead of an EPA identification number. The customer will use this number whenever it generates and transports off-site USFRS XL waste. USFRS will also assign to each approved waste stream from the customer a unique number known as a waste profile number.

After receiving the approval of EPA, MPCA and appropriate county agencies, USFRS will provide its customer with an approval letter.

Pursuant to new proposed § 266.319(c), USFRS will maintain a list of the approved customers and generators[6]. USFRS will include on that list the customer name, the USFRS client and waste profile numbers, a summary of the results of the USFRS profile analysis and the process waste streams approved for participation in the XL Project. USFRS will have that list available at its Roseville, Minnesota facility and will provide that list to EPA and MPCA on a quarterly basis[7]. If any of the customer information is claimed as confidential business information or trade secrets USFRS will indicate that fact and notify EPA and MPCA. EPA will treat such material in accordance with 40 CFR part 2.

EPA believes that USFRS' proposed system for notifying and tracking USFRS XL waste transporters, customers and generators is an acceptable replacement for the EPA notification and identification number requirements otherwise imposed upon hazardous waste generators under 40 CFR part 262. Additionally, EPA believes that this method may allow for better tracking of the progress and benefits associated with this XL Project since generators and their waste streams will be identified by unique codes instead of the generic site-wide EPA identification number. From an administrative perspective it may be better for all USFRS XL waste not to have a unique EPA identification number since a large percentage of these generators may have the need for such number only because of their participation in this XL Project. Once their participation ends so too would the need for the EPA identification number. This in and of itself is not a justification to replace the notification and EPA identification requirements. However, since USFRS will track the shipments of USFRS XL waste according to the unique USFRS customer and waste stream number and will provide EPA with a list of those customers EPA is receiving the same information without adding companies to the RCRA data base. Additionally, the USFRS tracking may be an improvement on the present hazardous waste tracking system since that system does not track the source of the waste streams. Finally, since this XL Project is limited in time and a participant may revert to a non-regulatory status once it quits this XL Project EPA believes that allowing a substitute to the notification and EPA identification number would be acceptable and may save the Agency resources.

3. Uniform Hazardous Waste Manifest

RCRA Requirements. The Uniform Hazardous Waste Manifest (''manifest'') is used to track hazardous waste from its point of generation to its destination, often referred to as the ''designated facility.''

Generally, hazardous waste generators must use the manifest when hazardous waste is transported offsite, (40 CFR 262.20(a)).[8] Instructions for the manifest

[5] Persons who qualify as conditionally exempt small quantity generators are not required to submit a notification to EPA to obtain an EPA identification number.

[6] A distinction is made in the rules between an approved customer and an approved generator. They are essentially the same with the only difference being that a customer is not automatically a generator. A customer becomes a generator when it first generates or causes to be regulated USFRS XL waste.

[7] USFRS will also have a list of the approved transporters, see proposed § 266.319(c).

[8] A substitute for the manifest is allowed for certain generators of small quantities of hazardous

require that the generator provide information about the wastes' handlers including the name of the transporter and the designated facility, and a description of the hazardous waste being transported. The generator must sign the manifest certifying that a waste minimization program is in place, and that the waste is properly packaged, marked, labeled and placarded.

Each time a waste is transferred (*e.g.*, from one transporter to another, or from a transporter to the designated facility), the manifest must be signed to acknowledge receipt of the waste. A copy of the manifest is retained by each individual in the transportation chain. Once the waste is delivered to the designated facility, the owner or operator of that facility must sign and return a copy of the manifest to the generator. The generator must submit an exception report to the EPA Regional Administrator if he or she still has not received the manifest after specified time periods (45 days for large quantity generators, and 60 days for small quantity generators). The generator, transporter, and the designated facility must each keep copies of the manifest for three years.

Generators are also prohibited from offering hazardous waste to transporters or treatment, storage or disposal facilities that do not have an EPA ID number.

XL Project Requirements. USFRS will ensure that USFRS XL waste reaches its destination by applying strict transportation routing and tracking requirements to the transportation of USFRS XL waste from generators, its use select approved transporters and the use of a USFRS Transportation Tracking Document. Proposed subpart N accomplishes this by directly imposing these requirements on USFRS and its generators and transporters (proposed § 266.310). The requirements are summarized below.

USFRS will control the transportation and routing of the USFRS XL wastes from a generator and its transporters. All USFRS XL waste generators must use a USFRS XL waste approved transporter to transport the USFRS XL waste. The USFRS XL waste must be sent to USFRS' Roseville, Minnesota facility. The generator must contact USFRS when it wants to transport its USFRS XL waste. USFRS's Roseville facility has a dedicated shipping department. That department will arrange with a USFRS XL waste approved transporter to pick-up the generator's USFRS XL waste within 30 days of receipt of the generator's request. USFRS' shipping department will complete the USFRS Transportation Tracking Document and provide it to the generator with a copy to USFRS's lab. USFRS will include on the Transportation Tracking Document information required by these new rules. USFRS will provide the generator with the Transportation Tracking Document prior to the transporter arriving at the generator's site to pick up the waste.[9]

USFRS's transporters must transport the USFRS XL waste to USFRS's Roseville, Minnesota facility within 30 days of USFRS's contacting the transporter to collect the USFRS XL waste from the generator. USFRS's lab will track the receipt of the USFRS XL waste identified on the Transportation Tracking Document. The proposed rules require the USFRS XL waste to be transported to the USFRS Roseville, Minnesota facility within 30 days of its pick-up. USFRS has indicated that this 30 days may be necessary to facilitate scheduling shipments of XL waste in an efficient manner. A USFRS transporter may store or arrange to store a shipment of USFRS XL waste during that 30 day period, provided however, it may only do so for a 10 day or less period without triggering the facility requirements in sections 264, 265, 268 and 270 of RCRA. This 10 day limitation on the storage of USFRS XL waste by the transporter mirrors the limitations on storage by transfer facilities contained in section 263.12.

If the shipment is not received by USFRS within 30 days of the USFRS transporter picking it up at the USFRS generator, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA and appropriate county agencies. USFRS will send copy of the Transportation Tracking Document to the USFRS generator within 5 days of USFRS' receipt of the XL001 waste from the transporter.

USFRS will use its own trucks or those of approved transporters to transport USFRS XL waste to USFRS's Roseville facility. USFRS has a strict program in place for selection of qualified transporters. USFRS contracts only with transporters who have met USFRS quality control requirements. USFRS requires its transporters to have an EPA identification number and a current satisfactory rating from the USDOT. This rating is the highest rating available and includes an assessment of the safety record of the transporter and its drivers and the condition of the trucks. Additionally, USFRS requires its USFRS XL waste transporters to have a Minnesota registration to transport hazardous waste. Proposed § 266.303(c) and (d) incorporates these USFRS requirements as part of the preliminary evaluation that USFRS must conduct prior to proposing a transporter to USEPA. The proposed rules allow USFRS to propose any transporter, including common carriers, as a participant. However, the transporter must be approved by USEPA prior to being accepted , must have a satisfactory USDOT safety rating and must complete training on the proper handling of the USFRS XL waste and compliance with subpart N. USFRS will assign to each transporter a unique USFRS client identification number. This number will be used on the Transportation Tracking Document.

In lieu of the manifest, USFRS, its transporters and generators will use a USFRS Transportation Tracking Document when transporting the USFRS XL waste from the generator to USFRS's Roseville facility. USFRS has provided EPA with a draft Transportation Tracking Document for use with this XL Project. The draft Transportation Tracking Document contains information similar to the information contained on the manifest. Instead of an EPA identification number the generator will use its USFRS client and waste profile numbers and the XL001 code to identify the USFRS XL wastes it is shipping. The transporter will also use its unique client identification number. The Transportation Tracking Document does not contain the waste minimization statement normally found on the manifest. The Agency believes that such a statement is not needed since the participants to this XL project have already committed to waste minimization, and therefore will be minimizing the water used and potentially other chemicals. Furthermore, as signatories to the FPA participants are certifying their intent to reduce the amount of waste that would be disposed. Proposed § 266.310 and the definition of the USFRS XL Waste

waste, see 40 CFR 262.20(e) and a manifest is not required for conditionally exempt small quantity generators, see 40 CFR 261.5.

[9] Proposed § 266.310(a) requires USFRS to provide the Transportation Tracking Document to the generator prior to the arrival of the transporter at the generator. Although a specific number of days in advance is not specified in the rule it is expected that USFRS will provide the Transportation Tracking Document with enough time for the generator to review the document to ensure it is accurate and can make any necessary revisions. USFRS anticipates that it will usually provide the Transportation Tracking Document within 3 days of receiving a request from the generator to pick-up its USFRS XL waste.

Transportation Tracking Document contained in proposed § 266.301 requires that USFRS obtain EPA approval of the Transportation Tracking Document prior to using the Transportation Tracking Document and whenever it proposes to revise it. EPA proposes to approve the draft Transportation Tracking Document provided by USFRS. Pursuant to proposed §§ 266.319(d), 320 and 321 USFRS, the transporter and the generator(s) will retain a copy of the Transportation Tracking Document for three years for each shipment of XL wastes that it receives at its Roseville, Minnesota facility.

This project shifts the burden of tracking the shipments from the generator to USFRS. Consequently, pursuant to proposed § 266.310(a), USFRS, not the generator, will assume responsibility for any exception reports. With this XL Project the generator must use USFRS or one of its approved transporters to transport the XL wastes. USFRS will track the receipt of the shipments at its Roseville, Minnesota facility. Since USFRS will only use approved transporters and it completes and tracks each generator Transportation Tracking Document, USFRS will know of any shipment that is not received at its Roseville facility. USFRS will use a shorter time period—five days—to gauge whether it is necessary to take further steps to locate a shipment. If USFRS is unable to locate the shipment within five days it will then notify EPA, MPCA and appropriate county agencies of that fact. This XL Project is more stringent than RCRA since it requires a preliminary evaluation of the transporters, directs the shipments to only one facility; and requires notice of lost shipments at an earlier time.

4. Pre-Transport and Transportation Requirements

RCRA Requirements. RCRA establishes pre-transportation and transportation requirements for generators and transporters of hazardous waste. The generator must properly package (40 CFR 262.30), label (40 CFR 262.31), mark (40 CFR 262.32) and placard (40 CFR 262.33) hazardous waste. These rules incorporate by reference the requirements for packing, labeling, marking and placarding contained in the US DOT regulations for transportation of hazardous materials found at 49 CFR parts 172, 173, 178, and 179. Generators must also mark containers of 110 gallons [10] or less of hazardous waste as follows (40 CFR 262.32(b)):

''HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. EPA.
Generator's Name and Address _____
Manifest Document Number'' _____

The transporter of hazardous waste must have an EPA identification number, (40 CFR 263.11); accept hazardous waste only with an accompanying manifest, sign and retain a copy of the manifest, and ensure the manifest accompanies the shipment of hazardous waste, (40 CFR 263.20); and ship the hazardous waste to the designated facility or next designated transporter, (40 CFR 263.21). Additionally, if a spill occurs during the shipment of the hazardous waste, then the transporter must take appropriate immediate action to protect human health and the environment, clean up the release and notify the National Response Center and the Department of Transportation when required, (40 CFR 263.30 and 31).

XL Project Requirements. Under this XL Project, USFRS or an approved USFRS transporter will transport the USFRS XL wastes from the generator to the USFRS Roseville, Minnesota facility. USFRS has an EPA identification number and a hazardous waste permit. USFRS approved transporters will have a current satisfactory safety rating from USDOT and a unique USFRS customer identification. All transporters will use the USFRS Transportation Tracking Document. Pursuant to proposed §§ 266.308(c) and 309 the transporters and generators will ensure the USFRS XL wastes have affixed to the ion exchange resin canisters the following warning statement which will be provided by USFRS:

XL001 wastes—USFRS ion exchange resin canister wastes-Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number _____''If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

USFRS will supply these labels to the generator at the same time as it provides the generator with the USFRS Transportation Tracking Document. The transporters will ensure that these labels are affixed to the containers during transport and that the XL wastes are within an approved container.

5. Accumulation and Storage Prior to Shipment

RCRA Requirements. Generators of hazardous waste are allowed to accumulate hazardous waste on their property from between 90 to 270 days, depending on the quantity of wastes, (40 CFR 262.34). The generators may accumulate the hazardous waste in containers, tanks, drip pads or containment buildings, provided each of these units meets specific requirements for the safe storage of hazardous wastes, (40 CFR 262.34). Generally, these ''safe storage'' standards are grouped into four broad categories of requirements: Use and Management of Containers, Preparedness and Prevention, Contingency Plan and Emergency Procedures and Personnel Training.

The container management standards require the generator to store the hazardous waste in containers which are in good condition, compatible with their contents and closed during storage (40 CFR 262.34(a)(1)(i) and 265.171, 172 and 173). The generator must meet special requirements for ignitable, reactive or incompatible wastes (40 CFR 262.34(a)(1)(i) and 265.176 and 177). The generator is required to inspect the condition of the containers on a weekly basis (40 CFR 262.34(a)(1)(i) and 265.174). The generator must also control volatile emissions from the containers (40 CFR 262.34(a)(1)(i) and 265.178). If the generator uses process vents or there is the possibility of air emissions from the containers, then the generator must comply with applicable special requirements contained in part 265, subparts AA, BB and CC [11].

The preparedness and prevention standards require the generator to maintain and operate the storage area so as to minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of the hazardous waste (40 CFR 262.34(a)(4) and 265.31); to have, where necessary, certain equipment such as communication devices to notify facility personnel and local emergency responders of emergencies, fire extinguishers and an adequate supply of water or foam (40

[10] The USDOT regulations have increased the size of the containers from 110 gallons to 119 gallons. EPA's regulations presently retain the 110 gallon size.

[11] Similar requirements apply to hazardous waste stored in tanks (40 CFR 262.34(a)(1)(ii)), stored on drip pads (40 CFR 262.34(a)(1)(iii)), and/or placed in containment buildings (40 CFR 262.34(a)(1)(iv).

CFR 262.34(a)(4) and 265.32); to routinely test and maintain such equipment (40 CFR 262.34(a)(4) and 265.33); to have such equipment accessible to facility personnel (40 CFR 262.34(a)(4) and 265.34); to have adequate aisle space to allow for access in the case of fire or spills (40 CFR 262.34(a)(4) and 265.35); to make arrangements with local emergency response authorities (*e.g.,* police, fire and hospitals), as necessary, to familiarize them with the hazards posed by the hazardous wastes (40 CFR 262.34(a)(4) and 265.37); and to have a contingency plan designed to minimize the hazards from the fire, explosion or unplanned sudden or non-sudden release of hazardous waste (40 CFR 262.34(a)(4) and 265.51) [12].

The Contingency Plan and Emergency Procedures standards require the contingency plan to include: the actions facility personnel would take; the arrangements made with local emergency responders; the name, address and telephone number of the generator's emergency coordinator; a list of the emergency equipment and an evacuation plan, (40 CFR 262.34(a)(4) and 265.52). The generator must have an emergency coordinator available or on call at all times, (40 CFR 262.34(a)(4) and 265.55). In the case of an imminent or actual emergency, the emergency coordinator must undertake certain emergency procedures. Those procedures require the emergency coordinator to activate internal alarms; notify appropriate state or local emergency responders; assess the nature, rate and extent of any release; take actions to ensure the releases do not occur, recur or spread; monitor for leaks; provide for proper treatment or disposal of the released hazardous wastes; segregate incompatible wastes; and notify EPA and the state of the emergency, (40 CFR 262.34(a)(4) and 265.56) [13].

The Personnel Training standards require the generator to have adequately trained personnel to handle the hazardous wastes, to comply with the requirements of RCRA, and to appropriately respond to emergencies (§§ 262.34(a)(4) and 265.16 (a) and (b)). The generator must retain records of who has been trained, their job title and job description, and a description of the training they have taken (§§ 262.34(a)(4) and 265.16(d)). The generator's hazardous waste personnel must annually review their training (§§ 262.34(a)(4) and 265.16(c)) [14].

XL Project Requirements. The USFRS XL wastes are contained within the resin canisters. These canisters are sealed units. The canisters have an inlet and outlet port. These ports may be sealed once the canisters are disconnected from the generator's processes. The canisters are leak proof, and able to withstand certain temperatures and certain height drops.

The wastes contained in the canisters will consist of the spent resins and wastes accumulated on them. The hazardous wastes found on the resins will be metals. USFRS does not anticipate the canisters will have any volatile chemicals in them. The resins and wastes will be neither combustible, reactive nor explosive. They are compatible with the cylindrical canisters. The resins are tiny pellets with the metals adhering to them via chemical attraction. The metals may not be physically capable of separation unless they come into contact with acids or caustic chemicals.

Given the nature of the USFRS XL waste, this XL Project's accumulation and storage standards focus on proper training, use and management of the containers and prevention of exposure. It imposes more stringent use and management standards. In exchange for this increased stringency it tailors and reduces the training, preparedness and prevention and contingency plan requirements normally found in RCRA to just the specific needs presented by handling of the USFRS XL waste.

The accumulation and storage requirements are contained in proposed § 266.308. The proposed rule requires the generator to store its USFRS XL waste on an impervious surface. Pursuant to § 266.302(c), prior to accepting a customer into this XL Project, USFRS will obtain from its customers the waste application form. This form will provide information on the location and condition of the proposed storage area. This information will be supplied on a site engineering form which USFRS developed and submitted as part of the waste application form. The generator will indicate on the site engineering form the location and construction of the storage area for the canisters. Prior to accepting a generator into this XL Project, USFRS will review the site engineering form and inspect the potential generator's storage area to determine if it is impervious. USFRS will only propose to EPA for this XL Project persons who, among other things, have an impervious storage area. Upon request, USFRS will provide a copy of the customer's site engineering form and the results of USFRS' evaluation of the customer to EPA, MPCA and appropriate county agencies.

The proposed rule limits the generator to less than 90 days for the on-site storage of its USFRS XL waste. The generator must store the USFRS XL wastes in the water treatment resin canisters and separately from its other wastes or materials, including explosive or ignitable wastes or materials. The generator will ensure that the canisters are closed and disconnected from the process(es). It will place on the canisters a label which indicates its name and location, contents of the canister and the date the canister was placed in storage. The generator will ensure that there is adequate aisle space to determine the condition of the canisters and to respond to any leaks from the canisters during their storage. The generator will inspect the condition of the canisters weekly while they are stored on-site. The generator will maintain a log of these inspections. The log will indicate the date the canister was placed in storage, the condition of the canister, the date of the inspection, the person conducting the inspection and the condition of the canisters and the storage area at the time of the inspection.

Pursuant to proposed § 266.313, the generator will retain the ability to legally treat or dispose of its wastes contributing to its USFRS XL waste stream in the event that it is no longer a participant in this XL Project. In most cases this will mean that the generator would have to make arrangements with its local POTW whereby the POTW would agree to take the generators' wastewater on 60 days notice. The POTW serving the Counties of Anoka, Hennepin, Ramsey, Washington, Dakota, Carver and Scott, known as the Metropolitan Council of Environmental Services (MCES) has advised EPA that it will be able to accept the wastewater of those generators who participate in this XL Project in its district on 60 days notice.

Generators will comply with tailored closure requirements of proposed § 266.312. If and when a generator's participation is terminated in this XL Project, USFRS will pick up all of the generator's canisters. Generally, proposed § 266.315 provides USFRS and the generator sixty days to complete the closure activities required by proposed § 266.312. USFRS will collect the generator's USFRS XL waste within thirty days of notice of the customer's

[12] Small quantity generators are required to implement a modified contingency plan, 40 CFR 262.34(d)(5)(i).

[13] Small quantity generators accumulating waste must comply with the emergency procedures found at 40 CFR 262.34(d)(5)(iv)

[14] Small quantity generators must conduct personnel training, 40 CFR 262.34(d)(5)(iii).

discontinuance in the program. The generator will remove from the storage area any USFRS XL wastes and clean any related contamination. The generator will retain records of all activities it has undertaken to decontaminate its storage area and equipment.

Within the same sixty days, the generator will provide USFRS with access to visit the generator. The purpose of this access is to allow USFRS to determine if all of the USFRS XL waste has been removed. USFRS has developed a systems discontinuation form that it will use to document its visual observations during this visit. Pursuant to proposed § 266.312(b) USFRS will provide a summary of its observations at the generator of the condition of the storage area and the removal of all USFRS XL Waste. USFRS may use its systems discontinuation form. USFRS will provide the summary to the customer to EPA, MPCA and appropriate county agencies. Pursuant to §§ 266.319(d) and 266.320 USFRS and the USFRS XL waste generator will maintain records of their compliance with the requirements of § 266.312, including a copy of the systems discontinuation form or its EPA approved equivalent summary.

Abbreviated closure requirements are specified in proposed § 266.314 for those companies who have not generated USFRS XL wastes at the time their participation is terminated. All that is required of these companies is that notice of their termination is provided and that they implement the alternative treatment or disposal required by § 266.313. This truncated closure is appropriate for these companies (i.e., USFRS XL waste approved customers) because at the time of their termination they will not have generated any USFRS XL waste. Consequently, the requirements related to decontamination and off-site shipment contained in proposed § 266.312 are not appropriate.

Proposed § 266.308(e) specifies the generators responsibilities for spilled or leaked USFRS XL waste on-site. If there is a leak or spill of USFRS XL waste in the generator's storage area, then the generator will immediately contain and collect the wastes. It is anticipated that the spilled or leaked materials may consist of water and/or resins. The generator will place spilled or leaked resins in a 55 gallon steel drum which is compatible with the spilled or leaked resins. When allowed by the local POTW, the generator will direct water spilled from the canisters to its drainage system for permitted discharge to the local POTW, and notify the POTW. Otherwise, the generator will place the spilled or leaked water and resin from the canister(s) in a steel 55 gallon drum which is compatible with the spilled or leaked water and resin. The generator will store and label the spilled or leaked USFRS XL wastes in accordance with the requirements for USFRS XL wastes. The generator will notify USFRS and MPCA of the spill or leak and arrange with USFRS for the transport of any such spilled or leaked USFRS XL wastes with the next scheduled shipment of USFRS XL wastes.

This XL Project and the proposed rule do not impose on the generator a requirement for an internal communication device. It eliminates the need for fire extinguishers, water or foam. It also eliminates the written contingency plan and an emergency coordinator at the generator. Instead, proposed § 266.308(i) requires the generator to have an external communication device, such as a telephone. It also requires in proposed § 266.308(a) and (b) that the generator store the wastes in a manner which should all but eliminate the potential for a release to the environment or an emergency. In particular, it requires the generator to segregate the USFRS XL wastes from other wastes and to store it on an impervious pad. Proposed § 266.308(d) and (e) require the generator to inspect the storage area on a weekly basis and to immediately respond to spills or leaks of the USFRS XL waste.

Prior to generating any USFRS XL waste, pursuant to proposed § 266.308(h) the generator must designate a contact person responsible for handling the USFRS XL wastes and responding to any releases of the wastes. It also requires USFRS to provide that person with adequate training on how to handle the USFRS XL waste and any releases. USFRS is required to provide each company (generators and transporters) with adequate training through the use of a training module (''USFRS training module''). USFRS may use any recorded communication media that it believes is appropriate for the training module (e.g., printed brochures, videos, etc.) Pursuant to proposed § 266.304 USFRS will submit this module to EPA, MPCA and the appropriate county agency early enough such that it may obtain the necessary approvals prior to accepting the first shipment of USFRS XL waste. Further, pursuant to the proposed rule, the USFRS training module will, at a minimum, identify the hazards presented by the USFRS XL waste, the steps needed to install and replace the ion exchange resin canisters, the requirements imposed by these rules, the procedures to follow in the event of a release of the USFRS XL wastes and the proper procedures to decontaminate equipment, structures and material in the event that the generator no longer participates in the XL Project. Prior to approving a person as a participant into the USFRS XL Project, USFRS will obtain a signed certification from that person. The certification will state that the person has reviewed, viewed or read the training materials and agrees to follow it. As part of this certification the potential generator will identify the individual responsible for its compliance with the conditions of these rules, the individual's job title and a description of his or her duties.

Pursuant to proposed § 266.305, USFRS will provide every potential generator with a material safety data sheet (''USFRS MSDS'') for the resin contained in the canister. USFRS will provide this at the time the company applies to USFRS for participation in this Xl Project. The USFRS MSDS will comply with the requirements for MSDS imposed by the Occupational Safety and Health Administration (OSHA)). Pursuant to proposed § 266.308(h) the generator will maintain and exhibit in a prominent location a copy of the USFRS MSDS on its property and will provide a copy of it to local police and fire departments and to the local hospital. USFRS will ensure that the MSDS prominently instructs individuals in the proper handling and emergency response procedures for handling spills or leaks of the USFRS XL wastes at the generator or while in transit to USFRS. The USFRS MSDS will also accompany each shipment of USFRS XL wastes.

If an imminent or actual emergency occurs which threatens the release of USFRS XL waste at the generator site, then the generator will notify the EPA, MPCA, USFRS and the appropriate local emergency responders and county agencies. The generator will take actions to ensure the releases do not occur, recur or spread; contact USFRS to arrange for the transport and disposal of the USFRS XL wastes; and make a written recording of the event and its actions in response to such event.

6. Reporting and Recordkeeping Requirements

RCRA Requirements. Generators of hazardous waste must complete and submit certain reports and documents. Generally, the RCRA regulations require the generator to retain these reports or documents for three years. The generator must retain copies of all manifests for three years, (40 CFR 262.40). Under federal requirements,

only large quantity generators must complete and retain copies of a biennial report of hazardous waste activity, (40 CFR 262.40(b) and 41). In the State of Minnesota, the requirement is for an annual report.

The annual report generally requires the generator to identify for that calendar year the amount and type of hazardous waste that it generated and transported off-site. It requires the generator to identify the transporters and facilities that it used for its hazardous waste transport, treatment and disposal. It also requires the generator to identify the efforts it has taken during the year to reduce the volume and toxicity of wastes produced. The generator must also keep records of all waste analyses or similar determinations of the characteristics of its hazardous wastes, (40 CFR 262.40(c)). Generators who store hazardous waste on-site in containers, tanks, drip pads, or containment buildings must also have a contingency plan on-site and provide copies to State and local responders (40 CFR 262.34(a)(4) and 265.53). They must report to EPA any emergency and retain a copy of such reports (40 CFR 262.34(a)(4) and 265.56(j)).

XL Project Requirements. Proposed §§ 266.319, 320 and 321 present the recordkeeping and reporting requirements for USFRS, the generators and transporters. Under the proposed rules, the generator will not be required to retain copies of the waste analysis or annual reports. Instead the burden will shift to USFRS to retain equivalent information to that contained within these reports. In particular, USFRS will retain for three years a copy of all approval letters to its approved customers and generators of USFRS XL wastes; any correspondence with its approved customers or generators relevant to their participation in this XL Project; a copy of the approved customer's and generator's XL Waste application form, site engineering form, summary of its generator closure review pursuant to § 266.312; waste analysis, and its review analyses of the approved customer's or generator's storage area; and the Transportation Tracking Document for each shipment of USFRS XL waste.

Each generator will be required to retain for three years records of any spill or emergency notifications and other duties imposed pursuant to proposed § 266.308(g); the signed FPA, certification; its weekly inspection log required by § 266.308(d); its compliance with the training requirements of § 266.308(h); and its records of compliance with the decontamination requirements of § 266.312.

Each transporter will retain for three years a copy of the USFRS XL Waste FPA, its certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of USFRS XL wastes required by § 266.311.

In addition to the records listed above, USFRS will develop and submit certain additional reports, lists and documents. Many of these reports and documents are in lieu of requiring the same or similar information from its customer (*e.g.,* annual reports or contingency plan). The reporting requirements are presented in proposed § 266.319 according to their frequency: annual reports (proposed § 266.319(a)), semi-annual reports (proposed § 266.319(b)) and quarterly reports (proposed § 266.319(c)). A summary of each report is presented below.

Quarterly reports are presented in proposed § 266.319(c) and consist of status reports on generator and transporter participation in the XL Project. Separate lists, with similar information, will be reported for each. The generator list is summarized in this paragraph. USFRS will identify on the XL participant list information on its preliminary evaluation of the transporters and generators, the dates of EPA, MPCA and appropriate county approvals, the effective date of a company being added to the USFRS XL Project and any termination date. For the generators, USFRS will also include a summary of USFRS's profile analysis, the generator's process waste streams approved for participation in the XL Project and the condition of the customer's storage area at the time of its application to USFRS. For generators who discontinue participation in this XL Project, USFRS will include on the XL generator list the date of the notice of termination of its participation, the date USFRS removed the last ion exchange canister, and the date of the USFRS review of the generator's decontamination efforts. USFRS will update the XL participant list as persons are added to or eliminated from this XL Project. USFRS will have the XL generator list available for review by EPA or MPCA at its Roseville, Minnesota facility. USFRS will send a copy of the XL generator list to EPA, MPCA and appropriate county agencies on a quarterly basis.

The annual report requirements are presented in proposed § 266.319(a) and are intended to provide a substitute for the hazardous waste biennial report. USFRS will provide an annual report on all USFRS XL wastes. USFRS will include in the annual report, at a minimum, each USFRS XL waste generator, the quantity of USFRS XL waste that USFRS received from each generator during the calendar year and a certification by USFRS that those wastes were treated at USFRS in accordance with the requirements imposed by new part 266, subpart N. USFRS will include information on the amount of metals it reclaimed and recycled from the resins.

USFRS will develop and track certain information that will be used to determine the environmental benefits derived from the USFRS XL Project. From the generators USFRS will report on an annual basis the following information: the amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered instead of being disposed by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister replacement in terms of process volume, the constituents in the material (ion exchange resins, wastewater treatment sludge, residues) collected at each facility (*e.g.*, recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, wastewater treatment sludge, residues) disposed by each facility (*e.g.*, contaminants/non-recoverable material).

USFRS will report on an annual basis the following information from its facility: quantity of material (ion exchange resins, wastewater treatment sludge, residues) to be processed, quantity of metals recovered, the constituents of the recovered material (ion exchange resins, wastewater treatment sludge, residues), quantity and constituents of the non-recoverable material (ion exchange resins, wastewater treatment sludge, residues) and how it was disposed.

USFRS shall report on an annual basis the following information from the metal reclamation facility it uses to recycle sludges: the quantity of each metal recovered.

Pursuant to proposed § 266.319(b), USFRS will collect and report on a semi-annual basis financial information related to the costs and savings realized

as a result of implementation of this project and sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. Pursuant to proposed § 266.319(b)(1), the report will contain information which includes, but is not limited to: 1. The volume of waste collected and recycled, 2. The amount of metals recycled, 3. The volume of recycled material sold to others, 4. Data regarding the management of the ion exchange canisters, 5. The constituents of the sludge and 6. Information regarding how the sludge and residues are managed.

Additionally, proposed § 266.319(b)(2) requires USFRS to report certain financial information related to implementation of this XL Project. It specifies that USFRS will collect baseline and XL costs. The baseline costs shall be calculated using two scenarios: 1. typical charges (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and 2. typical charges that would be incurred if wastes were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios). The XL costs will include the current costs to the generator for completing bills of lading, the current transportation costs for XL wastes, the generator's cost to install the ion exchange canisters, and the cost to USFRS of metals reclamation off-site (including costs associated with transportation and disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for the generators and which aspects of the XL Project produce these savings.

7. Additional Requirements Imposed on USFRS

RCRA Requirements. Companies which treat, store or dispose of hazardous waste must comply with a permit issued for such activities. The permit will contain the specific requirements which the company must meet.

XL Project Requirements. USFRS has a RCRA permit which allows it to receive the USFRS XL wastes. Pursuant to proposed § 266.307 once USFRS receives the USFRS XL waste at its Roseville, Minnesota facility, the waste will lose its USFRS XL waste designation (XL001) and must be handled as a fully regulated hazardous waste (i.e, as F006 and any other applicable hazardous waste code designation). USFRS will determine the appropriate designation of the waste based on its waste profile analysis and knowledge of the waste stream. USFRS will comply with all terms and conditions of its RCRA permit for handling these hazardous wastes. USFRS will also be responsible for the conditions and terms identified in items 1–6 above as applicable to USFRS—e.g., waste profiling, use of the Transportation Tracking Document, generator annual report, training module, MSDS, discontinuation review of the customer, and transportation of waste to the Roseville, Minnesota facility. USFRS will arrange for the recycling through metals recovery of the metals which are contained in the generator's USFRS XL wastes. Pursuant to proposed § 266.307(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. This rule further requires USFRS recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

To ensure proper coordination of responses to spills, leaks or emergencies of USFRS XL waste at the generator or while in transit, proposed § 266.307(c) requires USFRS to have a spill response coordinator. This person will receive all calls from generators and transporters regarding spills, leaks or emergencies related to the USFRS Xl wastes. This person shall also be responsible for coordinating the proper response to such spills, leaks or emergencies.

V. How the USFRS XL Project Will Result in Superior Environmental Performance

A. What Regulatory Changes Will be Necessary to Implement this Project?

1. Federal Regulatory Changes

The purpose of today's proposed regulatory changes are to provide generators and transporters of USFRS XL waste with alternative requirements for the proper handling and transportation of those wastes. The USFRS XL wastes are F006 hazardous wastes. Additionally, some of this F006 waste may be characterized as characteristically hazardous waste (i.e., ''D'' wastes) depending on the concentration of the constituents in the waste streams at each individual generator. Consequently, the USFRS XL wastes would be subject to the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279. However, today's proposal would provide the USFRS XL wastes with a separate waste code while they are at approved generators and transporters. It also proposes to substitute tailored management requirements for the approved generators and transporters and USFRS. Consequently, in order to implement this regulatory flexibility EPA is proposing to provide a ''temporary deferral'' from the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279 for USFRS XL waste while it is at the generator and during its transport to USFRS. The generators and transporters would have to manage the wastes in accordance with new part 266, subpart N in lieu of 40 CFR parts 261–265, 268, 270, 273 and 279. If a generator or transporter fails to comply with the new requirements, then it will have violated those requirements and may be subject to enforcement action for such violations. The deferral is temporary in that it is only applicable for the period of time that the waste is at the generator or in transport and not when it reaches USFRS. Additionally, this deferral expires when the XL Project is terminated. This XL Project will last no more than five years from the effective date of the new part 266, subpart N.

Today's proposal would also impose on USFRS additional handling, record keeping and reporting requirements for the USFRS XL wastes (XL001) it receives from the generators and transporters. These requirements complement the regulatory flexibility granted to the generators and transporters. These requirements are necessary for the successful completion of this XL Project. The new requirements are contained in new proposed part 266, subpart N.

This site-specific rule would add a new paragraph (v) to 40 CFR 261.6, and new Subpart N to part 266 to clarify that USFRS XL wastes (XL001) generated and transported by approved USFRS XL waste generators and transporters would be exempt from § 261.5, parts 262–266 (except 266, subpart N), 268, 270, 273 and 279. Instead these persons would be regulated by a new part 266, subpart N.

New part 266, subpart N would contain the procedures necessary to implement this regulatory flexibility and would fully describe the requirements imposed on USFRS, and the approved generators and transporters as detailed above in sections IV. A & B.

EPA is proposing to add the following definitions to § 266.301 to implement this XL Project: County Environmental Agencies or County Agencies, USFRS, USFRS XL Waste, USFRS XL Waste Application Form, USFRS XL Waste Approved Customer, USFRS XL Waste

Approved Transporter, USFRS XL Waste Transportation Tracking Document,, USFRS XL Waste Final Project Agreement, USFRS XL Waste Generator, USFRS Waste Training Module, USFRS XL Waste Material Safety Data Sheet, USFRS XL Waste Project or USFRS XL Project, and USFRS XL Waste Transporter.

2. State Regulatory Changes

The state of Minnesota is authorized under section 3006 of RCRA to implement the federal RCRA program. Thus, Minnesota's regulations operate in lieu of the federal regulations adopted pursuant to RCRA. EPA may directly implement and enforce new federal regulations in an authorized state only if those regulations are adopted pursuant to EPA's statutory authority granted by the Hazardous and Solid Waste Amendments of 1984, (HSWA) . Minnesota's and EPA's regulations require companies that treat, store or dispose of hazardous waste to have a permit or interim status. If a company has interim status it must comply with the requirements of 40 CFR part 265 and Minn. R. 7001.0650 and Minn. R. 7045.0552 to 7045.0648. If a company has a permit then it must comply with the permit. A company with a permit does not have to comply with new regulatory requirements (with certain exceptions) until such time that the permit is modified to incorporate those new requirements. 40 CFR 270.4. Minnesota has a similar provision, Minn. R. 7001.0150, subp. 2.P.

Minnesota's hazardous waste management regulations, codified in Minn. R. Chs. 7001 and 7045 contain equivalent or more stringent, requirements as compared to the Federal regulations at 40 CFR parts 260–266, 268, 270, 273 and 279 for hazardous waste. None of the regulations proposed with today's proposal are promulgated pursuant to EPA's HSWA authority. Consequently, the approved generators, transporters and USFRS are subject to the Minnesota state regulations until such time as these new regulations are adopted by the state of Minnesota or an equivalent state legal mechanism is used. Therefore, conforming state regulatory changes or legal mechanisms must be implemented in addition to the proposed federal changes for companies to enter into this XL Project. Section F below describes the changes that may be necessary and the options available to Minnesota to implement the flexibility provided by the proposed federal rules.

B. Why is EPA Supporting this New Approach to USFRS XL Waste Management?

EPA is supporting this new approach because it believes that it will provide superior environmental performance by promoting recycling of water and recovery and reuse of metals that would otherwise be land disposed. USFRS and its customers will be complying with requirements that are as protective of public health and the environment as the RCRA requirements that would otherwise be applicable. EPA also believes that implementation of this project will result in a significant cost savings to the participating customers (see section D below). The success of this project will be evaluated on an ongoing basis and will determine whether this new approach to waste management should be extended to other areas of the country.

C. How Have Various Stakeholders Been Involved in this Project?

Stakeholder involvement is essential for the success of this innovative environmental program. Nine public meetings were held to inform the general public and environmental groups about the project and to invite their comments and participation. Additional public meetings may be held during implementation of the FPA based on public interest or as decided by direct participants. Stakeholder input and community goals have been and will continue to be considered throughout project implementation. USFRS shall report on a quarterly basis efforts to maintain stakeholder involvement and public access to information in accordance with the requirements of the new subpart N.

D. How Will this Project Result in Cost Savings and Paperwork Reduction?

EPA believes that this project has the potential for cost savings by making recycling of water and waste more cost competitive with traditional treatment/disposal options. Costs savings may include those associated with: purchase of additional potable water for single use; capital and operating costs to treat mildly contaminated waste waters so that they meet pretreatment standards prior to discharge; discharge fees associates with wastewater discharge (including permits, monitoring and sewer access charges); transport and disposal of hazardous waste sludges; and taxes paid to local authorities.[15] A cost comparison will be conducted during project implementation to evaluate the cost savings. EPA believes that the paperwork burden for the generator will be reduced as compared to current RCRA requirements. USFRS will be required to retain and submit certain reports which RCRA would normally require of its customers, and report ongoing environmental performance and success in meeting its targets. For further information about the impacts of this rule on paperwork reduction, please see section VI.D.

E. How Will EPA Ensure the Integrity of this XL Project?

EPA will ensure the integrity of this project through the regulations that it is proposing today, its prior approval of the generators and transporters, its normal enforcement and oversight authority and coordination and cooperation with the state of Minnesota and appropriate county agencies.

The rules proposed today will be the primary vehicle EPA will use to ensure that USFRS and all generators or transporters of USFRS XL waste handle the USFRS XL wastes in a manner which is acceptable to EPA. According to the proposed rules, USFRS XL wastes may only be sent to USFRS' Roseville, Minnesota facility. That facility has a RCRA permit and must comply with the proposed rules. The proposed rules require USFRS to conduct a preliminary evaluation of any generator or transporter that it proposes to add to this XL Project. The rules specify the conditions and elements for such preliminary evaluations. For generators these requirements include appropriate training in handling the USFRS XL wastes, proper identification of their processes and an appropriately designed storage area. For the transporters these requirements include a satisfactory safety rating from the USDOT and training on the proper handling of the USFRS XL wastes. Once this pre-screening is completed, final approval is subject to EPA, MPCA and appropriate county agency oversight.

F. How Will the Terms of the USFRS XL Project and Proposed Rule be Enforced?

All XL projects must include a legally enforceable mechanism to ensure accountability and superior environmental performance. EPA retains its full range of enforcement options under the proposed rule. Thus, once there is a federally enforceable mechanism in place, if EPA determines that a company is not in compliance with it then EPA and, under certain conditions, private citizens may take enforcement action against that company and may terminate that

[15] The counties each will decide whether to exempt the XL 001 waste from normal hazardous waste taxation.

person's continued participation in the project (section 3005(d), 3006(d) and 3008(a) of RCRA). In the event EPA terminates a person's continued participation in this XL Project, EPA will use the criteria and procedures identified in the proposed rules, not those contained in Minnesota's rules or statutes. (See proposed § 266.314–318). The enforcement response on the part of EPA would vary depending upon the actual performance of each generator, transporter and USFRS, the mechanism the State uses to implement this XL Project and the severity of any violation.

EPA will enforce the existing Minnesota hazardous waste management regulations which are part of the Minnesota authorized hazardous waste program. The flexibility proposed in the proposed regulations will not be available to USFRS, its generators and transporters until EPA promulgates these regulations and the State of Minnesota adopts equivalent flexibility which is federally applicable and enforceable. The instrument selected for the State's implementation of this XL Project must be one that is clearly federally enforceable.

Once all of the required federal and state legal authorities are in place, EPA will retain a role in evaluating this XL Project and each generator and transporter. EPA will evaluate each generator and transporter prior to it being accepted into the program. Additionally, once this XL Project is effective EPA may routinely inspect any of the participants to determine their compliance. If EPA determines that a participant has violated a particular provision of the proposed rules, then that participant may be subject to civil or criminal penalties pursuant to section 3008 of RCRA.

Today's proposed rule includes a termination provisions in § 266.314–318. EPA will use the termination provisions of today's rules independent of any contained within the Minnesota rules. Today's proposed rules recognize that a company may terminate its participation in the USFRS XL Project voluntarily and at any time; even before generating or transporting USFRS XL waste. Additionally, a company may be automatically terminated upon a change in ownership or at the conclusion of this Project. EPA, MPCA or the appropriate county agency may terminate a company's participation as a result of violations of the regulations. In the case of EPA initiated termination the rules provide the company with notice and an opportunity to correct any violations. This opportunity to correct the violation does not compromise EPA's authority to initiate an enforcement action against the company for the non-compliance.

The proposed rule provides the federal procedures and time frame for termination of a company's continued participation in the USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. State or local procedures may be different but are expected to be equivalent in terms of the criteria and notice provisions.

In the event of a termination, the participant must remove the USFRS XL waste, take appropriate steps to decontaminate and return to compliance with RCRA.[16] The participants are provided with time to take these steps if the termination is the result of a change in ownership or a termination by EPA , MPCA or the appropriate county agency. USFRS XL waste transporters will have 30 days after receipt of EPA's notice of termination or a change in ownership to complete the termination procedures required by the proposed rules and return to compliance with RCRA. USFRS XL waste generators will have 60 days and USFRS will have 120 days. During the 30, 60 and 120 transition periods, the provisions of proposed subpart N would continue to apply in full. At the conclusion of the transition periods, the applicable RCRA regulations would again apply to the participant.

The rationale for the transition period is to allow sufficient time for the participant to reinstate the operational and administrative infrastructure necessary for proper RCRA compliance. EPA selected different time frames for the transporters, generators and USFRS based on the complexity of the activities they may have to engage in to return to compliance with RCRA.

USFRS XL waste transporters should be able to return to compliance with RCRA earlier since their obligations are expressed in terms of transportation of the USFRS XL waste. Since transportation of those wastes would normally be required within 30 days of receipt of the shipment, the USFRS XL waste transporter should be able to ship any loads in its possession within the 30-day transition period.

USFRS XL waste generators need a longer transition time since they will have to remove the USFRS XL waste on-site, decontaminate any storage area and may need to make process changes. USFRS XL waste generators may also have to (1) make new hazardous waste determinations, (2) re-train facility personnel, (3) obtain the necessary state and local approvals for any changes in its waste water discharge to the POTW, or ensure a suitable alternative which complies with environmental statutes and regulations, (4) establish systems for proper record keeping and reporting, (5) obtain an EPA identification number, and (6) acquire funding and resources which were unnecessary under the XL Project (e.g., additional funding might be needed for the re-negotiation of contract terms with hazardous waste contractors who might be needed for additional hazardous waste pick-ups).

In the case of USFRS, a longer transition time is provided since its termination will effectively terminate the participation of all of the XL Project generators and transporters. All of the activities identified above for the USFRS XL waste generators and transporters will have to be undertaken as well as USFRS's closure of the project. Thus a longer period of time is necessary. EPA believes that 120 days is a reasonable time period. For the reasons presented in the preceding paragraphs and since the proposed rule would be fully applicable during any transition period, EPA is confident that the 30/60/120-day time frames are protective of human health and the environment.

G. How Long Will this Project Last and When Will it be Completed?

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is one of limited duration. Today's proposed rule would set the term of the XL Project at five years after the effective date of this rule.

Because Project XL is a voluntary and experimental program, today's proposed rule contains provisions that allow the project to conclude prior to the end of the five years in the event that it is desirable or necessary to do so. For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable to the wastes during the project term which might render the

[16] If a generator or transporter elects to terminate its participation prior to ever generating or transporting USFRS XL waste the rules provide a truncated termination procedure. This procedure does not require removal or decontamination of USFRS XL waste since none have been generated or transported. It also provides for a shorter time for notice to EPA, MPCA and the appropriate county agencies. (See proposed §§ 266.314 and 266.316).

project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Similarly, the participants may also ask to discontinue participation in this XL Project prior to the five years if the experimental project does not provide sufficient benefits for them to justify continued participation.

If an early conclusion to the project is determined to be appropriate, today's rule provides a mechanism for EPA to legally conclude the project prior to the five years. A notice of termination will trigger a transition period described above in section F of this preamble. While EPA, the state and county environmental agencies and the participants have broad discretion and latitude to initiate an early conclusion of the project, all are expected to exercise their good faith and judgment in determining whether exercising this option is appropriate.

EPA reserves the discretion to terminate a project and the FPA in the event a participant fails to comply with or meet its obligations in the proposed rule, or its supplementary commitments contained in the FPA. The FPA and the proposed rule also provide for the participant's return to compliance with existing RCRA regulatory requirements following termination.

VI. Additional Information

A. How to Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the site specific rule to implement the U.S. Filter XL Project should contact Mr. Robert Egan of the Region 5 EPA office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than August 24, 2000. Written statements should be sent to EPA at the address given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does this Rule Comply with Executive Order 12866?

Because this rules affects only U.S. Filter, its transporters and its customers, it is not a rule of general applicability. It is therefore, not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary. Further, under Executive Order 12866, the Agency first 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 in 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 entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order and because this proposed rule affects only USFRS and its transporters and generators, it is not a rule of general applicability or a ''significant regulatory action'' and therefore not subject to OMB review. Further today's proposed rule does not apply to any entity unless they choose on a voluntary basis to participate in this XL Project. Finally, OMB has agreed that review of site specific rules under Project XL is not necessary.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as : (1) a small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's RCRA Regulations to modify the handling and reporting requirements for certain hazardous waste generators and transporters, as well as for USFRS. USFRS is not a small entity. The modifications authorized by the rule would reduce costs to the generators to whom it applies and those modifications should have no impact on costs to the transporters. EPA has concluded, therefore, that the rule will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?

The information collection requirements in this proposed rule have been submitted for approval to the

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1755.04, OMB Control No. 2010–0026) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460, by e-mail at farmer.sandy.epa.gov, or by calling (202) 260–2740. A copy also may be downloaded off the internet at *http://www.epa.gov/icr*. EPA is requiring that information be collected regarding which generators and transporters are eligible for regulatory flexibility under the USFRS XL Project. Information is also needed in order to keep generators, transporters, USFRS, and emergency response teams abreast of XL 001 waste, its contents, and when it is shipped and received. Finally information is needed to determine whether the project produces superior economic and environmental benefits. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a generator or transporter decides to participate, EPA requires the filing of this information. Quarterly reports will be publicly available. The estimated total cost burden of collecting the information is $224,940/year and the estimated total length of time to collect it is 3906 hours/year. The estimated total number of respondents is 90. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA will amend the various regulations to list the information requirements, if any, contained in the final rule. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs. Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 17, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by September 18, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is limited to USFRS and certain of its customers and transporters. This proposed rule would create no federal mandate because it is a voluntary program proposed by USFRS. Further, EPA is imposing no enforceable duties that are anticipated to be more expensive or more onerous for the parties that would exist without this proposed rule. The rule does not change the authorization status of the State. Since the proposed rule is a relaxation of the federal regulatory program, it will not take effect until the State adopts the rule. The State is under no federal obligation to adopt less stringent requirements. EPA has also determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Nevertheless, in developing this proposed rule, EPA worked closely with MPCA, Ramsey, Hennepin, Anoka, Dakota, Carver, Scott and Washington Counties and received meaningful and timely input in the development of this proposed rule.

F. Applicability of Proposed Subpart N under the Minnesota RCRA Authorized Hazardous Waste Program

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions for violations of the authorized requirements under RCRA sections 3007, 3008, 3013, and

7003. Authorized States also have independent authority to bring enforcement actions under State law. Additionally, citizens are provided with the opportunity to commence a civil action under section 7002 of RCRA for violations of the authorized program.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. Until these actions are completed, the State requirements which EPA previously authorized are the federally enforceable rules that apply pursuant to RCRA. The State must adopt any new more stringent Federal requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA, provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

2. Effect on Minnesota Authorization

Today's proposed rules, if finalized, would be promulgated pursuant to EPA's non-HSWA authority, rather than its HSWA authority. Minnesota has received authority to administer most of the RCRA program; thus, authorized provisions of its hazardous waste program are administered and enforced in lieu of the federal program equivalent. Minnesota has received authority to administer hazardous waste standards for generators, transporters and facilities that treat, store or dispose of hazardous waste. As a result of this authorization, the substantive requirements contained in today's proposed rules, if finalized, will not be effective in Minnesota until the State adopts equivalent legal mechanisms or requirements as state law that are authorized by EPA.

It is EPA's understanding that subsequent to the promulgation of this rule, Minnesota intends to propose rules or other legal mechanisms containing requirements equivalent to those imposed by new part 266, subpart N. Minnesota may accomplish this through a number of mechanisms. One mechanism is for Minnesota to revise its existing hazardous waste rules to mirror the changes contained in today's proposed rules. If Minnesota revises its rules in this manner then it will have to submit them to EPA for review and approval as part of the authorized state program. Until such time, EPA and citizens may enforce the previously authorized state rules, which do not provide the flexibility afforded by today's proposed rule.

Minnesota also may choose to rely on its existing statutory and regulatory authority under RCRA to issue a variance to individual or categories of companies covered by today's proposed rules. To the extent that MPCA relies on existing statutory and regulatory authority which is part of the authorized state hazardous waste program, then further federal review and authorization would not be necessary.

Through its existing hazardous waste management statutes and regulations—Minn. Stat. section 116.07, subd. 5 and chapter 7045 of Minnesota Rules (Minn. R. ch. 7045), the MPCA has specific authority to provide regulatory flexibility through the inclusion of variances in state-issued RCRA permits. Minn. R. 7045.0060 sets out the procedural and substantive requirements for issuance of a variance. It allows a variance from any requirement of the hazardous waste rules—including Minnesota's regulation of the generators, transporters and facilities. However, this authority is limited in a manner such that Minnesota may not grant a variance which would result in noncompliance with the federal hazardous waste regulations.

Any appropriate variance validly issued pursuant to the state's authorized RCRA program would be immediately applicable pursuant to RCRA and therefore federally enforceable. In order for such a variance to be immediately federally enforceable, thus replacing the current authorized requirements, it would have to meet the substantive criteria of Minn. R. 7045.0060 (*i.e.,* not result in noncompliance with the EPA regulations); in this case, that would mean that the variance would have to incorporate all of the conditions which are the same as those identified in new part 266, subpart N.

Another mechanism that Minnesota has indicated it might use to implement new part 266, subpart N is the Minnesota Environmental Regulatory Innovations Act, also known as the Minnesota XL statute (MS 114C). The Minnesota XL statute is not part of the authorized state hazardous waste management program, and without itself being federally approved cannot legally change or vary any requirement of the state's federally-approved RCRA program, nor would it have any legal effect on the applicable RCRA requirements and the federal or citizen suit enforcement authorities provided under RCRA. As such, it would not affect the enforceability of the requirements of today's proposed XL rule or the state-issued variance, as described in the previous paragraph.

The Minnesota XL statute allows the MPCA to issue XL permits which may vary the substantive requirements of state rules and local ordinance as a method of implementing XL projects. It also allows the State to substitute the specific public participation requirements of the XL statute for those detailed in MPCA permit rules. The statute identifies procedural elements which include a draft permit, public noticing of the draft permit, a public comment period and an opportunity for a hearing prior to issuance of a final permit. Once a permit is issued it may be revoked, after notice and an opportunity to request a hearing, and for specific reasons, including significant non-compliance with the permit.

Minnesota has indicated that it could, under its XL statute, issue a general permit to the category of generators covered by today's rule and a specific permit to USFRS. As specific generators are approved MPCA believes that it could add them to the general permit. Minnesota believes that the conditions imposed upon the generators and USFRS could be the same as those imposed by new part 266, subpart N. These state law XL permits would not be federally enforceable, and thus would have no legal effect on the federal applicability and enforceability of the current federally authorized rules, today's proposed rule (if finalized) or the variance issued by the state pursuant to its authorized regulations, until the State receives authorization for the changes. After authorization by EPA, these State XL permits would be federally enforceable.

Whatever instrument the State selects to implement the federal XL project it must be one that is clearly federally enforceable.

G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive

Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental, health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. Finally, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

H. How Does this Rule Comply with Executive Order 13132 on Federalism?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255), August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's proposed rule would apply only to the USFRS facility and generators and transporters of USFRS XL waste and will not take effect unless Minnesota chooses to adopt equivalent legal mechanisms or requirements under state law. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA anticipates that the generators who will take advantage of this rulemaking will be in Ramsey and Hennepin Counties. There are no communities of Indian tribal governments located in the vicinity of Ramsey and Hennepin Counties. Further, as stated above, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including any Indian Tribal communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Does this Rule Comply with the National Technology Transfer and Advancement Act?

Section 12(d) of NTTAA, Public Law 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 standards. This proposed rulemaking sets alternative handling and paperwork requirements for certain hazardous wastes; it does not set technical standards. EPA is not considering the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 261

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping Requirements.

40 CFR Part 266

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping Requirements.

Dated: August 4, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 261 and 266 of Chapter I of title 40 of the Code of Federal Regulations are 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, 6924(y) and 6938.

Subpart A—General

2. Section 261.6 is amended by revising paragraph (a)(2) introductory

text and by adding paragraph (a)(2)(v) to read as follows:

§ 261.6 Requirements for recyclable materials

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 270 and 124 of this chapter:

* * * * *

(v) U.S.Filter Recovery Services XL waste (subpart N).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922–6925, 6934 and 6937.

2. Part 266 is amended by adding a new subpart N to read as follows:

Subpart N—Standards applicable to U.S. Filter Recovery Services XL waste and U.S.Filter Recovery Services, Inc.

§ 266.300 Purpose, scope, and applicability.

The purpose of this subpart is to implement the U.S. Filter Recovery Services (USFRS) eXcellence in Leadership (XL) Project. Any person who is a USFRS XL waste generator or transporter must handle the USFRS XL waste in accordance with the requirements contained within this subpart. The standards and requirements of this subpart also apply to USFRS and its facility located at 2430 Rose Place, Roseville, Minnesota. These requirements are imposed on USFRS in addition to any requirements contained in its RCRA hazardous waste permit or other applicable state or federal law. USFRS XL waste generators and transporters are not required to comply with the requirements of 40 CFR 261.5, parts 262 through 266 (except this subpart N), parts 268, 270, 273 and 279 provided they manage USFRS XL waste in compliance with the requirements of this subpart N.

§ 266.301 Definitions.

County Environmental Agencies or *County Agencies* means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington in Minnesota.

USFRS means U.S. Filter Recovery Services, Inc. whose principal place of business for the purposes of these rules is 2430 Rose Place, Roseville, Minnesota.

USFRS XL Waste means one or more USFRS used water treatment resin canisters and their contents from a USFRS XL waste generator located within the State of Minnesota. USFRS XL waste includes the ion exchange resins, the wastes contained on or within the ion exchange resins and any other wastes contained within the water treatment resin canisters. *USFRS XL waste* also includes spills of XL waste which are handled in accordance with the requirements in this subpart. USFRS XL waste is limited to wastes which are derived from processes subject to the EPA F006 waste code designation (i.e. waste water treatment sludges from specified electroplating operations). These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. This definition includes only those ion exchange resin canisters which result in reuse of substantially all of the treated waste waters in the industrial process. This definition does not include those ion exchange resins canisters which result in the disposal of the treated waste waters, without any reuse of the treated waste waters in the industrial process. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste shall be identified by the waste code XL001.

USFRS XL Waste Application Form means the form approved by EPA and Minnesota Pollution Control Agency (MPCA) as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and used for characterization of the chemical constituents of a person's USFRS XL waste. The USFRS XL Waste Application Form shall include all attachments by USFRS or the applicant, including but not limited to, the USFRS Site Engineering Form, Systems Engineering Form and any waste analysis.

USFRS XL Waste Approved Customer means only those persons located in Minnesota who have properly identified their wastes and processes on the USFRS XL waste application form; have not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; have signed the USFRS XL waste Final Project Agreement (FPA); have certified that they have read and understand the USFRS XL waste training module; and have not generated USFRS XL wastes.

USFRS XL waste approved transporter means a transporter located within the State of Minnesota who has a satisfactory safety rating from the United States Department of Transportation (USDOT) in the last year; has not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; has signed the USFRS XL waste FPA; and has signed a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart.

USFRS XL Waste Facility or *USFRS Facility* means the U.S.Filter Recovery Service, Inc. operations located at 2430 Rose Place, Roseville, Minnesota.

USFRS XL Waste Final Project Agreement (FPA) means the agreement signed by USFRS, EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Transport and USFRS XL waste customers, generators and transporters. The FPA may be modified to add or delete participants, subject to the approval of EPA and MPCA.

USFRS XL Waste Generator means a USFRS XL waste approved customer who generates or generated USFRS XL waste.

USFRS XL Waste Project, *USFRS XL Project* or *XL Project* means the program identified in the Final Project Agreement and this part for the generation, transportation and subsequent treatment, storage and disposal of USFRS XL waste.

USFRS XL waste training module means the recorded training program approved by EPA and MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and developed by USFRS for the purpose of informing USFRS XL waste approved customers, generators and transporters of the special requirements imposed on them by this part and the proper method of handling USFRS XL wastes.

USFRS XL Waste Transportation Tracking Document means the Transportation Tracking Document developed by USFRS which was approved by EPA and the MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA; and used when USFRS XL waste is transported off-site from a generator.

USFRS XL Waste Transporter means USFRS or a USFRS XL waste approved transporter who transports USFRS XL waste.

§ 266. 302 Procedures for adding persons as generators to EPA's USFRS XL Project.

(a) Any person who wishes to participate in the USFRS XL Project as

a generator must obtain the approval of the EPA and the Minnesota Pollution Control Agency (MPCA). The approval of the County Agency is also required if that person will generate USFRS XL waste at a location in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person to the federal USFRS XL Project. USFRS and a proposed generator must also comply with the procedures identified by the MPCA, and appropriate County Agencies. A person may not be added to the federal USFRS XL Project unless it has the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to add a person as a generator to the USFRS XL Project. USFRS may propose to EPA to add persons to the USFRS XL Project at any time provided, USFRS complies with the requirements of this section. Prior to being considered a USFRS XL waste generator, a person must first be approved as a USFRS XL waste approved customer. Only a USFRS XL waste approved customer may become a USFRS XL waste generator. A person becomes a USFRS XL waste generator after it first generates or causes USFRS XL waste to be regulated.

(c) USFRS will conduct a preliminary evaluation of any person it wishes to propose to EPA to add to the USFRS XL Project as a generator. USFRS will complete this preliminary evaluation prior to proposing to EPA to add such a person to the USFRS XL Project. The preliminary evaluation will consist of the following activities: USFRS will require any person who wishes to become a USFRS XL waste generator to complete and sign the USFRS XL Waste Application Form; USFRS will complete the waste characterization required by 40 CFR 266.306(b); USFRS will evaluate the person's storage area for the USFRS XL waste to determine whether it meets the standards of this subpart N; and USFRS will provide the person with a copy of the USFRS XL waste MSDS, FPA and training module.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name and such other information as the Agency may require to determine if a person may participate in the USFRS XL Project as a generator. USFRS will propose for inclusion into the USFRS XL Project only those person(s) whose wastes are compatible with the ion exchange process and canisters, whose storage area meets the standards in this subpart N, and whose process will be able to reuse substantially all of its waste water. EPA's approval shall be effective within twenty one days of EPA's receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time period, provides USFRS with a written notice rejecting such person.

(e) After securing the approval of EPA, MPCA and the County Agencies, USFRS shall notify the person it proposed to add to the USFRS XL Project in writing that it is approved for participation in the USFRS XL Project. USFRS will assign to that person a unique client number and waste profile number for each waste stream approved for this XL project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has read and agrees to follow the USFRS XL waste training module. USFRS shall also ensure that as part of this certification the approved customer identifies its contact person as required by 40 CFR 266.308(h). Upon request by EPA, USFRS will provide EPA with a copy of the signed documents or other documents it requests.

(f) USFRS will accept USFRS XL waste only from those persons who have received the approval of EPA, MPCA and, as appropriate, the County Agencies and who have signed the USFRS XL Project FPA and the certification identified in paragraph (e) of this section. A person's participation in this USFRS XL Project is effective after EPA, MPCA and, as appropriate, the County Agency approve of them and on the date that USFRS receives the signed USFRS XL waste FPA and certification. At that time the person is a USFRS XL waste approved customer. A USFRS XL waste approved customer becomes a USFRS XL waste generator when it first generates or causes USFRS wastes to be regulated. A USFRS XL waste generator must handle all USFRS XL wastes generated after the effective date of it being added to the USFRS XL Project in accordance with the provisions of this subpart N. USFRS XL waste that is generated prior to this date is not subject to this subpart N and it must be handled according to the appropriate hazardous waste characterization for that waste, (*e.g.*, F006 and any other applicable waste code).

(g) USFRS will require a USFRS XL waste approved customer and generator to update the USFRS XL waste application form prior to it adding to or modifying the waste streams or processes it identified on its initial USFRS XL waste application form. USFRS will notify EPA, MPCA and as appropriate, the County Agencies whenever a customer or generator notifies USFRS that it has or will add or modify waste streams or processes. EPA will notify USFRS if any further EPA approvals are required.

§ 266. 303 Procedures for adding persons as transporters to EPA's USFRS XL Project.

(a) Any person who wishes to participate in the USFRS XL Project as a transporter must obtain the approval of the EPA and the MPCA. The approval of the County Agencies is also required if that person's principal place of business is located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person as a transporter to the federal USFRS XL Project. USFRS and a proposed transporter must also comply with the procedures identified by the MPCA, and as appropriate the County Agencies. A person may not be added to the federal USFRS XL Project unless it has received the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to EPA to add a person as a transporter to the USFRS XL Project.

(c) USFRS and Pioneer Transport are approved USFRS XL waste transporters. USFRS may propose to EPA to add other persons as USFRS XL waste transporters provided USFRS complies with the requirements of this section. USFRS will conduct a preliminary evaluation of any person who it proposes to add as a USFRS XL waste transporter. As part of that preliminary evaluation USFRS will ascertain whether the transporter has a valid EPA identification number, a valid Minnesota hazardous materials registration (''Minnesota registration'') and a satisfactory safety rating from USDOT within the last year.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name of the transporter, the unique USFRS client identification number for the transporter, the results of its preliminary evaluation identified in paragraph (c) of this section, and other information as EPA may require to determine if that person may participate in the USFRS XL Project. USFRS will propose for inclusion into the USFRS XL Project only those person(s) who have a satisfactory safety rating from USDOT. EPA's approval shall be effective within twenty one days of its receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time

period, provides USFRS with a written notice rejecting such person.

(e) After receiving the approval of EPA, MPCA and as appropriate the County Agencies USFRS shall notify the person in writing that it is approved for participation in the USFRS XL Project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart N.

(f) USFRS will allow only USFRS XL approved transporters to transport USFRS XL wastes. A person's participation in this USFRS XL Project is effective after it receives the approval of EPA, MPCA and the County Agencies, as appropriate, and on the date that USFRS receives the signed USFRS XL waste, FPA and certification. A USFRS XL waste approved transporter becomes a USFRS XL waste transporter when it first transports or accepts for transport USFRS XL waste.

(g) USFRS will require a USFRS XL waste approved transporter or USFRS XL waste transporter to notify it of any change in its rating from USDOT, its Minnesota registration or its EPA identification number. USFRS will notify EPA, MPCA and, the appropriate County Agencies in writing of any such changes. EPA will notify USFRS in writing of any additional information or steps that may be required as a result of such changes.

§ 266.304 USFRS requirements related to the development, use and content of USFRS XL Waste Training Module.

(a) USFRS will develop, implement and maintain a USFRS XL Waste Training Module. USFRS will provide this training module to every person who applies for participation in the USFRS XL Project. USFRS may use any recorded communication media that is appropriate for communicating the requirements of this subpart (e.g., printed brochures, videos, etc.).

(b) The Training Module will, at a minimum, identify the hazards presented by the USFRS XL waste: for generators, explain how to handle the installation and replacement of the ion exchange resin canisters; and explain the requirements imposed on the generator or transporter pursuant to this part.

(c) USFRS shall submit this training module to EPA for approval prior to accepting the first shipment of USFRS XL wastes.

§ 266.305 USFRS requirements relative to the development, use and content of USFRS XL Waste MSDS.

USFRS will develop a material safety data sheet (MSDS) for the resins contained in the USFRS XL waste. The MSDS will comply with the requirements for MSDS imposed by the Occupational Safety and Health Administration (OSHA). USFRS will provide a copy of this MSDS to every person who applies for participation in the USFRS XL Project. USFRS will ensure that the MSDS prominently instructs individuals in the proper handling and emergency response procedures for spills or leaks of the USFRS XL wastes.

§ 266.306 Waste characterization.

(a) Submission of USFRS XL Waste Application Form by USFRS XL Waste Generator. A person who proposes to participate in the USFRS XL Project as a generator of USFRS XL wastes must properly identify the wastes and processes which contribute to the production of the USFRS XL waste at its company. For the purposes of this subpart N it shall identify only those waste streams which meet the F006 listing and shall identify them on the USFRS XL waste application form. It shall complete and submit to USFRS the USFRS XL Waste Application Form. It shall update and submit to USFRS the XL Waste Application prior to changing any process which contributes to the USFRS XL waste it generates.

(b) USFRS Waste Profile Analyses. For any person which USFRS proposes to add to the USFRS XL Project as a generator, USFRS will perform a waste profile analysis of the waste stream(s) and process(es) which will contribute to the USFRS XL waste at that company. USFRS will update such analyses whenever a USFRS XL waste generator notifies USFRS of a change or modification to its waste stream or process contributing to its USFRS XL waste. USFRS will include in the waste profile analysis a complete chemical analysis of the waste stream(s) and a determination of its compatibility with the ion exchange resin process and canisters. USFRS shall complete such analysis in accordance with the testing methods identified in the waste analysis plan contained within its RCRA hazardous waste permit. USFRS shall assign to each generator a unique customer identification number and waste profile number.

§ 266.307 USFRS XL waste identification, handling, and recycling.

(a) USFRS XL waste will be denoted by the hazard waste code XL001 while it is handled by the USFRS XL waste generator or transporter. At the USFRS facility, the USFRS XL waste will be denoted by the waste code(s) it would have had at the generator but for its characterization as USFRS XL waste (i.e., F006 and any other applicable characteristic waste code). USFRS and others who may receive residuals from the USFRS XL waste will handle the USFRS XL waste and residuals according to the wastes code(s) it would have had at the generator (i.e., F006 and the appropriate characteristic hazardous waste code) and not according to the XL001 designation. USFRS shall handle the USFRS XL waste at its facility in accordance with its State issued RCRA hazardous waste permit and any applicable Federal requirements.

(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. USFRS shall continue to recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

(c) USFRS shall identify a spill response coordinator at its facility. This person shall be responsible for coordinating the proper response to any spill, leaks or emergencies of USFRS XL wastes at the generator or during transport. He will also be responsible for receiving the calls from the generators and transporters required by this subpart N for such spills, leaks or emergencies.

§ 266.308 Accumulation and storage prior to off-site transport.

A USFRS waste generator may store its USFRS XL waste on-site for less than 90 days, provided it complies with the following:

(a) *Condition and use of containers.* Except as provided in paragraph (e) of this section, the USFRS waste generator will store the USFRS XL waste in the USFRS water treatment resin canisters. At the time it places the canister in storage it will ensure that the water treatment resin canisters are disconnected from any processes and are sealed. It will ensure that the USFRS XL wastes are not mixed with other solid wastes. It will affix to the canisters a warning statement containing the information presented in paragraph (c) of this section.

(b) *Condition of storage area.* It will store the USFRS XL waste on an impervious surface. The USFRS waste generator will store the USFRS XL waste separately from other wastes or materials and will ensure that there is adequate aisle space to determine the condition of the USFRS XL waste and

to notice and respond to any leaks of USFRS XL waste.

(c) *Pre-transport requirements.* It will place the following warning statement prominently on the USFRS XL waste XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number ____''. If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

(d) *Inspections.* The USFRS waste generator will inspect the condition of the USFRS XL waste weekly while it is in storage at its company. It will maintain a log of these inspections. The log will indicate the date the USFRS XL waste was placed in storage, the condition of the water treatment resin canister at that time, the date(s) of the inspection, the person conducting the inspection, and the condition of the water treatment resin canisters and the storage area at the time of the inspection.

(e) *Response to spills or leaks.* The USFRS waste generator will immediately contain and collect any spill or leak of USFRS XL wastes. It will orally notify USFRS, and the duty officer at MPCA (Non-metro: 1–800–422–0798; Metro: 651–649–5451) within 24 hours of discovery of the spill or leak. It will place any spilled or leaked materials in a 55 gallon steel drum compatible with the USFRS XL wastes and comply with the requirements of paragraphs (a) to (c) of this section. It will arrange with USFRS for the disposal of that spilled or leaked material with the next shipment of USFRS XL wastes from its company. If allowed by the local POTW it may discharge any leaked or spilled water to its permitted drainage system. Otherwise, such wasters will be sent to USFRS.

(f) *Decontamination of storage area.* The USFRS waste generator will decontaminate all areas, equipment or soils used for or contaminated with USFRS XL waste no later than the dates provided in section §§ 266.312, 266.314 and 266.315.

(g) *USFRS XL Waste MSDS.* It shall maintain and exhibit in a prominent location the USFRS MSDS. It shall provide a copy of the USFRS XL waste MSDS to all local entities responsible for responding to releases of hazardous materials or wastes, (e.g., local police and fire departments, hospitals, etc.). It shall retain documentation of its efforts to comply with this paragraph (g).

(h) *Contact person.* No later than the date that it signs the FPA it will designate to USFRS a person who is responsible for handling its USFRS XL waste and its compliance with this subpart. That person shall complete training for the proper handling of USFRS XL waste and shall certify that he has read and understands the requirements imposed by this subpart N and the USFRS XL waste training module. That person shall also be responsible for responding to spills or leaks at the generator.

(i) *Communication devices.* It shall have an operating communication device (e.g., telephone, alarm, etc.) which allows the contact person to notify the appropriate state, local and federal officials and local hospitals and company personnel in case of an emergency.

§ 266.309 USFRS XL waste transporter pre-transport requirements.

A USFRS XL waste transporter will ensure that the USFRS XL waste is withinan approved container which prominently displays the following warning statement: XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, MPCA or EPA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number ____''. If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

§ 266.310 USFRS XL Waste Transport and Transportation Tracking Document.

A USFRS XL Transportation Tracking Document and USFRS XL Waste MSDS will accompany every shipment of USFRS XL waste from a USFRS XL waste generator off-site. Each canister will have the warning statement required by §§ 266.308(c) and 266.309 affixed to it. USFRS, and the USFRS XL waste generator and transporter shall comply with the following requirements:

(a) *USFRS.* USFRS will require each USFRS XL waste generator to contact USFRS to arrange for the transportation of the USFRS XL waste. USFRS will contact and use only USFRS XL waste transporters to transport the USFRS XL waste. USFRS will arrange for the USFRS XL waste transporter to pick-up the USFRS XL waste within 30 days of a USFRS' receipt of a request from a USFRS XL waste generator for such services. USFRS will complete and send to the USFRS XL waste generator the USFRS XL waste Transportation Tracking Document and warning statement identified in §§ 266.308(c) and 266.309 prior to the arrival of the transporter at the generator. USFRS will include on the Transportation Tracking Document all information EPA determines is required to comply with this subpart N. USFRS will direct the USFRS XL waste transporter to ship the USFRS XL waste to its facility at 2430 Rose Place, Roseville, Minnesota within 30 days of its pick-up from a USFRS XL waste generator. If a shipment is not received within 30 days, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA, the USFRS XL generator and as appropriate the County Agencies. USFRS will send a copy of the Transportation Tracking Document to the USFRS XL waste generator within 5 days of USFRS' receipt of the XL001 waste from the transporter.

(b) *USFRS XL waste generators.* A USFRS XL waste generator must contact USFRS for the off-site transport, treatment, storage or disposal of USFRS XL wastes. A USFRS waste generator will use only a USFRS XL waste transporter to transport the USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place. It must verify the accuracy of the USFRS XL Waste Transportation Tracking Document and warning statement, make any corrections to them that are necessary and sign the Transportation Tracking Document. It must affix the warning statement to each canister and provide a copy of the USFRS XL Waste Transportation Tracking Document and USFRS XL waste MSDS to the USFRS XL waste

transporter at the time it provides the transporter with the USFRS XL waste.

(c) *USFRS XL waste transporter.* A USFRS XL waste transporter shall verify the accuracy of the information contained on the USFRS XL Waste Transportation Tracking Document and on the canister warning statement. It shall sign and date the USFRS Transportation Tracking Document for each shipment of USFRS XL waste it transports and carry it with each shipment that it carries. It shall carry the USFRS XL waste MSDS with each shipment. It shall pick-up each shipment of USFRS XL waste within 30 days of it receiving a request for such services from USFRS. It shall deliver each shipment of USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place within 30 days of it being picked-up at a USFRS XL waste generator. A USFRS transporter may store XL waste for no more than 10 days at a transfer facility without being subject to regulation under 40 CFR parts 264, 265, 268, and 270 for the storage of those wastes.

§ 266.311 Releases of USFRS XL waste during transport.

In the event of a release of USFRS XL waste during transportation, a USFRS XL waste transporter must take appropriate immediate action to protect human health and the environment, including preventing the spilled material from entering a water system or a water body. The USFRS XL waste transporter also must comply with the provisions of § 263.31. The USFRS XL waste transporter will contact USFRS and the nearest police, public safety authority, EPA or MPCA, provide any emergency responder with a copy of the USFRS XL waste MSDS, handle the spilled material in accordance with the USFRS XL waste MSDS and the direction of any governmental entity charged with emergency response authority; and transport any spilled USFRS XL waste and contaminated soils or equipment to the USFRS facility located at 2430 Rose Place, Roseville, Minnesota in a metal 55 gallon drum compatible with the wastes.

§ 266.312 USFRS XL Waste Generator Closure.

(a) *Generator responsibilities.* At the time of termination of a USFRS XL generator's participation in the USFRS XL Project, the USFRS XL waste generator will disconnect its process(es) from the water treatment resin canisters; implement the alternative treatment or disposal required by § 266.313; arrange for the transport to USFRS of all USFRS XL waste that it has in storage; decontaminate any contamination resulting from the storage or handling of USFRS XL waste; and document its efforts to comply with this closure requirement.

(b) *USFRS responsibilities.* Prior to termination of a USFRS XL waste generator's participation in the USFRS XL Waste Project USFRS will remove all of the USFRS XL waste in the generator's storage area. USFRS will inspect the USFRS XL waste generator to determine if all USFRS XL wastes have been removed and to document the condition of the USFRS XL waste storage area. USFRS will provide a written summary to the customer, EPA, MPCA and as appropriate the County Agencies of its evaluation pursuant to this paragraph (b).

§ 266.313 USFRS XL waste generator requirements to maintain alternate treatment or disposal capacity.

During the period that it is participating in the USFRS XL waste Project, a USFRS XL waste generator shall maintain the ability to legally treat or dispose of its process wastes contributing to the USFRS XL waste by methods other than through transportation and treatment to USFRS' Roseville, Minnesota facility. A USFRS XL waste generator may use this alternative treatment or disposal method only after it has discontinued participation in this XL Project.

§ 266.314 Termination of a USFRS XL waste approved customer's participation in the USFRS XL Project.

The provisions in this section apply to a USFRS XL waste approved customer who has not yet generated USFRS XL waste. If a USFRS XL waste approved customer has generated or first caused to be regulated USFRS XL waste, then it is a USFRS XL waste generator and must comply with the termination provisions contained in § 266.315. The following procedures are to be followed to terminate a person's participation in the federal USFRS XL Project. A USFRS waste approved customer's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the appropriate County Agency.

(a) *Termination by the USFRS XL waste approved customer.* A USFRS XL waste approved customer may terminate its participation in the USFRS XL Project at any time prior to its first generating USFRS XL wastes. The USFRS XL waste approved customer will provide 5 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies its desire to discontinue participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved customer.

(b) *Change in ownership.* A USFRS XL waste approved customer will be automatically terminated upon a change in ownership. A USFRS XL waste approved customer must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) *Termination by EPA, MPCA, County Agency or USFRS.* If EPA or USFRS propose to terminate a USFRS XL waste approved customer they shall provide it with 5 days written notice. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, such person will be automatically terminated without further proceedings under this subpart N.

§ 266.315 Termination of a USFRS XL waste generator's participation in the USFRS XL Project.

The procedures identified in this subpart are to be followed to terminate a waste generator's participation in the federal USFRS XL Project. A USFRS waste generator's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste generator. The USFRS XL waste generator will provide 60 days written notice to USFRS, EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project. Within the 60 days the USFRS XL waste generator shall accomplish the closure required by § 266.312.

(b) Termination by EPA, MPCA or the County Agency. EPA, MPCA or the County Agency may terminate a USFRS XL waste generator's participation. If EPA proposes to terminate such person's participation then it will provide the generator with written notice. EPA retains the right to terminate a USFRS XL waste generator's participation in the USFRS XL Project if the USFRS XL waste generator is in non-compliance with the requirements of this subpart. In the event of

termination by EPA, EPA will provide USFRS, the USFRS XL waste generator, MPCA, and as appropriate the County Agencies with 15 days written notice of its intent to terminate a generator's continued participation in the USFRS XL Project. During this period, which commences on receipt of the notice to terminate by the generator, the generator will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the generator from this XL Project the generator shall close in accordance with § 266.312. The USFRS XL waste generator shall complete the closure and comply with § 266.312 within sixty days of EPA's re-issuance of the notice of termination. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, that person's participation will be automatically terminated without further proceedings under this rule and such person must comply with the closure requirements contained in § 266.312.

(c) Termination by USFRS. USFRS may terminate a USFRS XL waste generator's participation in the USFRS XL Project only after providing 60 days written notice to the generator, EPA, MPCA and the county agency. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in storage. Additionally, USFRS will inspect the USFRS XL waste generator in accordance with § 266.312(b).

(d) Termination as a result of changes in ownership. A USFRS XL waste generator will provide written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of a change in its ownership. It will provide such notice within 10 days of the change in ownership. Within the 60 days of the change in ownership the USFRS XL waste generator shall accomplish the closure required by § 266.312.

§ 266.316 Termination of a USFRS XL waste approved transporter's participation in the USFRS XL Project.

The provisions in this subpart apply to a USFRS XL waste approved transporter who has not transported or accepted for transport USFRS XL waste. If a USFRS XL waste approved transporter has transported or accepted for transport USFRS XL waste it is a USFRS XL waste transporter and must comply with the termination provisions contained in § 266.317. The procedures identified in this subpart are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this Federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste approved transporter's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste approved transporter. A USFRS XL waste approved transporter may terminate its participation in the USFRS XL Project at any time prior to its first transporting or accepting for transport USFRS XL wastes. The USFRS XL waste approved transporter will provide 5 days written notice to USFRS, EPA, MPCA, and as appropriate the County Agencies of its desire to discontinue participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved transporter.

(b) Change in ownership. A USFRS XL waste approved transporter will be automatically terminated upon a change in ownership. A USFRS XL waste approved transporter must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) Termination by EPA, MPCA, the County Agencies or USFRS. EPA, MPCA, the County Agencies and USFRS may also terminate a USFRS XL waste approved transporter's participation in the USFRS XL. If EPA or USFRS propose such termination they will provide the transporter, each other, MPCA and the appropriate County Agencies with 5 days written notice.

§ 266.317 Termination of a USFRS XL waste transporter's participation in the USFRS XL Project.

The procedures identified in this subpart are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this Federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste transporter's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon a change in ownership of the transporter, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste transporter—voluntary and changes in ownership. The USFRS XL waste transporter will provide 10 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of its desire to discontinue participation in the USFRS XL Project or of a change in ownership. Within 30 days of that notice the USFRS XL waste transporter will ensure that all of its shipments of USFRS XL waste are delivered to the USFRS facility.

(b) Termination by EPA, MPCA or the County Agencies. EPA, MPCA or the County Agencies may terminate a USFRS XL waste transporter's participation in the USFRS XL Project. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency does terminate such person's participation, such person's participation in the Federal USFRS XL Project will be automatically terminated without further proceedings under this subpart and the transporter shall ensure that all shipments of XL waste are delivered to the USFRS facility within 30 days of notice of termination. If EPA proposes to terminate a transporter's participation in the USFRS XL Project EPA will provide such person, MPCA, the County Agency and USFRS with a 30 days written notice prior to terminating such person's participation in the USFRS XL Project. EPA retains the right to terminate a USFRS XL waste transporters participation in the USFRS XL Project if the USFRS XL waste transporter is not in compliance with the requirements of this subpart N. During this period, which commences on receipt of the notice by the transporter, the USFRS XL waste transporter will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the USFRS XL waste transporter from this XL Project the USFRS XL waste transporter shall ensure that all shipments of USFRS XL waste are delivered to the USFRS facility within 30 days of such re-issued notice.

(c) Termination by USFRS. USFRS may terminate a USFRS XL waste transporter's participation in the USFRS XL Project only after providing 30 days written notice to the transporter, EPA, MPCA and as appropriate the County Agencies. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in the possession of the USFRS XL waste transporter.

(d) Change in ownership. A USFRS XL waste transporter will be automatically terminated upon a change in ownership. A USFRS XL waste transporter must notify USFRS, EPA, the County Agencies and MPCA within 5 days of a change in its ownership.

§ 266.318 Termination of USFRS' participation in this XL Project.

The procedures identified in this subpart are to be followed to terminate USFRS' participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating USFRS' participation from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate USFRS' continued participation in this USFRS XL Project. USFRS' participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon a change in ownership of USFRS, or upon notice of EPA, MPCA or as appropriate the County Agency. If there is a change of ownership at USFRS, USFRS shall give EPA, MPCA and the appropriate County Agencies 30 days notice of the change. EPA will notify USFRS if its participation in this USFRS XL Project will terminate. The USFRS XL Waste Project is terminated if USFRS'' participation is terminated. In such an instance USFRS must supply EPA, MPCA and the County Agencies with a proposed schedule for transitioning all USFRS XL Project participants to compliance with the RCRA requirements within 120 days of a notice to terminate pursuant to this section.

(a) USFRS' termination of its participation in this XL Project—voluntary termination. USFRS will provide written notice to all USFRS XL Project participants (e.g., USFRS XL waste approved customers and approved transporters, USFRS XL waste generators and transporters), EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project (''voluntary termination'') USFRS will provide its notice of voluntary termination 120 days prior to the date it proposes to terminate this XL Project. Within this 120 days USFRS will arrange for the transition of it and the USFRS XL waste Project participants to return to compliance with the RCRA requirements. During this time all USFRS XL Project participants will complete all closure activities required by § 266.312.

(b) Termination as a result in a change of ownership of USFRS. USFRS will provide written notice to EPA, MPCA and the County Agencies of any change in ownership of USFRS. USFRS will provide this notice within 30 days of the change in ownership. Within 90 days of USFRS's notice of a change in ownership USFRS will arrange for the transition of all USFRS XL waste Project participants to return to compliance with the RCRA requirements. All USFRS XL waste Project participants will complete all closure activities required by § 266.312.

(c) EPA or MPCA termination of the USFRS XL Project.

(1) EPA or MPCA may terminate this XL Project after providing written notice to USFRS. EPA retains the right to terminate this XL Project if:

(i) USFRS is in non-compliance with the requirements of this subpart;

(ii) This Project does not provide superior environmental benefit; or

(iii) There is repeated non-compliance by USFRS XL waste generators or transporters.

(2) In the event of termination by EPA, EPA will provide USFRS, MPCA and the County Agencies with 30 days written notice of its intent to terminate USFRS' participation in this XL Project. During this period, which commences on receipt of the notice by USFRS, USFRS will have the opportunity to come back into compliance, to provide a written explanation as to why it was not in compliance and how it intends to return to compliance or otherwise respond to the reasons for EPA's proposed termination. If, upon review of the written explanation EPA re-issues a written notice terminating this XL Project then USFRS shall submit to EPA within 30 days of its receipt of the re-issued notice its plan for transitioning all USFRS XL waste Project participants to compliance with the RCRA requirements. This transition plan shall contain a proposed schedule which accomplishes compliance with RCRA within 120 days of EPA's re-issued written notice.

§ 266.319 USFRS recordkeeping and reporting requirements.

(a) *Annual reporting.* USFRS will provide an annual report, on October 1, on all USFRS XL wastes. It will provide the information separately for each USFRS XL waste generator. The annual report, at a minimum, will include:

(1) An identification of each USFRS XL waste generator who sent USFRS XL wastes to USFRS; the quantity of XL waste that USFRS received from each USFRS XL waste generator during the calendar year and a certification by USFRS that those USFRS XL wastes were treated and recycled at USFRS in accordance with this subpart N;

(2) The amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered as opposed to disposed of by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister replacement in terms of process volume, the constituents in the material (ion exchange resins, other wastewater treatment sludge, residues) collected at each facility (e.g., recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, other wastewater treatment sludge, residues) disposed by each facility (e.g., contaminants/non-recoverable material);

(3) Quantity of material (ion exchange resins, other wastewater treatment sludge, residues) to be processed from the XL waste at the USFRS Roseville facility, quantity of the metals recovered from the XL waste at the USFRS Roseville facility, the constituents of the recovered material (ion exchange resins, other wastewater treatment sludge, residues from the XL waste), quantity and constituents of the non-recoverable material from the XL waste (ion exchange resins, other wastewater treatment sludge, residues), and how it was disposed of; and

(4) The quantity of each metal recovered at each metals reclamation facility it uses for this Project.

(b) *Quarterly reporting.* USFRS will submit a quarterly report to EPA, MPCA and the County Agencies on October 1, January 1, April 1 and July 1 which will include:

(1) Sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. That report will, at a minimum, contain information which includes, but is not limited to: the

volume of water and waste collected and recycled; the amount of metals recycled; the volume of recycled material sold to others; data regarding the management of the ion exchange canisters; the constituents of the sludge; and information regarding how the sludge and residues are managed;

(2) Financial information related to the costs and savings realized as a result of implementation of this project. USFRS will collect baseline and XL costs.

(i) The baseline costs shall be calculated using two scenarios:

(A) Typical expenses (including any hazardous waste taxes) of the generator (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and

(B) Typical expenses of the generator that would be incurred if waste were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios).

(ii) The XL costs will include the costs to the generator for completing the Transportation Tracking Document, the transportation costs for XL wastes, the generator's cost to install the ion exchange canisters, any other costs the generator incurs such as cleaning up any spills, payment of hazardous waste taxes, etc., the cost to USFRS of metals reclamation off-site (including costs associated with transportation or disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for generators and which aspects of the XL Project produce any savings.

USFRS will also submit any of the information required in paragraphs (b)(2)(i) (A) and (B) of this section upon request by EPA, MPCA or the County Agency;

(3) A list of all USFRS XL Waste Approved Customers and Generators. USFRS shall include on that list the customer and generator's name, a summary of the results of the USFRS waste characterization of the customer and generator's waste stream(s) and process(es), the customer's and generator's process waste streams approved for participation in the USFRS XL Waste Project, the unique client number USFRS has assigned to the customer and generator and its waste stream, the date of USFRS notice to EPA and MPCA proposing to add the customer and generator to the USFRS XL Project; the date on which USFRS notified the customer that it is approved for participation in this USFRS XL Project; and the date USFRS received the signed FPA and certification from the customer or generator. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes from the generator and the date USFRS conducted its visual evaluation of the condition of the USFRS XL waste storage areas and notice of compliance with § 266.312. USFRS will update its waste customer and generator list when new customers and generators have been approved by EPA, MPCA and the County Agencies or when a customer or generator has been terminated from this XL Project; and

(4) A list of all USFRS XL Waste Approved Transporters. USFRS shall include on this list the transporter's unique USFRS client number, the transporter's name, and if available, EPA identification number and its Minnesota registration number, the date of USFRS notice to EPA and MPCA proposing to add the transporter to the USFRS XL Project; the date on which USFRS notified the transporter that it is a USFRS XL Waste Approved Transporter; and the date on which it received the signed USFRS XL waste FPA and certification. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes from the transporter. This USFRS XL waste transporter list may be modified upon approval of EPA and MPCA.

(c) *Recordkeeping.* USFRS will retain for three years a copy of USFRS XL waste application forms, and correspondence with each USFRS XL waste approved customer and generator; records of any spill or leak notifications it receives; records of its compliance with this subpart N; and the USFRS XL waste Transportation Tracking Document for each shipment from a USFRS XL waste generator.

§ 266.320 USFRS XL waste generator recordkeeping and reporting requirement.

A USFRS XL waste generator will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; its log of weekly inspections required by § 266.308(d); its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.308(e); its compliance with the training and facility contact requirements of § 266.308(h); a copy of the signed Transportation Tracking Document for USFRS XL waste it generated; and documentation of its compliance with § 266.312.

§ 266.321 USFRS XL waste transporter recordkeeping and reporting requirement.

A USFRS XL waste transporter will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.311.

§ 266.322 Effective dates.

This subpart N is effective from [Effective date of final rule] until [Date 5 years from effective date of final rule].

[FR Doc. 00–20424 Filed 8–16–00; 8:45 am]

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Federal Register

Thursday,
August 17, 2000

Part III

Department of Health and Human Services

Office of the Secretary
Health Care Financing Administration

45 CFR Parts 160 and 162

Health Insurance Reform: Standards for Electronic Transactions; Announcement of Designated Standard Maintenance Organizations; Final Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 162

[HCFA–0149–F]

RIN 0938–AI58

Health Insurance Reform: Standards for Electronic Transactions

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: This rule adopts standards for eight electronic transactions and for code sets to be used in those transactions. It also contains requirements concerning the use of these standards by health plans, health care clearinghouses, and certain health care providers.

The use of these standard transactions and code sets will improve the Medicare and Medicaid programs and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information. It implements some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: The effective date of this rule is October 16, 2000. The incorporation by reference of certain publications listed in this rule is approved by the Director of the **Federal Register** as of October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Brooks, (410) 786–5318, for medical diagnosis, procedure, and clinical code sets.

Joy Glass, (410) 786–6125, for the following transactions: health claims or equivalent encounter information; health care payment and remittance advice; coordination of benefits; and health claim status.

Marilyn Abramovitz, (410) 786–5939, for the following transactions: enrollment and disenrollment in a health plan; eligibility for a health plan; health plan premium payments; and referral certification and authorization.

SUPPLEMENTARY INFORMATION:

Availability of Copies

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I. Background

A. Electronic Data Interchange

Electronic data interchange (EDI) is the electronic transfer of information, such as electronic media health claims, in a standard format between trading partners. EDI allows entities within the health care system to exchange medical, billing, and other information and to process transactions in a manner which is fast and cost effective. With EDI there is a substantial reduction in handling and processing time compared to paper, and the risk of lost paper documents is eliminated. EDI can eliminate the inefficiencies of handling paper documents, which will significantly reduce administrative burden, lower operating costs, and improve overall data quality.

The health care industry recognizes the benefits of EDI and many entities in that industry have developed proprietary EDI formats. Currently, there are about 400 formats for electronic health claims being used in the United States. The lack of standardization makes it difficult and expensive to develop and maintain software. Moreover, the lack of standardization minimizes the ability of health care providers and health plans to achieve efficiency and savings.

B. Statutory Background

The Congress included provisions to address the need for standards for electronic transactions and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which was enacted on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled ''Administrative Simplification.'' (Public Law 104–191 affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part is to improve the Medicare program under title XVIII of the Social Security Act and the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements to enable the electronic exchange of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, indiyvidually identifiable health information, standard, and standard setting organization (SSO).

Section 1172 of the Act makes any standard adopted under part C applicable to (1) all health plans, (2) all health care clearinghouses, and (3) any health care provider who transmits any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act.

This section also contains requirements concerning standard setting.

- The Secretary may adopt a standard developed, adopted, or modified by a standard setting organization (that is, an organization accredited by the American National Standards Institute (ANSI)) that has consulted with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA).
- The Secretary may also adopt a standard other than one established by a standard setting organization, if the different standard will reduce costs for health care providers and health plans, the different standard is promulgated through negotiated rulemaking procedures, and the Secretary consults with each of the above-named groups.
- If no standard has been adopted by any standard setting organization, the Secretary is to rely on the recommendations of the National Committee on Vital and Health Statistics (NCVHS) and consult with the above-named groups before adopting a standard.

• In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the NCVHS, consult with appropriate State and Federal agencies and private organizations, and publish the recommendations of the NCVHS regarding the adoption of a standard under this part in the **Federal Register**.

Paragraph (a) of section 1173 of the Act requires that the Secretary adopt standards for financial and administrative transactions, and data elements for those transactions, to enable health information to be exchanged electronically. Standards are required for the following transactions: health care claims or equivalent encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health care claim status, and referral certification and authorization. Section 1173(a)(1)(B) authorizes the Secretary to adopt standards for any other financial and administrative transactions as she determines appropriate.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for each individual, employer, health plan, and health care provider. It also requires that the adopted standards specify for what purposes unique health identifiers may be used.

Paragraphs (c) through (f) of section 1173 of the Act require the Secretary to adopt standards for code sets for each data element for each health care transaction listed above, security standards to protect health care information, standards for electronic signatures (established together with the Secretary of Commerce), and standards for the transmission of data elements needed for the coordination of benefits and sequential processing of claims. Compliance with electronic signature standards will be deemed to satisfy both State and Federal statutory requirements for written signatures with respect to the transactions listed in paragraph (a) of section 1173 of the Act.

In section 1174 of the Act, the Secretary is required to adopt standards for all of the above transactions, except claims attachments, within 18 months after enactment. The standards for claims attachments must be adopted within 30 months after enactment. Modifications to any established standard may be made after the first year, but not more frequently than once every 12 months. The Secretary may, however, modify an initial standard at any time during the first year of adoption, if she determines that the modification is necessary to permit compliance with the standard. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets and that there are crosswalks from prior versions. Any modification to a code set must be implemented in a manner that minimizes the disruption and the cost of compliance.

Section 1175 of the Act prohibits health plans from refusing to conduct a transaction as a standard transaction. It also prohibits health plans from delaying the processing of, or adversely affecting or attempting to adversely affect, a person submitting a standard transaction or the transaction itself on the grounds that the transaction is in standard format. It establishes a timetable for compliance: each person to whom a standard or implementation specification applies is required to comply with the standard no later than 24 months (or 36 months for small health plans) following its adoption. With respect to modifications to standards or implementation specifications made after initial adoption, compliance must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days after the modification is adopted by the Secretary.

Section 1176 of the Act establishes civil monetary penalties for violation of the provisions in part C of title XI of the Act, subject to several limitations. Penalties may not be more than $100 per person per violation of a provision, and not more than $25,000 per person per violation of an identical requirement or prohibition for a calendar year. With certain exceptions, the procedural provisions in section 1128A of the Act, ''Civil Monetary Penalties,'' are applicable to imposition of these penalties.

Section 1177 of the Act established penalties for any person that knowingly misuses a unique health identifier, or obtains or discloses individually identifiable health information in violation of this part. The penalties include: (1) A fine of not more than $50,000 and/or imprisonment of not more than 1 year; (2) if the offense is ''under false pretenses,'' a fine of not more than $100,000 and/or imprisonment of not more than 5 years; and (3) if the offense is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than $250,000 and/or imprisonment of not more than 10 years. We note that these penalties do not affect any other penalties that may be imposed by other federal programs.

Under section 1178 of the Act, the provisions of part C of title XI of the Act, as well as any standards or implementation specifications adopted under them, generally supersede contrary provisions of State law. However, the Secretary may make exceptions to this general rule if she determines that the provision of State law is necessary to prevent fraud and abuse, ensure appropriate State regulation of insurance and health plans, or for State reporting on health care delivery or costs, among other things. In addition, contrary State laws relating to the privacy of individually identifiable health information are not preempted if more stringent than the related federal requirements. Finally, contrary State laws relating to certain activities with respect to public health and regulation of health plans are not preempted by the standards adopted under Part C or section 264 of Public Law 104–191.

Finally, section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when ''authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution.''

II. General Overview of the Provisions of the Proposed Rule

On May 7, 1998, we proposed standards for eight transactions (we did not propose a standard for either health claims attachments or first report of injury) and for code sets to be used in the transactions (63 FR 25272). In addition, we proposed requirements concerning the implementation of these standards. This proposed rule set forth requirements that health plans, health care clearinghouses, and certain health care providers would have to meet concerning the use of these standards.

We proposed to add a new part 142 to title 45 of the Code of Federal Regulations to include requirements for health plans, certain health care providers, and health care clearinghouses to implement HIPAA administrative simplification provisions. This material has been restructured to accommodate HIPAA privacy and security provisions, and is now contained in parts 160 and 162 of title 45. Subpart A of part 160 contains the general provisions for all parts. Subpart I of part 162 contains the general provisions for the standards proposed in the Standards for Electronic

Transactions proposed rule. Subparts J through R contain the provisions specific to each of the standards proposed in the Standards for Electronic Transactions proposed rule.

III. Analysis of, and Responses to, Public Comments on the Proposed Rule

In response to the publication in the **Federal Register** of the proposed rule on May 7, 1998, we received approximately 17,000 timely public comments. The comments came from a wide variety of correspondents including professional associations and societies, health care workers, law firms, third party health insurers, hospitals, and private individuals. We reviewed each commenter's letter and grouped like or related comments. Some comments were identical, indicating that the commenters had submitted form letters. After associating like comments, we placed them in categories based on subject matter or based on the section(s) of the regulations affected and then reviewed the comments. All comments relating to general subjects, such as the format of the regulations were similarly reviewed.

This process identified areas of the proposed regulation that required review in terms of their effect on policy, consistency, or clarity of the rules.

We present comments and responses generally in the order in which the issues appeared in the May 1998 proposed rule.

General—Comment Period

Comment: We received several comments that stated the 60-day comment period was too short. It was stated that the period did not take into account the highly detailed, technical review of the thousands of pages in the implementation specifications that was required in order to comment in a meaningful way.

Response: We disagree. We understand the difficulty in reviewing a rule of this complexity. However, we met our notice requirements for the length of the comment period and made every effort to ensure that the proposed rule was readily accessible to the public (for example, the proposed rule was published in the **Federal Register** and available over the Internet). In addition, we received many comments requesting changes to the implementation specifications, which indicates that the majority of interested parties were able to review all implementation specifications in the 60-day period. If additional changes are necessary, revisions may be made to the standards on an annual basis.

A. Applicability

In subpart A § 142.102 we listed the entities that would be subject to the provisions and we discussed under what circumstances they would apply.

Below we discuss the comments concerning applicability.

Comments and Responses on the Applicability of the Regulations

1. Electronically Transmitting Transactions

Proposal Summary: Our proposed rules apply to health plans and health care clearinghouses, as well as any health care provider when transmitting an electronic transaction defined in Subpart A of 45 CFR Part 142.

Comment: Several commenters requested clarification on the applicability provisions. For example, several commenters questioned whether a health plan would be required to accept or send a standard that it does not currently support electronically. Some commenters believe the language allows any entity to submit a standard transaction and expect it to be processed by the receiver even though they do not have a business relationship with each other.

Response: Under the terms of section 1172(a) of the Act, these regulations apply to health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction referred to in section 1173(a) of the Act (in other words, ''covered entities''). We interpret this provision to mean that by the applicable compliance dates of the regulation, all covered entities must comply with the standards adopted by this regulation. (Covered entities, of course, may comply before the applicable compliance dates.) We do not have the authority to apply these standards to any entity that is not a covered entity. However, we require covered entities to apply many of the provisions of the rule to the entities with whom they contract for administrative and other services related to the transactions, as it would be inconsistent with the underlying statutory purpose to permit covered entities to avoid the Act's requirements by the simple act of contracting out certain otherwise covered functions.

With respect to health plans, a health plan is required to have the capacity to accept and/or send (either itself, or by hiring a health care clearinghouse to accept and/or send on its behalf) a standard transaction that it otherwise conducts but does not currently support electronically. For example, if a health plan pays claims electronically but historically performed enrollment and disenrollment functions in paper, the health plan must have the capacity to electronically perform enrollment and disenrollment as well as claims payment as standard transactions by the applicable compliance date of the regulation.

Also, in response to the public's need for clarification of the applicability of the HIPAA administrative simplification provisions (45 CFR subtitle A, subchapter C) to covered entities, we revisited the applicability provision with respect to health care providers. In the proposed rule, we proposed that the administrative simplification provisions would apply to a health care provider when transmitting an electronic transaction (63 FR 25305). (We note that this language differed somewhat from the statute, which states that the HIPAA administrative simplification provisions apply to ''a health care provider who transmits any health information in electronic form in connection with a transaction'' referred to in subchapter C.)

We phrased the applicability section in the proposed rule as we did in an effort to convey the message that these regulations do not require a health care provider to transmit transactions electronically; thus, a health care provider remains free to use paper media. These regulations do require, however, that a health care provider who uses electronic media to transmit any health information in connection with a transaction referred to in 45 CFR subtitle A, subchapter C, must do so in compliance with the regulations. We do not believe that the proposed applicability language as it applied to health care providers adequately communicated this message. Thus, after reevaluating the proposed approach, we believe that the best approach is to have the applicability text mirror the statute and use § 162.923 (Requirements for Covered Entities) as the vehicle to detail the specific requirements for covered health care providers.

In addition, we provide the following as examples of types of health care provider behavior that are permissible under the regulations. For instance, a health care provider may send an electronic health care claim or equivalent encounter information standard transaction for Patient A to health plan Z, and may send a paper claim for Patient B to health plan Z. A health care provider may also send an electronic health care claim or equivalent encounter information standard transaction to health plan S

and then send paper claims to health plan T.

In regard to the second comment, while we interpret HIPAA to mean that a health plan cannot refuse to conduct a transaction because it is a standard transaction, we do not believe that use of standard transactions can create a relationship or liability that does not exist. For example, a health plan cannot refuse to accept a claim from a health care provider because the health care provider electronically submits the standard transaction. However, the health plan is not required to pay the claim merely because the health care provider submitted it in standard format, if other business reasons exist for denying the claim (for example, the service for which the claim is being submitted is not covered). This rule does not require a health care provider to send or accept an electronic transaction.

2. Various Technologies

Proposal Summary: Entities that offer on-line interactive transmission of the transactions described in section 1173(a)(2) of the Act, would have to comply with the standards (63 FR 25276). For example, the Hypertext Markup Language (HTML) interaction between a server and a browser by which the data elements of a transaction are solicited from a user would not have to use the standards, although the data content must be equal to that required for the standard. Once the data elements are assembled into a transaction by the server, the transmitted transaction would have to comply with the standards.

a. *Comment:* Several comments recommended that electronic transmissions should be classified as ''computer to computer without human interaction'' (i.e., batch and fast batch transmissions) and be subject to the national standards. They also recommended that transmissions involving browser to server (Internet, Extranet, HTML, Java, ActiveX, etc.), direct data entry terminals (dumb terminals), PC terminal emulators, point of service terminals (devices similar in function to credit card terminals), telephone voice response systems, ''faxback'' systems, and any real-time transactions where data elements are directly solicited from a human user, be classified as ''person to computer'' transmissions. Moreover, ''person to computer'' transmissions should be supplemental to the national standards, but the data content of these transmissions should comply with the HIPAA electronic standards as they apply to data content.

Several commenters questioned whether HIPAA requires a health plan to support ''person to computer'' methods. Several commenters suggested that we should only except HTML web sites from the transaction standards if the web browser is used in HTML passive mode without plug-ins or programmable extensions and that the response times must be the same or faster than that of the HIPAA electronic standards.

Commenters also recommended that we permit the use of a proprietary format for web-based transactions if the transactions are sent to an entity's in-house system for processing, and the entity's web browser is under the control of a back-end processor, as well as part of the same corporate entity, and does not serve other back-end processors. They recommended that the HIPAA standards be used if the transactions are sent externally (outside of that entity's system) for processing, and the entity's web browser is under a contract with a back-end processor that is not under the same corporate control, and that serves more than one back-end processor.

Response: We are pleased that commenters support the use of the national standards for electronic transactions since this outcome is required by section 1173 of the Act. For each designated transaction, these standards specify the format, the data elements required or permitted to structure the format, and the data content permitted for each of the data elements, including designated code sets where applicable.

Certain technologies present a special case for the use of standard transactions. We proposed that telephone voice response, ''faxback'', and Hyper Text Markup Language (HTML) interactions would not be required to follow the standard. We have since reevaluated this position in light of the many comments on this position and on developments in the EDI industry which continue to expand the options in this area. We have decided that, instead of creating an exception for these transmissions, we will recognize that there are certain transmission modes in which use of the format portion of the standard is inappropriate. However, the transaction must conform to the data content portion of the standard. The ''direct data entry'' process, using dumb terminals or computer browser screens, where the data is directly keyed by a health care provider into a health plan's computer, would not have to use the format portion of the standard, but the data content must conform. If the data is directly entered into a system that is outside of the health plan's system, to be transmitted later to the health plan, the transaction must be sent using the full standard (format and content). We have included this clarification in § 162.923 (Requirements for Covered Entities).

3. Atypical Services

Proposal Summary: Transactions for certain services that are not normally considered health care services, but which may be covered by some health plans, would not be subject to the standards (63 FR 25276). These services would include, but not be limited to: nonemergency transportation, physical alterations to living quarters for the purpose of accommodating disabilities, and case management. Other services may be added to this list at the discretion of the Secretary.

Comment: We received comments both for and against subjecting transactions for certain services to the transaction standards. Some commenters recommended that any service that could be billed to a health plan be required to comply with the standards in order to avoid the need to maintain alternate systems. However, other commenters argued that certain Medicaid services are not insured by any other program, thus, use of the standard is unnecessary.

Several commenters supported not subjecting these services to the standard, except for case management, arguing that a more precise definition of case management needs to be developed. Other commenters stated that case management is considered a health care service by many health plans and health care providers, and reported using standard codes.

We received suggestions for additional services that should not be subject to the standards. Suggestions included home and community based waiver services provided under the Medicaid program and abbreviated transactions between State agencies, for example, claims between a State health service and a State Medicaid agency.

Response: We agree with commenters that case management is a health care service since it is directly related to the health of an individual and is furnished by health care providers. Case management will, therefore, be subject to the standards.

We recognize that the health care claim and equivalent encounter information standard, with its supporting implementation specification, is capable of supporting claims for atypical services. However, requiring all services potentially paid for by health plans to be billed using the

standards would lead to taxi drivers, auto mechanics and carpenters to be regulated as health care providers. Instead, we will use our definition of ''health care'' found at 160.103 to determine whether a particular service is a ''health care'' service or not. Services that are not health care services or supplies under this definition are not required to be claimed using the standard transactions. Thus, claims for non-emergency transportation or carpentry services for housing modifications, if submitted electronically, would not be required to be conducted as standard transactions. As noted above, the standards do support such claims and a health plan may choose to require its atypical service providers to use the standards for its own business purposes.

Those atypical services that meet the definition of health care, however, must be billed using the standard if they are submitted electronically. If there are no specific codes for billing a particular service (for example, there is not yet an approved code set for billing for alternative therapies), or if the standard transactions do not readily support a particular method of presenting an atypical service (for example, roster billing for providing immunizations for an entire school or nursing facility), the health care service providers are urged to work with the appropriate Designated Standard Maintenance Organizations (DSMOs) to develop modifications to the standard and implementation specifications. (See ''I. New and Revised Standards'' in this section of the preamble for a discussion of the DSMOs.)

We disagree with the proposal that home and community based waiver services should have a blanket exemption from the administrative simplification standards. First, Congress explicitly included the Medicaid programs as health plans that are subject to the administrative simplification standards. Second, these waiver programs commonly pay for a mix of health care and non-health care services. State Medicaid agencies with home and community based waivers are not exempt from these standards for transactions relating to health care services or supplies.

4. Conducting the Transactions

Proposal Summary: If a person conducts a transaction (as defined in § 160.103) with a health plan as a standard transaction, the following apply:

(1) The health plan may not refuse to conduct the transaction as a standard transaction.

(2) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

Comment: Some commenters questioned what was meant by ''delay'' of a standard transaction. They questioned what methods (i.e., batch, online, etc.) a health plan must provide to support receipt and submission of standard transactions. The proposed rule did not define the term ''delay'' nor specify the time frame within which a health plan is required to act when it receives a standard transaction.

Several commenters recommended the rule encompass all entities that might be conducting an electronic transaction with a health plan and that there be further clarification of what an unreasonable delay would be. It was also recommended that the regulation should apply to a health care provider, not a person that conducts an ''electronic'' transaction.

Response: Section 1175 of the Act prohibits a health plan from delaying a standard transaction, or otherwise adversely affecting, or attempting to adversely affect any person desiring to conduct a transaction referred to in § 1173 (a)(1) of the Social Security Act or the transaction on the ground that the transaction is a standard transaction. We interpret this provision to mean that there should be no degradation in the transmission of, receipt of, processing of, and response to a standard transaction solely because the transaction is a standard transaction. Thus, health plans must process standard transactions from any person, including, but not limited to, covered entities, in the same time frame in which they processed transactions prior to implementation of HIPAA. They also may not provide incentives that will discourage (*i.e.*, adversely affect) the use of standard transactions.

In § 162.923 we have included requirements for all covered entities and in § 162.925 we have provided additional requirements for health plans.

5. Role of Health Care Clearinghouses

Proposal Summary: Health care clearinghouses would be able to accept nonstandard transactions for the sole purpose of translating them into standard transactions for sending customers and would be able to accept standard transactions and translate them into nonstandard formats for receiving customers (63 FR 25276).

Comment: Several commenters believe health care clearinghouses are excepted from accepting the standards. Other commenters believe that allowing health care providers to use a health care clearinghouse will negate administrative simplification. There was also concern that entities may designate themselves as a health care clearinghouse to avoid compliance.

Several commenters also requested that we clarify who is responsible for health care clearinghouse costs and state that contracts cannot require health care providers to use nonstandard formats.

Response: First, we clarify that a health care clearinghouse is a covered entity and must comply with these rules. Accordingly, all transactions covered by this part between health care clearinghouses must be conducted as standard transactions. However, the statute permits a covered entity to submit nonstandard communications to a health care clearinghouse for processing into standard transactions and transmission by the health care clearinghouse as well as receive standard transactions through the health care clearinghouse.

If a covered entity (for example, a health care provider) uses a health care clearinghouse to submit and receive nonstandard/standard transactions, the health care clearinghouse is the covered entity's business associate. If a health plan operates as a health care clearinghouse, or requires the use of a health care clearinghouse, a health care provider may submit standard transactions to that health plan through the health care clearinghouse. However, the health care provider must not be adversely affected, financially or otherwise, by doing so. (For example, the costs of submitting a standard transaction to a health plan's health care clearinghouse must not be in excess of the costs of submitting a standard transaction directly to the health plan.)

In § 162.915, we clarify what a trading partner agreement that a covered entity enters into may not do. Section 162.923 specifies that a covered entity conducting a transaction covered under this rule with another covered entity (or within the same covered entity) using electronic media must conduct the transaction as standard transaction, with an exception for direct data entry. Section 162.925 makes it clear that a health plan may not offer an incentive for a health care provider to conduct a transaction covered by this part under the direct data entry exception.

6. Exception for Transmissions within Corporate Entities

Proposal Summary: Transmissions within a corporate entity would not be

required to comply with the standards (63 FR 25276).

Comment: We received many comments regarding excepting transmissions within corporate boundaries and the examples we provided. The comments can be summarized by three questions: (1) What constitutes a ''corporate entity'' and ''internal'' communications; (2) can the ''internal umbrella'' cover the transactions among ''corporate'' entities; and (3) why should Government agencies be excepted from meeting the standards?

Some commenters attempted to determine the circumstances under which compliance with the standards can be avoided. Generally, these commenters indicated a desire for a very broad definition of ''corporate entity.'' Some commenters reflected a desire to severely restrict the boundaries or eliminate them altogether. Other commenters asked if particular kinds of data or transactions are required in particular situations.

Response: We proposed to create an exception for transactions within a corporate entity to minimize burden. However, after considering public comment, and further analyzing the implications of the proposed exception, we have decided not to create an exception for standard transactions within a ''corporate entity.'' First, we have not been able to define ''corporate entity'' so that the exception would not defeat the rule. The rapid pace of mergers, acquisitions, and dissolutions in the corporate health care world would make such an exception extremely difficult to implement. Equally important, the proposed exception would not have promoted the use of the standard transactions at the health care provider and health plan level. Each health care provider that is owned by or under contract to one or more health plans could be required to use the ''in-house'' or ''non-standard'' transactions favored by each health plan, thus negating the benefits of the use of the standards. Finally, our decision to not adopt a corporate entity exception does not impose an additional burden on health plans, because health plans already are required to have the capacity to accept standard transactions from any person. Thus, the fundamental policy is that covered entities must use a standard transaction when transmitting a transaction covered by this part with another covered entity (or within the same covered entity) electronically, regardless of whether the transmission is inside or outside the entity.

We have decided to clarify the description of each transaction to help covered entities determine when the standards must be used. A transaction is now defined in § 160.103 as the exchange of data for one of the enumerated specific purposes. In subparts K through R of part 162, we describe each transaction in specific, functional terms. For example, one type of health care claims or equivalent encounter information transaction is the exchange of information between a health care provider and a health plan about services provided to a patient to obtain payment; one type of eligibility for a health plan transaction is the exchange of information between a health provider and a health plan to determine whether a patient is eligible for services under that health plan. Data submissions or exchanges for purposes other than those designated in this regulation are not transactions and therefore do not require use of the standards.

Transactions may be used by both covered entities and other entities. For example, the enrollment and disenrollment in a health plan transaction is most commonly sent by employers or unions, which are not covered entities, to health plans, which are covered entities. The employer may choose to send the transaction electronically in either standard or non-standard format. The health plan, however, must conduct the transaction as a standard transaction when conducting the transaction electronically with another covered entity, with another part of itself, or when requested to do so by any other entity. Moreover, if an employer or other non-covered entity desires to send a transaction as a standard transaction, the health plan may not delay or adversely affect either the sender or the transaction. It is expected that this provision will encourage non-covered entities that conduct the designated transactions with more than one health plan to conduct these transactions as standard transactions.

In general, if a covered entity conducts, using electronic media, a transaction adopted under this part with another covered entity (or within the same covered entity), it must conduct the transaction as a standard transaction. If any entity (covered or not covered) requests a health plan to conduct a transaction as a standard transaction, the health plan must comply. We have provided examples below to assist in determining when a transaction must be conducted as a standard transaction.

Example 1: Corporation K operates a health plan that is a covered entity under these rules. Corporation K owns a hospital which provides care to patients with coverage under Corporation K's health plan and also provides care to patients with coverage under other health plans. Corporate rules require the hospital to send encounter information electronically to Corporation K identifying the patients covered by the corporate plan and served by the hospital.

(A) Must the transmission of encounter data comply with the standards? Both the health plan and the hospital are covered entities. The hospital is a covered entity because it is conducting covered transactions electronically in compliance with its corporate rules. The electronic submission of encounter data satisfies the definition of the health care claims or equivalent encounter information transaction designated as a standard transaction (see § 162.1101(b)). Therefore, the submission of this encounter data therefore must be a standard transaction.

(B) Must the payments and remittance advices sent from Corporation K's health plan to the hospital be conducted as standard transactions? Corporation K's health plan is covered by the definition of ''health plan,'' the hospital is a covered entity, and the transmission of health care payments and remittance advices is within the scope of the designated transactions (see § 162.1601). The health care payments and remittance advices must be sent as standard transactions.

Example 2: A large multi-state employer provides health benefits on a self-insured basis, thereby establishing a health plan. The health plan contracts with insurance companies in seven states to function as third party administrators to process its employees' health claims in each of those states. The employer's health plan contracts with a data service company to hold the health eligibility information on all its employees. Each of the insurance companies sends eligibility inquiries to the data service company to verify the eligibility of specific employees upon receipt of claims for services provided to those employees or their dependents.

(A) Are these eligibility inquiries activities that must be conducted as standard transactions? In this case, each insurance company is not a covered entity in its own right because it is functioning as a third party administrator, which is not a covered entity. However, as a third party administrator (TPA), it is the business associate of a covered entity (the health plan) performing a function for that entity; therefore, assuming that the covered entity is in compliance, the TPA would be required to follow the same rules that are applicable to the covered entity if the covered entity performed the functions itself. The definition for the eligibility for a health plan transaction is an inquiry from a health care provider to a health plan, or from one health plan to another health plan, to determine the eligibility, coverage, or benefits associated with a health plan for a subscriber. In this case, the inquiry is from one business associate of that health plan to another business associate of that same health plan. Therefore, the inquiry does not meet the definition of an eligibility for a

health plan transaction, and is not required to be conducted as a standard transaction.

(B) Is an electronic eligibility inquiry from a health care provider to the data service company, to determine whether an employee-patient may receive a particular service, required to be a standard transaction? The health care provider is a covered entity, because it conducts covered electronic transactions. The data service company is the business associate of the employer health plan performing a plan function. Therefore, the activity meets the definition of the eligibility for a health plan transaction, and both the inquiry and the response must be standard transactions.

Example 3: A pharmacy (a health care provider) contracts with a pharmacy benefits manager (PBM) to forward its claims electronically to health plan Z. Under the contract, the PBM also receives health care payment and remittance advice from health plan Z and forwards them to the pharmacy.

(A) Must the submission of claims be standard transactions? The pharmacy is a covered entity electronically submitting, to covered entity health plan Z, health care claims or equivalent encounter information, which are designated transactions (see § 162.1101), through a business associate, the PBM. The claims must be submitted as standard transactions.

(B) Must the explanation of benefits and remittance advice information be sent as a standard transaction? Health plan Z and the health care provider are covered entities conducting one of the designated transactions (see § 162.1601). This transaction, therefore, must be conducted as a standard transaction.

Example 4: A State Medicaid plan enters into a contract with a managed care organization (MCO) to provide services to Medicaid recipients. That organization in turn contracts with different health care providers to render the services.

(A) When a health care provider submits a claim or encounter information electronically to the MCO, is this activity required to be a standard transaction? The entity submitting the information is a health care provider, covered by this rule, and the MCO meets our definition of health plan. The activity is a health care claims or equivalent encounter information transaction designated in this regulation. The transaction must be a standard transaction.

(B) The managed care organization then submits a bill to the State Medicaid agency for payment for all the care given to all the persons covered by that MCO for that month under a capitation agreement. Is this a standard transaction? The MCO is a health plan under the definition of ''health plan'' in § 160.103. The State Medicaid agency is also a covered entity as a health plan. The activity, however, does not meet the definition of a health care claims or equivalent encounter information transaction. It does not need to be a standard transaction.

However, note that the health plan premium payment transaction from the State Medicaid agency to the health plan would have to be conducted as a standard transaction because the State Medicaid agency is a covered entity sending the transaction to another covered entity (the health plan), and the transaction meets the definition of health plan premium payment.

7. Applicability to Paper Transactions and Other Entities

Proposal Summary: Although there are situations in which the use of the standards is not required (for example, health care providers may continue to submit paper claims and employers and other noncovered entities are not required to use any of the standard transactions), we stressed that a standard may be used voluntarily in any situation in which it is not required (63 FR 25276).

a. Comment: The majority of commenters suggested that the transaction standards and their codes sets, in some manner, apply to paper transactions. They suggested that the required data elements in the standard transactions also be required for paper transactions and that any required identifiers also be required for use on paper transactions.

The commenters stated that there could be two consequences if the same data were not required on paper and electronic transactions. First, health plans would have to maintain two systems: one for the processing of electronic claims; and one for the processing of paper claims. The same argument was also applied to identifiers—it was argued that health plans would need to maintain two sets of identifiers: one for paper claims; and one for electronic claims. Second, many health care providers would revert to paper claims if the data requirements were less restrictive than those for electronic claims.

Response: These are powerful arguments from a cost benefit standpoint. While the HIPAA statute provides the Secretary with the authority to declare these standards applicable to all transactions, including those on paper, we chose at this point to focus on standards for electronic transactions. Most of the paper forms currently in use today cannot accommodate all of the data content included in the standard transactions. This does not prevent health plans from requiring the same data, including identifiers for paper transactions as is required by the HIPAA regulations with respect to electronic transactions.

b. Comment: Several commenters recommended that employers/sponsors who perform EDI should be required to use the standards because they play a critical role in the overall administration of health care. These entities are the major users of the enrollment and disenrollment in a health plan transactions, and are often major payers of health premiums.

Response: The administrative simplification provisions of HIPAA do not require noncovered entities to use the standards, but noncovered entities are encouraged to do so in order to achieve the benefits available from such use. For example, employers and sponsors play a key role in the administrative functions of health care, *e.g.* the enrollment and disenrollment of individuals in health plans. But because the legislation does not specifically require employers /sponsors to use the transaction standards, we are not extending the requirement to them in the regulation. Health plans are, however, free to negotiate trading partner agreements with employers and sponsors that require the use of standard transactions.

8. Exceptions for State Law (Section 1178)

Proposal Summary: The proposed rule did not propose preemption requirements in the regulation text and did not directly request comments on the preemption issue. However, it did set forth a summary of the preemption provision of the Act, section 1178, and, therefore, raised the issue for public comment (63 FR 25274). In response, we received a number of comments regarding the preemption issue, and requesting guidance on how preemption questions will be resolved.

Comment: Many commenters recommended the exception for State law process be delineated or clarified in the final rule. Many commenters stated that exceptions in general should not be granted, saying that this is contrary to the idea of national standards. Other commenters stated exceptions should be discouraged.

Response: The statute clearly states that the Secretary may grant exceptions in certain circumstances. The proposed rule regarding Standards for Privacy for Individually Identifiable Health Information, published in the **Federal Register** on November 3, 1999 (64 FR 59967), specifically raised the preemption issue. Comments received in response to that proposed rule are being analyzed. We will issue conforming amendments to Part 160 Subpart B when the preemption issues have been resolved in the context of the Standards for Privacy for Individually Identifiable Health Information final rule.

B. Definitions

Comments and Responses Concerning the Definitions

Several definitions in this rule have also been proposed in other HIPAA proposed rules. They may be revised as these other rules are published in final.

1. Code set

Comment: One commenter stated that the definition of code set should be expanded to include factors such as functional status, in order to clarify that a code set is not limited to ''medical'' terms.

Response: We have defined ''code set'' very broadly to encompass any set of codes used to encode data elements. Many code sets (such as revenue codes) are nonmedical in nature and are designated within the transaction standards. We are separately designating standards for medical data code sets used in the transaction.

2. Health Care Clearinghouse

Comment: Several commenters requested that the definition of a health care clearinghouse be reworded. Of particular concern was the reference to other entities, such as billing services, repricing companies, etc. Commenters stated the definition would preclude these other entities from using a health care clearinghouse for format translation and data conversion. Several commenters stated health care clearinghouses play roles other than data and format conversion as described in the proposed rule.

Response: If an entity does not perform the functions of format translation and data conversion, it is not considered a health care clearinghouse under our definition. Billing services, for example, are often extensions of a health care provider's office, primarily performing data entry of health care claims and reconciling the payments received from a health plan. Health care providers may use health care clearinghouses for format translation and other services a health care clearinghouse provides. We agree the definition should be reworded and have revised the definition in § 160.103.

3. Health care provider

Comment: We received several comments requesting clarification on the distinction between billing health care providers and a billing service, as well as clarification on the difference between housekeeping staff and home health aides. Several commenters recommended removal of the word ''bills'' in the definition. They want the definition to be based on the direct provision of health care and not financial arrangements.

Response: The proposed rule regarding Standard Health Care Provider Identifiers, published in the **Federal Register** on May 7, 1998 (63 FR 25320) also included the definition of health care provider. Comments received in response to that proposed rule regarding the definition of a health care provider included the comments above, as well as additional comments, and are being analyzed. We believe it is appropriate to address all comments regarding the definition of a health care provider in the final rule for Standard Health Care Provider Identifiers.

4. Health plan

We interpret section 1171(5)(G) of the Act to mean that issuers of long-term care policies are considered health plans for purposes of administrative simplification. We also believe that this provision of the statute gives the Secretary the discretionary authority to include or exclude nursing home fixed-indemnity policies from the definition of a health plan. We specifically requested comments on the impact of HIPAA on the long-term care segment of the health care industry.

a. Comment: The majority who commented on long-term care policies recommended we exclude these policies from the definition of a health plan. Several commenters stated the standard transaction implementation specifications do not meet long term care administrative requirements. The commenters noted that there are fundamental differences between the nature and type of transactions and information required by health plans that pay for long-term care services and those that pay for hospital or physician care. The commenters pointed out that not all long-term care insurance policies pay directly for specific long-term care services. They also stated that the code sets included in the proposed regulation do not adequately meet the needs of long-term care insurance because most documents sent to these companies are narrative ''activities of daily living'' (ADLs) evaluations, adult ''day care'' invoices and physician notes.

Moreover, including long-term care only policies within the definition of a health plan would be contrary to the purposes of section 1171 of the Act. It was also stated that for the most part, the long-term care industry is not automated and the costs of developing systems to implement these requirements will be dramatic with little, if any, return. It would increase consumer premiums. Most long-term care claim submissions and payment transactions are between the insured (or a family member) and their insurance companies, without health care providers submitting claims.

One commenter that supported including long-term care policies in the definition of a health plan stated that there have been great strides in the automation of health information in the long-term care industry and it should not be excepted from the standards. Another commenter stated the proposed standards offer the opportunity for all segments of the health care industry to adopt automation and to benefit from such adoption. The standards provide long-term care health care providers with a single method that can be exchanged with all health plans. The commenter stated it would be an unfortunate precedent to except segments of the health care industry from these rules.

Response: The arguments both for and against inclusion of long-term care policies have merit. Since some long term care health care providers bill Medicaid using the UB92, it appears that standard transactions and code sets could be used by long-term care health care providers to bill health plans. In addition, we agree that movement by the industry to these electronic standards would create long term benefits including decreased administrative costs.

We interpret the statute as authorizing the Secretary to exclude nursing home fixed-indemnity policies, not all long-term care policies, from the definition of ''health plan,'' if she determines that these policies do not provide ''sufficiently comprehensive coverage of a benefit'' to be treated as a health plan (see section 1171 of the Act). We interpret the term ''comprehensive'' to refer to the breadth or scope of coverage of a policy. ''Comprehensive'' policies would be those that cover a range of possible service options. Since nursing home fixed indemnity policies are, by their own terms, limited to payments made solely for nursing facility care, we have determined that they should not be included as health plans for the purposes of this regulation. The Secretary has, therefore, determined that only nursing home fixed-indemnity policies should be excluded from the definition of ''health plan.'' Issuers of all other long-term care policies are considered to be health plans under this rule.

b. *Comment:* Several commenters recommended that property and casualty insurance health plans and workers' compensation health plans be included in the definition of a health plan. It was stated that we should not

arbitrarily exclude certain health plans. It was also stated that exclusion will cause undue hardship on health care providers of those specialities that most frequently deal with these health plans, such as orthopedic specialists. It was questioned whether the Bureau of Prisons or state correctional facilities are included in this definition, since they provide or pay for the cost of medical care.

Another commenter stated that if State Workers' Compensation Programs are allowed to operate with different rules (as they do now) health care providers will be required to maintain multiple systems to accommodate the many variations. Consequently, administrative simplification will not achieve the desired cost savings.

Response: We recognize that non-HIPAA entities such as workers' compensation programs and property casualty insurance accept electronic transactions from health care providers, however, the Congress did not include these programs in the definition of a health plan under section 1171 of the Act.

The statutory definition of a health plan does not specifically include workers' compensation programs, property and casualty programs, or disability insurance programs, and, consequently, we are not requiring them to comply with the standards. However, to the extent that these programs perform health care claims processing activities using an electronic standard, it would benefit these programs and their health care providers to use the standard we adopt.

We believe that prisons do not fall within this definition of health plan, as prisons are not ''individual or group plans'' established for the purpose of paying the cost of health care.

c. *Comment:* We received two requests to clarify that limited scope dental and vision health plans are not subject to the rule. It was stated that the proposed rule did not specifically indicate that the standards are applicable to these health plans. The limited scope dental health plans provide for annual maximum benefits generally in the $1000–$2000 range and annual benefit payments under limited scope vision health plans rarely exceed a few hundred dollars. The commenters noted that consumers can afford presently to pay for the cost of the annual benefit payments, but if health plans must implement these standards, they will most likely pass on the costs associated with this burden to their enrollees, causing many consumers to drop their coverage.

Response: We believe limited scope dental health plans and limited scope vision health plans meet the definition of health plan and, thus, they are subject to the requirements of this rule. The Congress did not give the Secretary the discretion to treat these health plans differently than other health plans. If a health plan believes it would be cost prohibitive to implement the standards, it has the option of using a health care clearinghouse to transmit and receive the standard transactions.

5. Small Health Plan

Comment: One commenter requested we clarify how the figure for the number of participants for a small health plan was determined. For instance, is an individual insured in a health plan for one month considered a participant for that year? Would twelve different people insured for one month each in a single year be considered a participant? Another commenter questioned why small health plans are being given an extra 12 months to implement the standards.

Response: In the proposed rule, we stated that a small health plan means a group health plan or individual health plan with fewer than 50 participants. It has come to our attention that the Small Business Administration (SBA) promulgates size standards that indicates the maximum number of employees or annual receipts allowed for a concern (13 CFR 121.105) and its affiliates to be considered ''small.'' The size standards themselves are expressed either in number of employees or annual receipts (13 CFR 121.201). The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and the SBA (13 CFR 121.902). With respect to the insurance industry, the SBA has specified that annual receipts of $5 million is the maximum allowed for a concern and its affiliates to be considered small (13 CFR 121.201). Consequently, the definition of small health plan has been amended to be consistent with SBA requirements. As such, we need not address the definition of participants for purposes of small health plans.

Small health plans must implement the standards no later than 36 months after adoption under section 1175 of the Act.

6. Standard

Comment: One commenter stated the proposed rule dramatically changed the definition of standard. The commenter stated the new definition implies that any and all standards promulgated by an ANSI SSO or HHS automatically become a standard, whereas under the Act, only the Secretary can specify, establish, or adopt standards. The commenter recommended the definition under the Act stay the same.

Response: We agree that only the Secretary may adopt a standard under the Act. Because the statutory definition of the term ''standard'' is ambiguous, we are adopting a broader definition to accommodate the varying functions of the specific standards proposed in the other HIPAA regulations. We have revised the definition in § 160.103 to clarify this, and have also added a definition for standard transaction in § 162.103 for further clarification.

7. Transaction

Comment: Several commenters recommended we amend the transaction definition to clarify each transaction.

Response: We have provided clarification in the definitions of each transaction in subparts K through R.

Additional Definitions

Comment: We received comments requesting that we define the terms ''sponsor,'' ''third party administrator,'' ''trading partner agreement,'' and ''health claims attachments.''

Response: We have included a definition for trading partner agreement in § 160.103. In this final rule, we are defining only terms used in the regulations text, therefore, we are not providing definitions for ''sponsor'' or ''third party administrator.'' In the future, we intend to publish a proposed rule that defines health claims attachment.

We have added definitions to parts 160 and 162 that were not part of the proposed rule. In order to clarify the applicability and scope of this rule, we have added definitions for ''covered entity,'' ''trading partner agreement,'' and ''workforce'' to part 160, and definitions for ''direct data entry'' and ''electronic media'' to part 162.

We have added a definition for ''business associate'' to part 160 in order to distinguish those functions a covered entity chooses other entities to perform on its behalf (making the other entity a business associate of the covered entity) from the functions of other types of agents. These other types may have differing meanings in different situations (for example, insurance agent).

To aid in the articulation of the process by which standards are adopted and changed, we have added definitions for ''compliance date,'' ''implementation specification,'' ''modify'' and ''standard

setting organization'' to part 160, and definitions for ''code set maintaining organization,'' ''designated standard maintenance organization (DSMO),'' and ''maintenance'' to part 162.

We added a definition for ''standard transaction'' to part 162 to complement the definitions of ''standard'' and ''transaction,'' which were proposed and, in the case of standard, revised as discussed earlier in this preamble. And, in order to enumerate as many facets of a standard transaction as possible, we have added definitions for ''data condition,'' ''data content,'' ''data element,'' ''data set,'' ''descriptor,'' ''format,'' ''maximum defined data set,'' and ''segment'' to part 162. These definitions should help to make clear the components of a standard transaction.

We also made several clarifications with respect to the definition of ''health plan'' (§ 160.103). For purposes of defining the various health plans that are considered health plans for purposes of the regulation, we added the word ''issuer'' to Medicare supplemental policy, and long-term care policy. We included the word ''issuer'' when referring to long-term care policies, because policies themselves are not entities subject to the statute. Rather, it is the issuers of long-term care policies that are subject to the statute. We also added the SCHIP program, because it is a health plan under section 4901 of the Balanced Budget Act of 1997 (Pub. L. 105–33) and meets the statutory criteria for a health plan.

We are adding a definition of ''state'' to § 160.103 to clarify its meaning with regard to the Federal programs included in the definition of ''health plan,'' which contain this term.

Several terms were in the proposed rule but are not included in the final rule. We have reconsidered the inclusion of the definition of ''medical care.'' It has come to our attention that the term ''medical care'' is easily confused with the term ''health care.'' Since the term medical care is used in the regulation only in the context of the definition of health plan and its inclusion in the regulation text may cause confusion, we have decided to remove the definition of ''medical care'' from the final regulation. We note, however, that ''medical care'' is a statutorily defined term and its use is critical in making a determination as to whether a health plan is considered a ''health plan'' for purposes of Administrative Simplification. Thus, we do include the statutory cite for ''medical care'' in the definitions of ''group health plan'' and ''health plan.''

Similarly, we removed the definition of ''participant'' because it appears only in the context of the definitions of the various types of health plans. As in the case of ''medical care,'' we embed the statutory cite for the definition of ''participant'' in the definition of ''group health plan.''

Also, the definitions for ''ASC X12,'' ''ASC X12N'' were removed because we decided their presence in the regulation did not add to the functionality of the text. We did not receive any comments on the definitions that were removed.

C. Effective Dates and Compliance Dates

1. Effective Dates and Compliance Dates for Specified Standards

The effective date for this final rule is the date that it amends the Code of Federal Regulations (CFR). The current CFR consists of the rules published in the latest CFR volume and any effective amendments published in the **Federal Register** since the revision of the latest CFR volume. Since the impact is expected to be in excess of $100 million per year, Congress will have 60 days after the date of publication in the **Federal Register** to revise the rule before it becomes effective. Standards are adopted and implementation specifications are established as of the effective date of this rule.

The compliance dates of this final rule are the dates that covered entities must be in compliance with the rule. The compliance date of this final rule for most covered entities is no later than 24 months after the effective date of this final rule. The compliance date of this final rule for small health plans, however, is no later than 36 months after the effective date of this final rule.

In our proposed rule, we stated that we would include the specific compliance dates in the subpart for each standard (63 FR 25279). The compliance dates in this final rule have been consolidated in § 162.900.

Comments and Responses on Effective Dates and Compliance Dates for Specific Standards

Comment: The majority of commenters cited that Y2K initiatives will clash with implementing the HIPAA standards. It was recommended that the implementation date should be delayed until after the year 2000.

Several commenters stated that a 2-year implementation time frame may be inadequate to coordinate new system designs with other health plans and to modify existing systems and contracts. There was concern that the industry cannot convert to the new standards within 2 years.

Several commenters recommended that all health plans have the same time frame with which to comply with the standards of this rule. They noted that a health care provider has no knowledge of whether a health plan is a small or large health plan. It would be very inefficient for a health care provider to maintain two systems for an additional year.

The majority of those who commented on the publication of the final rule recommended that the rules be published in a staggered fashion, specifically the identifiers first, then the transactions. Some also wanted the attachment and security regulations published at the same time the transaction regulation is published. Some commenters also wanted the effective dates for each standard transaction to be staggered. Several commenters recommended publishing an interim final rule allowing for additional comments.

Several commenters generally supported the WEDI recommendation that health care providers not be required by health plans to use any of the standards during the first year after adoption of the standards, and that willing trading partners could implement any or all of the standards by mutual agreement at any time during the 2 year implementation phase (3 years for small health plans). WEDI also recommended that health care providers be given at least 6 months' notice by a health plan before requiring health care providers to implement the standards.

Response: Section 1175 of the Act dictates that the standards are to be implemented no later than 24 months after adoption (36 months for small health plans).

In the interest of a smooth transition, we encourage health plans not to require health care providers to use the standards specified in subparts K through R during the first year after the effective date of the transactions final rule, although willing trading partners could do so by mutual agreement during that time. We also encourage health plans to give health care providers at least 6 months notice before requiring health care providers to implement a standard transaction. For example, if the effective date of the rule is 8/1/2000 and trading partners have agreed not to implement during the first year, the first implementation date could be 8/1/2001 and health care providers should be notified by 2/1/2001.

2. Effective Dates and Compliance Dates of Modifications

Proposal Summary: In § 142.106 (now § 160.104), we proposed that if the

Secretary adopts a modification to an implementation specification or a standard, the implementation date of the modification (the date by which covered entities must comply with the modification) would be no earlier than the 180th day following the adoption of the modification (the effective date of the final rule in the **Federal Register** which adopts the modification). The Secretary would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. The Secretary would be able to extend the time for compliance for small health plans.

Comments and Responses on Effective Dates and Compliance Dates of Modifications

Comment: Some commenters believed 180 days may not always be enough time to implement a revised standard.

Response: The statute states that the Secretary must permit no ''fewer'' than 180 days for implementation after adopting a revised standard (i.e., a modification). Depending on the nature of the revision, the minimum time frame of 180 days could be longer. This time frame does not apply to the maintenance of medical code sets and external code sets. The compliance date will be specified by the code set maintaining organization responsible for maintenance changes to that code set.

We will clarify the terms modification and maintenance. In the transactions context, when a change is substantial enough to justify publication of a new version of an implementation specification, this change will be considered to be a modification. Such a change must be adopted by the Secretary through regulation. Maintenance is the activities necessary to support the use of a standard, including technical corrections to an implementation specification, and enhancements, additions, or deletions to a data code set. These changes could be non-substantive or error correction. Public comment and notification is required as part of the normal, ANSI-accredited standards development process, but regulatory action would not be required for maintenance as we have defined it. For example, this final rule adopts the ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000 as the standard for the referral certification and authorization transaction. Error corrections or addendums to Version 4010, May 2000, would constitute maintenance to this standard and there would be no regulatory action. Changes requiring a new version, or an updated edition of Version 4010 (for example, moving from Version 4010, May 2000 to Version 4010, October 2001) would constitute a modification to this standard and would be adopted through regulatory action.

D. Data Content

Proposal Summary: We proposed standard data content for each adopted standard. Information that would facilitate data content standardization, while also facilitating identical implementations, would consist of implementation specifications, data conditions, data dictionaries, and the standard code sets for medical data that are part of this rule. Data conditions are rules that define the situations when a particular data element or segment can or must be used.

It is important to note that all data elements would be governed by the principle of a maximum defined data set. No one would be able to exceed the maximum defined data set in this rule. This principle applies to the data elements of all transactions.

Comments and Responses on Data Content

Comment: The majority of commenters supported the concept of a maximum defined data set; however, there was some confusion on what we were proposing.

Several commenters believed we were requiring health care providers to always send the transaction with the maximum data possible. They stated that health care providers and health plans will pay excessively for unused data that is transmitted. Concern was also expressed that health plans would have to store coordination of benefits (COB) information if it is submitted, even though they do not perform COB. Several commenters suggested that health plans be allowed to reject a transaction because it contains information they do not want.

One commenter recommended that the maximum defined data set be the full set of data available in the implementation specifications, not the addendum in the proposed rule.

A few commenters wanted to expand the concept of a maximum defined data set to include code sets, modifiers, narrative descriptions, guidelines and instructions applicable to codes sets, as well as an additional category for ''usage'' in the implementation specifications, ''not required unless specified by a contractual agreement.'' Several commenters wanted trading partners to be able to agree on which non-required data will be used between them.

One commenter suggested a ''minimum'' data set principle be applied. If a submitter sends a minimum data set, the receiver cannot reject it as incomplete. Again, the commenter believed we were implying that a submitter must send the maximum every time, in order to assure acceptance of the transaction.

Response: We wish to clarify the maximum defined data set concept. A maximum defined data set contains all of the required and situational data elements possible in a standard transaction. For each standard transaction there are situational data elements that are both relevant to the particular transaction and necessary to process it; there are also situational data elements that an entity may include in a transaction, but does not need to include, in order for the transaction to be processed. A required data element is always required in a transaction. A situational data element is dependent on the written condition in the implementation specification that describes under which circumstances it is to be provided. The maximum defined data set is based on the implementation guides and not the addendum in the proposed rule. The maximum defined data set also includes the applicable medical and nonmedical code sets for that transaction. Some code sets, *e.g.,* HCPCS and CPT–4, include special codes referred to as ''modifiers.'' Modifiers are included in the concept of maximum defined data set. The maximum defined data set does not include operational guidelines or instructions for every code set.

We note that if an entity follows the implementation specification and the conditions in the implementation specification for each transaction, the entity will only be supplying the minimum amount of data elements necessary to process a transaction (required data elements and relevant situational data elements); the entity will not be supplying possible but unnecessary situational data elements.

In addition, we note that the intent behind the maximum defined data set was to set a ceiling on the nature and number of data elements inherent to each standard transaction and to ensure that health plans did not reject a transaction because it contained information they did not want. For example, if an implementation specification defines a health care claim or equivalent encounter information transaction as having at most 50 specific data elements, a health plan could not require a health care provider to submit a health care claim or encounter transaction containing more than the 50

specific data elements as stipulated in the implementation guide. (A health plan may, however, request additional information through attachments.)

While operational guidelines or instructions are not included in the concept of a maximum defined data set, we agree that standardization of these code set guidelines is highly desirable and beneficial. We reviewed the available guidelines to determine which should be adopted as implementation specifications and have found that there are also many current practical barriers to achieving such standardization. For example, we recognize that the operational guidelines for some code sets required for use in the designated transactions are more complete than others. Also, objective, operational definitions for most codes are not available and the level of detail varies widely from code to code. In addition, the processes for developing guidelines and instructions are typically not open and include limited participation compared to the code development processes. However, where such guidelines exist and are universally accepted, we name them as part of the standard. Therefore, we adopt the Official ICD–9–CM Guidelines for Coding and Reporting as maintained and distributed by the Department of Health and Human Services (§ 162.1002). Additionally, we received many public comments in support of this action. We do not name guidelines for other code sets.

With respect to COB, if a health plan electronically performs COB exchange with another health plan or other payer, then it must store the COB data necessary to forward the transaction to that health plan or other payer.

In addition, we disagree with commenters that we should add a new ''usage'' statement, ''not required unless specified by a contractual agreement,'' in the implementation guide. We believe that the usage statement would have the same effect as allowing trading partners to negotiate which conditional data elements will be used in a standard transaction. Each health plan could then include different data requirements in their contracts with their health care providers. Health care providers would then be required to use a variety of guidelines to submit transactions to different health plans. This would defeat the purpose of standardization.

E. Availability of Implementation Specifications

Proposal Summary: We provided the addresses and telephone numbers for a person to obtain the implementation specifications for the proposed standards.

Comments and Responses on Implementation Specifications and Their Availability

1. *Comment:* One commenter suggested that the X12N (the ASC X12 subcommittee chartered to develop electronic standards specific to the insurance industry) implementation specifications under HIPAA must be flexible to permit businesses to customize their EDI process. It was stated the implementation specifications do not allow flexibility between trading partners.

Response: We disagree. Allowing flexibility would result in non-standard implementation of the transactions. The X12N implementation specifications under HIPAA, adopted in this final rule, are all version 4010. If businesses customize implementations of 4010, the health care industry would have hundreds of different implementations of the same transaction.

2. *Comment:* One commenter recommended we include the following language: ''In addition, a set of NCPDP standards contains all of the approved standards and implementation specifications. For an additional fee, the data dictionaries are available.''

Response: We are aware that data dictionaries are available and that there is a charge separate from the membership fee for them. We do not believe this needs to be included in the final rule, since this information is available through the NCPDP web site.

F. Proposed Requirements Stated in Each Subpart

In each subpart setting forth a standard or standards, we stated which entities had to use the standard(s), the effective dates for implementation, and that we are incorporating implementation specifications (where applicable) by reference.

Comments and Responses on Provisions Appearing in Each Subpart

1. Code Set Standards

Proposal Summary: We proposed in subpart J the following: In § 142.1002 (now § 162.1000), we stated that health plans, health care clearinghouses, and certain health care providers would have to use the diagnosis and procedure code sets as prescribed by the Secretary for electronic transactions. The proposed standard medical code sets of these diagnosis and procedure code sets were identified in the preamble, and the implementation specifications for the transaction standards in part 142 (now part 162), Subparts K through R, specified which of the standard medical data code sets should be used in individual data elements within those transaction standards.

In § 142.1004, we specified that the code sets in the implementation specification for each transaction standard in part 142, subparts K through R, would be the standard for the coded nonmedical data elements present in that transaction standard.

In § 142.1010, the requirements sections of part 142, subparts K through R, specified that those who transmit electronic transactions covered by the transaction standards must use the appropriate transaction standard, including the code sets that are required by that standard. These sections would further specify that those who receive electronic transactions covered by the transaction standards must be able to receive and process all standard codes.

We proposed code sets for various types of services and diagnoses.

Comments and Responses on Proposed Standards for Code Sets and Requirements for Their Use

Proposed Code Sets

a. Version Control. *Comment:* The majority of commenters stated that we should have a clearer requirement for version control, that is, we should require an electronic transaction to use the version of each applicable code set that is valid at the time the transaction is initiated. A common schedule should be established (for example, calendar year) for conversion to new versions of all standard code sets. A few commenters indicated that there should be an overlap period in which both last year's and this year's codes are accepted to accommodate resubmission or subsequent transfer of claims initiated in the prior year.

Many commenters said that HHS should maintain a consolidated list of the current accepted versions of standard code sets and make this list available to the public, *e.g.,* on the Web. Several commenters indicated that all of the code sets themselves should be available from a single HHS website.

Response: We have included in § 162.1000 a clearer statement that the version of the medical data code sets specified in the implementation specifications must be the version that is valid at the time the health care is furnished. Since transactions may have to be resubmitted long after the time health care was provided, health plans must be able to process earlier versions of code sets. The version of the nonmedical data code sets specified in

the implementation specifications must be the version that is valid at the time the transaction is initiated.

At this time we are not establishing a common schedule for implementing new versions of all HIPAA medical data code sets, since some of the code sets are updated annually (for example, ICD–9–CM, CPT) and some are updated more frequently. The organizations that maintain medical data code sets will continue to specify their update schedule. Different Federal laws mandate the implementation of annual updates to ICD–9–CM on October 1 and annual updates to the CPT on January 1 of the following year for their use in the Medicare program. Changing either of these dates would require legislative action and would also represent a major change in current practice for many elements of the health care industry.

We agree that a common web site is a viable solution, but it is unclear what the Federal role would be in the development of one. We expect to work with the medical data code set maintainers to explore this option.

6. *Proprietary coding systems.* Two of the code sets proposed as HIPAA standards, CPT and The Code on Dental Procedures and Nomenclature (referred to as ''The Code'' and published as CDT), are proprietary products.

Comment: Many commenters stated that the Secretary should not recommend proprietary systems as national standards. They believed that the proposed rule lacked a definitive method to guarantee public access to the proposed standards at low cost, and recommended that the government should develop or maintain the national standards or acquire the rights to the standards of choice. Without ownership and control, the government places itself and the remainder of the health industry at noteworthy risk. One commenter indicated that implementation of the standards should be delayed until proprietary code sets have been moved into the public domain. One commenter said it was illegal for the Secretary to establish the CPT as a national standard. Another argued that the ''The Code'' should not be named a national standard.

Response: Under HIPAA, the Secretary has the authority to select existing code sets developed by either private or public entities and is not precluded from selecting proprietary code sets. The Secretary is required to ensure that all standard code sets are updated as needed and that there are efficient, low cost mechanisms for distribution (including electronic distribution) of the code sets and their updates. Free distribution of standard code sets is not required by the statute.

The comments we received regarding code sets were overwhelmingly in favor of the selection of currently used code sets as the initial standards. Some of the code sets that are currently used in administrative transactions are proprietary code sets. We have obtained some clarification from the developers of these code sets about the pricing structure and mechanisms for publishing the pricing structure that will be in place when the initial standards are implemented. The existence of efficient, low-cost distribution mechanisms will affect future decisions regarding changes or additions to the code sets designated as standards.

A health care provider who submits X12N transactions can download the implementation specifications free of charge from the Washington Publishing Company website. However, two of the medical codes sets, CPT and the Dental Code require a fee. Royalties for electronic use of the CPT are based on a $10.00 per user standard. Royalties for electronic use of the Dental Code in practice management systems are based on $10.00 per user site. These royalty fees are normally included in the purchase and maintenance costs of the electronic systems that such providers use. The other medical codes sets, HCPCS and ICD–9 CM, may be downloaded free of charge.

For paper manuals, to which most providers that use these code sets already subscribe, the CPT manual is $49.95 and the Dental Code manual is $39.95. In fact, the need for such paper manuals may decrease as more electronic systems are implemented.

A health care provider who submits retail pharmacy transactions who wants a copy of the NCPDP standards can pay an annual fee of $550 for membership in the NCPDP organization, which includes copies of the implementation specifications for the retail pharmacy standard and the data dictionary as well as technical assistance in implementation. As a non-member, the implementations specifications and data dictionary may be purchased separately for $250 each.

Although nothing in this final rule, including the Secretary's designation of standards, implementation specifications, or code sets is intended to divest any copyright holders of their copyrights in any work referenced in this final rule, future decisions regarding changes or additions to the code sets designated as standards may be affected by the existence of efficient, low-cost distribution mechanisms.

c. Code Sets Proposed. The following code sets were proposed as initial standards:

(a) Diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health-related problems.

The standard code set for these conditions is the International Classification of Diseases, 9th edition, Clinical Modification, (ICD–9–CM), Volumes 1 and 2, as maintained and distributed by the U.S. Department of Health and Human Services. The specific data elements for which the ICD–9–CM is the required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(b) Procedures or other actions taken to prevent, diagnose, treat, or manage diseases, injuries and impairments.

(1) Physician Services. The standard code set for these services is the Current Procedural Terminology (CPT–4) maintained and distributed by the AMA. The specific data elements for which the CPT–4 (including codes and modifiers) is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(2) Dental Services. The standard code set for these services is The Code on Dental Procedures and Nomenclature, printed as ''The Code'' and published as CDT, maintained and distributed by the ADA for a charge. The specific data elements for which the Dental Code is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(3) Inpatient Hospital Services. The standard code set for these services is the International Classification of Diseases, 9th edition, Clinical Modification (ICD–9–CM), Volume 3 procedures, maintained and distributed by the U.S. Department of Health and Human Services. The specific data elements for which ICD–9–CM, Volume 3 procedures, is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(c) Other Health-Related Services. The standard code set for other health-related services is the Health Care Financing Administration Common Procedure Coding System (Level II of HCPCS) maintained and distributed by the U.S. Department of Health and Human Services.

(d) Drugs. The proposed standard code set for these entities is the National Drug Codes maintained and distributed by the U.S. Department of Health and

Human Services, in collaboration with drug manufacturers. The specific data elements for which the NDC is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

(e) Other Substances, Equipment, Supplies, or Other Items Used in Health Care Services. The proposed standard code set for these entities is the Health Care Financing Administration Common Procedure Coding System (Level II of HCPCS) as maintained and distributed by the U.S. Department of Health and Human Services.

a. *Comment:* The great majority of commenters supported the selection of the code sets proposed on the basis that these code sets were already in wide use among hospitals, physician offices, other ambulatory facilities, pharmacies, and similar health care locations. Commenters mentioned that replacement systems could have different formats and number of digits. This could complicate the initial conversion. They also pointed out that replacement systems for the ICD–9–CM are still under development and testing. Many commenters stated that it would be premature to make a decision on replacements for the ICD–9–CM prior to their completion and testing.

Response: We agree that the continued use of the proposed coding systems will be the least disruptive for many entities required to implement HIPAA standards. The fact that replacement systems are still under development and testing further supports this decision.

b. *Comment:* Two commenters stated that the proposal did not reflect current uses of some code sets. One commenter stated that in addition to being used for inpatient procedural coding, the ICD–9–CM procedure codes are also required by many health plans for the reporting of facility-based outpatient procedures. The second commenter pointed out that in addition to being used by physicians and other health care professionals, the combination of HCPCS level I and CPT–4 is required for reporting ancillary services such as radiology and laboratory services and by some health plans for reporting facility-based procedures. Further, Medicare currently requires HCPCS level II codes for reporting services in skilled nursing facilities.

Response: Health plans must conform to the requirements for code set use set out in this final rule. Therefore, if a health plan currently requires health care providers to use CPT–4 to report inpatient facility-based procedures, they both would be required to convert to ICD–9.

We agree that the proposal did not reflect all current uses of some code sets. For example, we agree that CPT–4 is commonly used to code laboratory tests, yet laboratory tests are not necessarily considered to be physician services. Moreover, the proposed rule implied that laboratory tests are a type of other health care service which are encoded using HCPCS. We believe that the architecture of both coding sets, HCPCS and CPT–4, is such that they are both frequently used for coding physician and other health care services. Both of these medical data code sets are standard medical data code sets and may be used in standard transactions (see § 162.1002(e)). Therefore, a health plan using CPT–4 to report outpatient facility-based procedures would not be required to change that practice.

In addition, the proposed rule did not itemize the types of services included in other health care services. These other health care services include the ancillary services, radiology and laboratory which are mentioned in the comment, as well as other medical diagnostic procedures, physical and occupational therapy, hearing and vision services, and transportation services including ambulance. Similarly, other substances, equipment, supplies, or other items used in health care services includes medical supplies, orthotic and prosthetic devices, and durable medical equipment.

In the final rule, we clarify the description of physician and other health care services and we recognize that two code sets (CPT–4 and HCPCS) are used to specify these services. In the proposed rule, we used the term ''health-related services'' to help describe these services. We believe that use of the term ''health-related services'' might suggest that these services are not health care. In an effort to prevent this confusion, and because the codes in this category are used to enumerate services meeting the definition of health care, we are using what we believe is the more appropriate term (''health care services'') to describe these services. We note that the substance of the category remains the same. The final rule has been revised to indicate that the combination of HCPCS and CPT–4 will be used for physician services and other health care services. The use of ICD–9–CM procedure codes is restricted to the reporting of inpatient procedures by hospitals.

In § 162.1002 we clarify the use of medical code sets. The standard code sets are the following:

(a) ICD–9–CM, Volumes 1 and 2 (including The Official ICD–9–CM Guidelines for Coding and Reporting), is the required code set for diseases, injuries, impairments, other health problems and their manifestations, and causes of injury, disease, impairment, or other health problems.

(b) ICD–9–CM Volume 3 Procedures (including The Official ICD–9–CM Guidelines for Coding and Reporting) is the required code set for the following procedures or other actions taken for diseases, injuries, and impairments on hospital inpatients reported by hospitals: prevention, diagnosis, treatment, and management.

(c) NDC is the required code set for drugs and biologics.

(d) Code on Dental Procedures and Nomenclature is the code set for dental services.

(e) The combination of HCPCS and CPT–4 is the required code set for physician services and other health care services.

(f) HCPCS is the required code set for other substances, equipment, supplies, and other items used in health care services.

c. *Comment:* Although there was wide support for the code sets that were proposed, a number of commenters pointed out that additional code sets were needed to cover some health services recorded in administrative health transactions. One commenter mentioned that the code sets proposed as standards lacked coverage of alternative health care procedures and recommended that the Alternative Link coding system also be designated as a standard code set. Commenters also indicated that none of the proposed standard code sets covered home infusion procedures; they recommended that the Home Infusion EDI Coalition Coding System (HIEC) be selected as a HIPAA standard. HIEC is currently used by some non-governmental health plans. One commenter recommended that dental diagnostic codes (SNODENT) developed by the ADA be used as a national standard. This commenter stated that the ICD–9–CM codes were inadequate for dentistry.

Response: No single code set in use today meets all of the business requirements related to the full range of health care services and conditions. Adopting multiple standards is a way to address code set inadequacies, but can also introduce complexities due to code set overlaps. We acknowledge that the coding systems proposed as initial standards may not address all business needs, especially in the areas of alternative health care procedures, home infusion procedures, and dental

diagnoses. Specific shortcomings should be brought to the attention of the code set maintainers. The adoption of additional standards may be an appropriate way to fill gaps in coding coverage in these areas. Additional code sets must be analyzed by the DSMOs that will make recommendations to the National Committee on Vital and Health Statistics. In order to request changes, we recommend working through the processes described in §§ 162.910 and 162.940. In the interim, segments exist in the standard transactions which allow for manual processing of services for which codes have not been adopted.

d. *Comment:* While agreeing in general with the code sets proposed as standards, some commenters indicated that they lacked sufficient specificity to code data elements in several areas: functional status and other data elements necessary for studying persons with mental illness; behavioral health; chronic conditions and functional assessments covered by long term care insurance; and mental health services.

Response: We agree the code sets proposed as HIPAA standards may not cover functional status, mental and behavioral health, chronic conditions, and mental health services to the extent required by the legitimate business needs of some health care providers and health plans. We are unaware of any viable alternative code sets which cover these areas more completely. Maintainers of code sets seeking to be named as standards must pursue recognition through the processes set out at §§ 162.910 and 162.940.

e. *Comment:* One commenter, who supported the proposed code sets for their intended purposes, felt that they lacked the detail necessary to document a complete clinical encounter. The commenter stated that a comprehensive health information system requires the use of a controlled reference terminology to document care, retrieve data to perform studies, and assess patient outcomes. The commenter stated that as the implementation of HIPAA progresses towards the adoption of standards for a complete computer based patient record, the current coding systems will be inadequate. The commenter stated that the system developed by Systematized Nomenclature of Human and Veterinary Medicine International (SNOMED) could be used as a future standard.

Response: We agree that more detailed clinical terminologies are likely to be needed in complete computer-based patient records. SNOMED is one of the clinical terminologies being examined by the Work Group on Computer-Based Patient Records of the National Committee on Vital and Health Statistics' Subcommittee on Standards and Security. The Work Group is responsible for studying the issues related to the adoption of uniform data standards for patient medical record information and the electronic exchange of such information.

f. *Comment:* One commenter expressed problems with the use of the ICD–9–CM and the ICD–10–CM for the collection of both reimbursement and research related data. It was stated that the data collected in claims' transactions clog up the reimbursement data system with a large amount of extraneous material. The commenter also felt that the data were of dubious quality. The commenter estimated that as much as 50% of the information gathered within the transactions' systems was for research purposes only. The commenter felt it was unfair to force the private sector to subsidize research costs through subterfuge. The commenter suggested that the issue be resolved by limiting the initial scope of the ICD–10–CM to collecting only information used or needed for reimbursement.

Response: The adopted coding systems support the collection of a wide variety of data that can be used for many purposes. However, we disagree with the commenter that standard health care claims or equivalent encounter information transactions collect data primarily for research purposes. The content of the health care claims or equivalent encounter information transaction was developed on a consensus basis by health care providers, health plans, and other industry representatives as necessary for the conduct of administrative transactions.

d. Coordination among Code Sets. Comment: Several commenters recommend that a very tight process be put in place to control overlap of HCPCS Level II ''D'' codes (*The Code on Dental Procedures and Nomenclature,* printed as ''The Code'' and published as CDT) and the CPT–4 codes. It was questioned whether there will be a review process in place for dental codes. Since there is some duplication of dental codes and the CPT–4 codes presently, a review process is needed to avoid duplication. One commenter stated that to attain and maintain coding consistency and avoid duplicate codes, the American Dental Association should be a member of a federal HCPCS committee.

Response: We agree that a mutual exchange of information is necessary to attain and maintain coding consistency. Panel member(s) from HCPCS Level II ''D'' Codes (The Code on Dental Procedures and Nomenclature), CPT–4, and Alpha-Numeric HCPCS will participate or act as consultants on the other coding panels in order to attain and maintain coding consistency and avoid duplicate codes.

e. Proposed changes to Dental Codes. Proposal: In HCPCS, the first digit ''0'' in the American Dental Association's The Code on Dental Procedures and Nomenclature is replaced by a ''D'' to eliminate confusion and overlap with certain CPT–4 codes. The ADA has agreed to make this change an official part of the dental codes they distribute and to replace their first digit ''0'' with a ''D.'' Consequently, dental codes will no longer be issued within HCPCS as of the year 2000. The ADA will be the sole source of the authoritative version of ''The Code.''

Comment: There were several specific comments about the proposal to change the initial digit in the ADA's version of The Code on Dental Procedures and Nomenclature from ''0'' to ''D.'' Comments in favor of the change agreed that it would avoid potential overlap and confusion. One commenter indicated that this was particularly true for those claims that would continue to be submitted manually since the ASC X12N 837 and 835 transactions contain a code qualifier that clearly indicates which procedure code is being used. One commenter stated that as the ADA replaces the leading ''0'' with the letter ''D,'' some of the resulting codes will coincide with existing HCPCS Level II ''D'' codes, but will have totally different meanings. This could create great confusion at adjudication time. Dealing with a coding system that contains an alphabetic character would also cause problems for many systems. One commenter believed that it is the responsibility of both the ADA and the Department to specify clear and unambiguous rules that will affect this transition between coding systems, so the resulting confusion is minimized. The commenter suggested the following options: (1) Replace the codes nationwide on a certain date; (2) choose a letter other than ''D'' for ''The Code,'' so there is no overlap; or (3) retain the leading zero in ''The Code'' and assure that there continues to be no conflict or overlap with the CPT–4 anesthesia codes, as currently they do not overlap.

There were no comments about the proposal that ''The Code'' be removed from HCPCS and that the ADA become the sole source of the definitive version of these codes.

Response: The ADA will change the leading ''0'' to a ''D'' as proposed. Many organizations are already using the ''D''

Codes, which contains the leading ''D,'' without difficulty, and we expect others to make this transition without difficulty. Although we did not receive comments that specifically addressed the removal of the dental codes from the HCPCS, general comments about the desirability of more consolidated access to all HIPAA code sets have led us to revise our position on the inclusion of ''The Code'' in the HCPCS. Thus, the dental codes will be available from two sources: the ADA, and through a licensing agreement between HCFA and the ADA.

f. Other Dental Code Issues. a. Comment: One commenter (a major health plan) emphasized the critical importance of federal oversight and monitoring of dental coding maintenance and revision to ensure that dental data sets do not incorporate fragmented or unbundled procedures that are integral parts of a single dental service. For example, in ''The Code-1,'' the procedure code 04910, periodontal prophylaxis/periodontal recall, included the examination as part of this single dental service; in ''The Code-2,'' the examination is unbundled and is listed as a separate procedure. The import of this unbundling is the potential for increasing cost of care, without otherwise increasing the services provided. At the very least, to control the impact that unbundling might potentially have on the cost of care, it was recommended that once a particular standard code is established, it may not be deleted and any changes or modifications to the code or descriptor be included as a new code.

Response: The American Dental Association (ADA) will be responsible for maintaining an appropriate open process for updating ''The Code.'' Interested public and private sector organizations and groups will have the opportunity for substantive input, as they will for all HIPAA standards. The Department will continue to review the process of code modification to ensure that the code sets continue to meet the business needs of the industry.

b. *Comment:* One commenter questioned whether the addition of a specific procedure to the dental codes adopted as a HIPAA standard meant that a health plan had to cover the procedure or whether it meant the health plan only had to be able to receive and process the standard code for the procedure.

Response: The establishment of a code in any of the code sets adopted as HIPAA standards does not require that a health plan cover the coded procedure. However, health plans must be able to receive and process all codes in HIPAA standard code sets. In other words, transactions containing standard codes may be returned with a message that the procedure is not covered by the health plan to whom they have been submitted. Transactions may not be rejected because the health plan's system does not recognize valid standard codes.

g. Future Consideration of ICD–10 Code Sets. Proposal Summary: Although the exact timing and precise nature of changes in the code sets designated as standards for medical data are not yet known, it is inevitable that there will be changes to coding and classification standards after the year 2000. For example, the ICD–10–CM for diagnosis may replace the ICD–9–CM as the standard for diagnosis data. When any of the standard code sets proposed in this rule are replaced by wholly new or substantially revised systems, the new standards may have different code lengths and formats.

a. *Comment:* Several commenters felt that the ICD–10–CM should be considered as a future national standard after the year 2000. The commenters stated that the proposed initial standard, ICD–9–CM, should be selected since it was currently in use. They pointed out that the ICD–10–CM was still under development. Several commenters suggested that the system be tested and evaluated as a future national standard when the final draft is completed. One commenter was supportive of the system and suggested that factors such as code length be considered as part of the testing and evaluation of the ICD–10–CM system. Several commenters felt that the current draft of the ICD–10–CM showed significant improvements over the ICD–9–CM. Another commenter stated that the system would allow for more accurate reporting by health care providers. One commenter stated that the use of the ICD–10–CM will require considerable training.

Response: We agree with the commenters that the ICD–10–CM has great potential as a replacement for the ICD–9–CM. We also agree that a final evaluation of the system should await the completion of the final draft and testing.

b. Comment: Several commenters stated the ICD–10–PCS (which is under development for use in the United States as a replacement for the procedure coding section of ICD–9–CM) should be considered as a future national standard. Most commenters recommended that the decision to use or not use the ICD–10–PCS should await final development and testing. The majority of commenters stated that future systems, such as the ICD–10–PCS, should not be implemented until after the year 2000. However, several commenters supported the future migration to the ICD–10–PCS because it was felt to offer significant improvements over the ICD–9–CM. One commenter stated that the ICD–10–PCS development project has made valuable contributions to many issues relating to coding and terminology. Another commenter expressed concern about the level of detail in the ICD–10–PCS and recommended that further studies and trials should be performed in order to establish the relative costs and benefits of the system. This commenter was particularly concerned about the pathology section and felt it needed more work. Others praised the increased level of detail in the system and felt the added clinical information would be useful.

Response: We believe the ICD–10–PCS has great promise as a future replacement of the ICD–9–CM, volume 3. However, we also believe the system needs additional testing and revision prior to making a decision about its use as a national standard. The system is dramatically different from the ICD–9–CM containing more digits, greater detail, and a more organized approach. With any new system, many factors must be weighed prior to making a recommendation about national use. Changing a coding system will have a great impact on national data and would be evaluated carefully by the Designated Standard Maintenance Organizations and the NCVHS, with opportunity for public input.

h. Universal Product Number (UPN). Proposal: The Universal Product Number (UPN) identifies medical equipment and supplies. It was not recommended as an initial standard for the following reasons: the existence of two different sets of UPN codes; incomplete coverage—approximately 30 percent of the health care products do not have a UPN assigned to them; and lack of experience with UPNs for reimbursement. However, the proposal asked for comments regarding UPNs and when it might be appropriate to designate one or more UPN systems as HIPAA standards.

a. *Comment:* Several commenters stated that the HCPCS level II codes that we recommended to identify medical equipment and supplies are currently not specific enough for accurate claims processing, proper financial controls, or proper tracking of utilization. Health care providers use many different kinds of supplies and equipment not found in the HCPCS level II codes. It was argued that establishing UPNs as a national coding system for identifying health

care supplies and equipment will provide the following advantages over the HCPCS level II codes:

- The UPN system would allow for more accurate billing and better fraud and abuse detection than the use of a non-specific coding system such as the HCPCS level II.
- UPNs would improve administrative efficiency and effectiveness.
- The product specificity that UPNs provide in identifying the actual specifications of manufacturer's products and packaging sizes is essential to managing health industry transactions and determining accurate payment amounts.
- The UPN mechanism is already in place and has been proven in use.

Several commenters agreed that we should not include the UPNs in the initial list of standards. A cautious approach and considerable further study is necessary to determine if the objectives of administrative simplification and reduced costs within the health care system will be achieved by using the UPNs as a national coding system for health care products.

Response: We agree that additional information regarding the utility of the UPNs for claims processing needs to be obtained before a decision is made to require their use. Specifically, more information is needed concerning the costs and benefits that can be expected from using the UPNs and the extent to which their use would promote administrative simplification. Also, information is needed regarding the standards that would have to be established to ensure that the UPNs could be used effectively by third party payers. Another issue that needs to be studied is the amount and type of information that an insurer would have to obtain from manufacturers in order to adequately identify the products represented by approximately three to five million UPNs. Only detailed information concerning the products that are represented by the UPNs, provided in a consistent manner, will allow comparisons to determine if products from different manufacturers are functionally equivalent.

b. *Comment:* Several commenters expressed concern that the health care industry may continue to use two different types of UPN systems rather than a single system. They asserted that this is the best time to choose between the two coding councils, the Health Care Uniform Code Council (UCC) and the Health Industry Business Communications Council (HIBCC), because there has not been a substantial investment in either system.

Response: We believe that neither UPN system should be selected at this time, based on the reasons outlined above. We look to the industry to resolve the issue of whether the two systems should continue.

Before requiring the use of UPNs, we need to obtain more information regarding the costs and benefits of implementing the UPN, the adaptability of the UPN system for making coverage and payment determinations, and for combating fraud and abuse. We will be monitoring demonstrations being conducted by California Medicaid to determine the cost and feasibility of using UPNs in the health care industry. The entity proposing such a demonstration must request an exception from the standards following the procedures in § 162.940.

i. NDC. a. Comment: Commenters generally agreed with our recommendation to eliminate Level II HCPCS codes for drugs by the year 2000 and to use NDC for all drugs. However, some commenters disagreed with applying this requirement to non-pharmacy claims and recommended that the NDC be used only for retail pharmacy claims until sufficient benefits and overhead costs of exclusively implementing the NDC codes can be further researched. It was mentioned that the NDC numbers notate a vial size and physician injections often results in a single vial being used for multiple patients. They alleged that current Level II HCPCS codes allow for this identification. Several commenters also recommended that those durable medical equipment (DME) that do not have Level II HCPCS codes should use NDC codes.

It was noted that Medicaid agencies must reimburse health care providers for supplying the drug products of any company in the Federal Rebate Program as long as the drug reimbursement rates are within the Federal Upper Payment Limit. Because many companies produce the same drug, there are often many NDCs that correspond to the same drug with the same Level II HCPCS code. It was stated that Medicaid uses the Level II HCPCS codes to indicate which of these many products is reimbursable for health care provider submitted drug transactions.

One commenter suggested moving the NDC codes to the HCPCS codes. The commenter stated using two different coding systems (NDC and HCPCS) is counter to the overall goal of administrative simplification.

Response: We continue to believe that use of NDC to identify drugs is the most appropriate and efficient coding system available. While commenters gave various reasons in support of their objection to requiring use of NDC for non-pharmacy claims, most of these reasons were based upon a misunderstanding of the proposal. For example, contrary to one comment, the Medicaid drug rebate program requires the NDC, not the generalized Level II HCPCS code for the rebate program.

In response to the commenter who stated that the NDC does not always allow identification of partial vials (that is, when a single vial is used among multiple patients), we note that although this may be true with certain NDC codes, the transaction standards allow the reporting of dosage units for the NDC. In addition, although certain commenters requested a crossover period during which both nonstandard and standard codes may be used for processing, we believe that it is more reasonable to require all of the systems' changes that we can at one time, rather than addressing the changes in a piecemeal fashion. The two years after the effective date allowed before compliance is required will allow for a smooth transition period. Both non-standard electronic formats and the new standard transactions may be used during this transition period.

With respect to DME claims, HCPCS Level II is the proposed standard for DME. DME do not receive NDC as NDC are national drug codes. We are not moving the NDC codes to the HCPCS since each are separate coding systems for different purposes. Commenters generally supported this recommendation.

b. Comment: One commenter recommended to either revise the existing NDC or create a new coding system so the codes are distinctive in their format. The commenter stated that the coding system should serve the inventory and distribution industries as well as assist with the billing and inventory management of outpatient and hospital settings. Moreover, the commenter wanted the system to have the capacity to last 50 to 100 years or longer.

One commenter stated the NDC system was designed for health care providers who manufacture drug products or pay for drug therapy. The commenter said the design is completely inappropriate for the needs of most health care providers who prescribe drug therapies, dispense drug products, or administer medications to patients. The NDC identifies drug products at a level of detail (the package) that is much too granular to be of any practical use for most health care providers. The commenter recommended to select either

MediSource Lexicon or the HL7 Vocabulary Special Interest Group Drug Model and Listing as the standard code set for drugs.

Response: In general, the Act requires the Secretary to adopt existing code sets developed by private or public entities, unless code sets for the data elements have not been developed by such entities. When new code sets are developed or existing ones revised, they need to be evaluated. Demonstrations need to be performed in order to determine the cost and feasibility of such codes sets in the health care industry. MediSource and HL7 are not currently used within the transaction system for administrative and reimbursement purposes for retail pharmacy claims. The majority of commenters supported the adoption of the NDC coding system for pharmacy claims and did not support one commenter's opinion regarding difficulties perceived. The NDC was originally developed as a 10-digit identifier made up of three subcodes: the manufacturer code, the product code, and the package size code. Each subcode is variable in length. Some subcodes are reported with leading zeroes and some truncate the leading zero. This leads to variable sizes, such as: 5–4–1, 5–3–2, and 4–4–2. Originally, the subcodes were separated by hyphens. However, when used in computer systems, it is customary to display each subcode using its largest valid size, yielding an 11-digit number: 5–4–2. We are adopting the 11-digit NDC in order that the format is distinctive and will be in place until the Secretary decides to adopt a new code system. Since it will be in a standard format, inventory systems, as well as other systems, should realize benefits. As the nation moves beyond the adoption of initial standards, there may be a need to evaluate other coding systems that have the potential of being adopted as a standard in the future.

c. *Comment:* Several commenters said the FDA needs to improve its oversight of NDC before adoption. It was stated that the FDA shifted responsibilities for the maintenance of the system to manufacturers and drug packagers who assigned their own codes. As a result, the FDA does not possess a current, accurate, or complete NDC list. It was stated that the 11-digit NDC code identifies drugs, and these codes are assigned on a continuous basis throughout the year as new drug products are issued.

Response: The Food and Drug Administration's Center for Drug Evaluation and Research provides daily updates to the New and Generic Prescription Drug Approval List. They provide weekly updates to the FDA Drug Approval List. This list includes additions and deletions to prescription and over the counter (OTC) drug products. This list must be used in conjunction with the most current publication of the Approved Drug Products with Therapeutic Equivalence Evaluations (a.k.a. Orange Book) which is updated on a monthly basis. The NDC Directory is updated on a quarterly basis. These lists are available via the Internet at: http://www.fda.gov/cder.

j. Training Requirements. Comment: A medical association stated that there will be a significant increase in the workload required in order to adequately comply with the standardized transaction code sets. There is a tremendous need for training for health care providers as well as information systems modifications. For example, the code sets for anesthesia, dental, and procedure codes will require a large amount of time and effort for State Medicaid Management Information Systems (MMIS) to comply with using the standardized code sets.

Response: We agree that educational activities must occur. Health plans should inform their health care providers of the impending changes as soon as possible and arrange for appropriate educational opportunities in 2000. It is also anticipated that health care clearinghouses and other commercial entities will offer training.

k. Local Codes. Proposal Summary: The Health Care Financing Administration Procedural Coding System (HCPCS) contains three levels. Level I (CPT–4), is developed and maintained by the AMA and captures physician services. Level II of HCPCS contains codes for products, supplies, and services not included in CPT–4. Level III, local codes, include codes established by insurers and agencies to fulfill local claim processing needs. One of the intentions of this rule is to eliminate local codes.

Comment: We received comments from a diverse group of organizations, ranging from data management corporations, health insurance organizations, State agencies, etc. A little less than half of the commenters did not favor the elimination of local codes. There was a general concern expressed by both public and private insurers that very specific and unique codes are necessary for processing and paying claims efficiently. Many commenters, particularly ones from State Medicaid agencies and from other insurance health plans, commented on the need for local codes to describe a wide variety of health care services. For example, several commenters described specific needs for local codes for physician services, such as digital rectal exam, that are not delineated in CPT–4 or HCPCS. Other commenters opposed the elimination of local codes because they argued that it would be difficult to get a national code approved in a timely fashion to process claims for new technologies that come onto the market and are coverable. The main concern of these commenters was that the needs of some health plans' programs are so specific that a more general code would not meet their needs. Furthermore, eliminating both local codes and the process to standardize codes would take away some of a State's authority to administer its programs. There was great concern that if the translation of local codes to national codes is not done expeditiously it would create a high number of ''not otherwise classified codes,'' which in turn create processing delays. There was a great deal of concern expressed by health plans that eliminating local codes would disrupt data reporting, claims payment, and data systems design for a considerable amount of time and would be very expensive.

Many commenters said that the proposed process was not well defined in the proposed rule. They felt that given the timetable specified in the proposed rule there would not be enough time to develop and implement an effective standardization process.

Commenters made a number of recommendations regarding the standardization process. Included among them were the following: conduct monthly meetings of the HCPCS panel; have each State establish its own HCPCS committee with health plan and health care provider representatives deciding which local codes to eliminate and which to submit to the national panel for standardization; open the HCPCS panel meetings to the public and include participation of stakeholders such as state beneficiary representatives and data maintenance organizations; add the AMA, ADA and BC/BS Association as voting members; and establish both state and regional level committees to make decisions on standardization of codes.

The main concern was that the proposed elimination of local codes would create an enormous backlog of codes for the HCPCS panel to review and this would result in the delay of the implementation of national codes. There was a general recommendation that any process that is established to standardize local codes should also have a mechanism in place to assign

national codes for use within a very short time frame.

Several commenters stated they were unclear about whether all local codes could be translated into equivalent national codes within the next two years. They considered the timetable presented as difficult to achieve, and suggested that all codes developed and approved by HCFA should have a standard publication timetable. They said that any process for standardizing local codes must have the ability to assign codes within a very short time frame to assure that claims can be processed timely. Some commenters proposed that local codes should be eliminated when the ICD–10 codes sets and transactions are implemented. Others suggested delaying the elimination of local codes to allow for an orderly transition.

Response: We understand commenters' concern about eliminating local codes and moving to a national process for reviewing and approving codes that are needed by public and private insurers. We remain committed in our effort to work with the industry to facilitate the standardization process. We will be monitoring the process of code revision to ensure that the code sets continue to meet the needs of the industry. Moreover, although the standardization of local codes will be challenging, we believe it is an achievable undertaking as health plans and health care providers have two years to eliminate local codes and transition to national codes (small health plans have three years before they are required by statute to be compliant with the HIPAA standards).

We would like to clarify that covered entities may not use local codes in standard transactions after compliance with this regulation is required. Nor may a covered entity require the use of local codes in standard transactions after compliance with this regulation is required.

We believe that the prohibition on the use of local codes in standard transactions will likely require health insurers to review their local codes and eliminate those codes that duplicate elements in the national codes. During this review process, we expect that covered entities will find that there are instances when they use a particular local code in fewer than 50 claims submissions per year. In those instances when a covered entity discovers that it uses a local code in fewer than 50 claims submissions per year, the covered entity should not make a modification request to the maintainer of the relevant medical code set for a unique national code for the item or service. Rather than having the maintainer of the relevant code set issue a unique national code for a service or item for which there are fewer than 50 claim submissions per year, a covered entity should use the national Not Otherwise Specified (NOS) code (use of the NOS code is voluntary before the compliance date of this regulation, but use of the NOS code becomes mandatory after the compliance date of the regulation). We believe that not only will NOS codes continue to serve as the national code for claim submissions for an item or service that are submitted fewer than 50 times per year, they will continue to serve as the national code for new services or items that have not yet been assigned a unique national code by the maintainer of the relevant medical code set.

Also, we anticipate that insurers will need to work with other similarly situated health plans to review local codes used for professional services, procedures, health care products and supplies which are not described by the current code sets. Finally, in situations where, after careful review, no national code currently exists to replace a local code, health plans may request the establishment of a national code. Health plans should bear in mind the criteria for the establishment of a national code. Specifically, national codes are only designed to identify an item or service; additional codes are not established to carry health plan specific information such as units or health care provider identification for products or procedures which have been given a national code. Such information must be used elsewhere and cannot be imbedded in the national codes.

Health plans should submit individual code requests for the establishment of national codes, along with supporting documentation, to the appropriate standard code set maintenance group. For example, in order to provide a better understanding of the HCPCS process, a Web site has been set up to provide public access to the list of items submitted for the HCPCS National Panel for review. An e-mail link is available for questions and comments related to the HCPCS process. The Internet site is http://www.hcfa.gov/medicare/hcpcs.htm.

For information on changes and updates to the procedure part of ICD–9–CM (Volume 3) see the following Internet site: http://www.hcfa.gov/medicare/icd9cm.htm.

For information on changes and updates to the diagnosis part of ICD–9–CM (Volumes 1 & 2) see the following Internet site: http://www.cdc.gov/nchswww/about/otheract/icd9/maint/maint.htm.

The Internet site for requesting a change or an addition to the code(s) in the Code on Dental Procedures and Nomenclature is: http://www.ada.org/P&S/benefits/cdtguide.html.

To request a change or an addition to the code(s) in the Current Procedural Terminology, Fourth Edition (CPT–4) you can write: American Medical Association, Department of Coding and Nomenclature, 515 North State Street, Chicago, Illinois, 60610. The Internet site for the American Medical Association is http://www.ama-assn.org.

For the list of codes found in the National Drug Codes, see the following Internet site: http://www.fda.gov/cder/ndc/index.htm.

For information about submitting a request to modify the National Drug Codes, see the following Internet site: http://www.fda.gov/cder.

In addition, some commenters have stated that they use codes within their operating systems that are internally generated. These internal operating codes are used solely within the organization for administrative purposes. We understand that these codes are sometimes called local codes. Furthermore, commenters are concerned that this regulation will require the elimination of those internal operating codes. We clarify that this regulation will not require the elimination of the use of these internal operating codes when not part of a transaction for which a standard has been adopted under this part.

2. Transaction Standards

We received numerous comments on the specific transaction standards and implementation specifications which we proposed to adopt. Some of these concerned the choice of the particular standard itself, a matter clearly within the Secretary's purview. Many of the other comments, however, concerned specific issues raised by the electronic formats, data conditions, and/or data content of the proposed standards and/or implementation specifications themselves. As these are all standards that are developed and maintained by external organizations (SSOs), the concerns raised by this latter group of comments could not be directly addressed by the Secretary.

Thus, we initially analyzed the public comments received to determine which comments fell into this latter group. The comments directed at the implementation specification for the X12N standards were turned over to the ASC X12N Subcommittee for review and action by the appropriate work

group(s). They classified the comments into two categories: business needs, and technical or editorial errors. A listing of issues reviewed by X12N and the X12N response to those issues can be viewed on the Internet at http://www.wpc-edi.com/hipaa/nprm_issues. Those workgroups in turn reviewed the various comments and concluded that the existing standard and/or implementation specification: (1) Needed to be changed and made the appropriate changes, (2) already addressed the concerns raised, so that no change was needed, (3) were correct, so that no change was needed, or (4) needed to be changed, but that the changes needed could not be made in the time available.

Thus, the discussion of the particular X12N standards in the preamble below generally reflects this approach. The first four paragraphs of the discussion of the agency's response to each standard follows the following general format:

Of those comments we referred to ASC X12N, the work groups determined that [#] comments identified areas where the implementation specification could be improved, and the appropriate changes were made. [#] comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920. [#] comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that [#] comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required. There were another [#] comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

We set out below the number of comments that fell into each category with respect to each of the standards. The particular groupings above appear, where applicable, as paragraphs (i), (ii), (iii), and (iv), respectively, of the responses to the comments on each X12N standard.

a. Transaction Standard for Health Care Claims or Equivalent Encounter Information. We proposed in subpart K that:

For pharmacy claims, the NCPDP Telecommunications Standard Format Version 3.2 and equivalent Standard Claims Billing Tape Format batch implementation, version 2.0, would be the standard.

For dental claims, the ASC X12N 837—Health Care Claim: Dental, Version 4010, Washington Publishing Company, 004010X097, would be the standard.

For professional claims, the ASC X12N 837—Health Care Claim: Professional, Version 4010, Washington Publishing Company, 004010X098, would be the standard.

For institutional claims, the ASC X12N 837—Health Care Claim: Institutional, Version 4010, Washington Publishing Company, 004010X096, would be the standard.

Comments and Responses on the Transaction Standard for Health Care Claims and Equivalent Encounter Information: Pharmacy

i. *Comment:* One commenter suggested that the final rule contain the correct version of the NCPDP Batch Standard Version. The correct version is 1.0, not version 2.0 as originally proposed.

Response: We agree to make the recommended change. The correct name of the standard may be found in § 162.1102.

ii. *Comment:* Several commenters recommended that we reword this section to state ''version 3.2 or higher.'' This change would allow any approved version of the standard to be used. Currently, there are health plans and health care providers who have implemented a higher version of the standard.

Response: This final rule adopts NCPDP Telecommunications Standard Format, Version 5.1 in place of version 3.2. We do not believe that the term ''or higher'' is appropriate in that it will allow for variations in the standard used for pharmacy transactions. This is the most recently approved version of the NCPDP standard. This version contains revisions that address comments made to the proposed rule. There are numerous other benefits and advantages to naming Version 5.1. Some of these benefits and advantages are the following:

- Expanded dollar fields.
- HIPAA supported fields including Employer ID, Plan ID, and Prescriber (Provider) ID.
- New clinical fields including expanded Diagnosis Code, Patient Height, and Patient Body Surface Area.
- Service transactions for expanded professional pharmacy service support.
- Expanded coordination of benefits (COB) support.
- Support of intermediary processing.
- Coupon fields.
- Expanded response messaging including preferred product support and approved message codes.
- Flexibility with qualifiers that allows for addition of qualifier type codes instead of adding new fields.
- Pricing uniformity.
- Controlled Substance reporting support including Alternate ID and Scheduled Rx ID.
- Consistency within the NCPDP telecommunication standard.
- Correction of issues from previous versions.
- Variable length transactions that allow for trading partners to transmit only the data required for doing business (*i.e.* A v5.1 claim can be very small when necessary. Refer to the v5.1 implementation specifications for examples).
- Supports partial fill indicators.
- Additional code values for Drug Utilization Review (DUR).

iii. *Comment:* One commenter recommended that the word ''retail'' be removed when mentioning the NCPDP standard since the NCPDP Telecommunications Standard Format Version 3.2 and equivalent NCPDP Batch Standards Version 1.0 may be used to bill professional pharmacy services as well as retail pharmacy services.

Response: We are adopting the NCPDP standard for retail pharmacy only. We are adopting the ASC X12N 837 for professional pharmacy claims. Professional pharmacy claims use both the National Drug Code (NDC) and HCPCS j-codes to identify the pharmacy procedure or service. The NCPDP standard is designed to accommodate the NDC only and does not allow for billing of professional pharmacy claims using HCPCS. The NCPDP standard would require major modifications in order to accommodate the HCPCS codes.

Comments and Responses on the Transaction Standard for Health Care Claims or Equivalent Encounter Information: Dental

The majority of commenters expressed support of the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 246 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. One individual comment identified a business need that ASC X12N judged

could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Thirty-one individual comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 31 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 4 individual comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

Comments and Responses on the Transaction Standard for Health Care Claims or Equivalent Encounter Information: Professional

i. Of those comments we referred to ASC X12N, the work groups determined that 356 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Thirty-five comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. 267 comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 276 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 9 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* The majority of commenters expressed support for the selected standard. However, there was concern that the X12N 837 neither meets Medicaid's needs nor supports behavioral health services. One commenter stated that representatives of the alcoholism and substance abuse treatment fields were not adequately represented in the development of the standards.

Response: The X12N standards are developed and maintained in an open atmosphere. We strongly encourage all industry stakeholders to assist in this process to ensure that their business needs are met. If Medicaid Agencies or other entities believe their business needs will not be met through the selected standard, we encourage them to submit any new data requests to the DSMOs. We will be monitoring the DSMOs' process for the revision of standards to ensure that they are revised appropriately.

vi. *Comment:* Several commenters stated that the adoption of the claim standard without the attachment standard will create processing problems. They stated there is a potential that certain claims that require an attachment will need to be adjudicated manually.

Response: The health care claims or equivalent encounter information standard currently contains many justification requirements for certain services, including oxygen, chiropractic, ambulance, and durable medical equipment services. Therefore, these claims will not have to be adjudicated manually. Once the attachment standard is adopted, we expect that the justification requirements for the services listed above will be met by the attachment standards and, therefore, will be removed from the health care claims or equivalent encounter information standard. All other attachments that are not in this transaction or are not met by the attachment standard will need to be adjudicated manually.

Comments and Responses on the Transaction Standard for Health Care Claims or Equivalent Encounter Information: Institutional

i. Of those comments we referred to ASC X12N, the work groups determined that 169 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Three comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. 54 comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 54 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 6 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* The majority of commenters expressed support of the selected standard.

Several commenters stated that they wanted the UB92 to be selected as the institutional claim standard since it is widely used. Several commenters disagreed that the X12N 837 met all of the guiding principles. The guiding principles are:

(1) Improve the efficiency and effectiveness of the health care system by leading to cost

reductions for, or improvements in benefits from, electronic health care transactions.

(2) Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

(3) Be consistent and uniform with the other standards required under this part—their data element names, definitions, and codes and the privacy and security requirements—and with other private and public sector health data standards, to the extent possible.

(4) Have low additional development and implementation costs relative to the benefits of using the standard.

(5) Be supported by an ANSI-accredited standard setting organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.

(6) Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

(7) Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, except when they are explicitly part of the standard.

(8) Be precise and unambiguous, but as simple as possible.

(9) Keep data collection and paperwork burdens on users as low as is feasible.

(10) Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

The principles in question were 1, 4, 6, 8, 9 and 10.

There was also concern that the X12N 837 does not meet the needs of many State Medicaid agencies. Different agencies require codes and data elements that are not in the transaction standard.

Response: While the UB92 is supported by many institutions, it is not used in a standard manner. To undergo a national UB92 standardization effort is not practical since the X12N 837 meets institutional needs and the majority of commenters support the selection of all X12N transactions.

We believe the X12N 837 meets all of the guiding principles in question. Implementation of the X12N 837 using the specifications defined in the implementation specification for version 4010 will lead to administrative simplification and cost savings for both health plans and health care providers. One nationally accepted standard will exist, rather than a variety of national and local formats (#1). We believe that the long-term savings that will accrue from the adoption of the standard will offset the short-term implementation costs (#4) (see section VI. Final Impact Analysis). The DSMOs have a process for the development and maintenance of transactions and implementation specifications that include many quality and technical assurance checkpoints prior to the approval of X12 standards and X12N industry implementation specifications (#6). Uniform implementation of the standards is critical. The implementation specifications provide for standard as well as unambiguous data content requirements for all users of each transaction (#8). Exchange of the X12N 837 standard transaction does not require increased data collection or paperwork burden (#9). The X12N 837 standard and syntax allow for the easy addition of new business functions. For example, instead of listing all CPT codes, the implementation specification refers to the code source. The standard uses qualifiers to aggregate general data content into unambiguous business transactions (#10). If an external code set is updated, the standard transaction would not have to be updated since the codes are external to the implementation specification. Qualifiers allow for the precise definition of generic fields, such as dates.

As part of the proposed rule comment process, commenters were encouraged to review the implementation specifications. Many commenters submitted requests for data needs or changes to the implementation specifications and, thus, we believe there has been ample time to review and submit these requests. If Medicaid agencies or other entities did not identify all of their business needs, they will need to submit new data requests to the DSMOs.

We note that health plans and covered health care providers that do business with Medicaid agencies will be required to use the standards within the 24 month implementation period (36 months for small health plans). We believe it would be inconsistent with the statutory intent to require these entities to support non-standard requirements solely for individual State Medicaid agencies, especially where those health plans and health care providers operate in more than one State. HCFA and the DSMOs stand ready to assist the State agencies with their transitions to the standards.

b. Transaction Standard for Health Care Payment and Remittance Advice. In subpart L, redesignated as subpart P, we proposed ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, Washington Publishing Company, 004010X091 as the standard for health care payment and remittance advice.

Comments and Responses on the Transaction Standard for Health Care Payment and Remittance Advice

The majority of commenters expressed support of the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 209 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Seven comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Fifteen comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 15 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. *Comment:* A number of commenters asked that they be allowed to continue to use proprietary codes, narrative information, and their current alternate uses of selected ASC X12N 835 segments.

Response: We disagree. Permitting the combined use of nonstandard data content would not comply with the intent of the statute. The ASC X12N 835 format is intended to be fully machine readable, so that there can be totally automated posting of transactions to patient and health care provider accounts wherever used, regardless of the health plan.

We encourage health care providers and health plans who have a business need for additional information in the ASC X12N 835 format to provide background to the DSMOs on the need so the ASC X12N 835 implementation specification can be modified for a future version, or so that the DSMOs can advise commenters how their business needs can be met within the current implementation specification. ASC X12N made a number of changes in the 4010 implementation specification as a result of such comments on the proposed rule. In most cases, however, commenters who indicated that current code sets were inadequate did not submit any specific suggestions or requests with respect to the changes they needed. The DSMOs cannot

consider an implementation specification modification to meet a need if the need has not been defined. We strongly encourage health plans and health care providers to participate in this process so that their needs are met.

v. *Comment:* Some commenters questioned why the ASC X12N 835 did not explain the basis for the payment issued.

Response: The ASC X12N 835 is not intended to explain how the amount of payment for a service is determined. A health care payment and remittance advice, as embodied in the ASC X12N 835 format, primarily exists to notify the health care provider of the amount being paid for a set of bills and, if that payment does not equal the amount billed, to briefly explain every adjustment applied to those bills by the health plan. A health care payment and remittance advice is not a vehicle for instructing health care providers on coverage policy, except to briefly refer to that policy when it is the reason for denial or reduction of a billed service. Information on policy type and coverage rules is more appropriately included on a health plan's membership card and the coverage information shared with the subscriber and/or a health care provider at enrollment or in subsequent newsletters.

vi. *Comment:* A number of health plans requested that the ASC X12N 835 format be rearranged to more closely parallel the internal flat file they use for their claims systems in order to minimize the programming changes they would need to make in order to comply with version 4010 of the ASC X12N 835. They argued that they did not consider it administratively simpler if they had to make extensive programming changes.

Response: We considered these comments. In some cases, the implementation specification was changed, but for the most part, such requests could not be accommodated. HIPAA requires that United States health plans and certain health care providers, or their clearinghouses, use national health care transaction standards. Health care providers and health plans have flexibility in how they will implement the standards. They may choose to utilize a health care clearinghouse to process their transactions. By definition, a health care clearinghouse is used to translate non-standard format into a standard format, or vice-versa. When a health plan or health care provider uses a health care clearinghouse for those functions, they may be able to minimize programming changes. There are also a wide variety of software vendors from whom they may choose to purchase translation software.

vii. *Comment:* Some commenters asked for more generic codes in the ASC X12N 835 version 4010 implementation specification so that a health plan can simply report a service as denied or reduced, without the need to furnish more explanation on the reason for the denial or reduction.

Response: Health care providers need to have adequate details on the ASC X12N 835 transaction that they receive in order to enable them to not only post accounts, but to decide whether an appeal should be filed, or further action taken in response to the health plan's decision on a claim. A failure to supply adequate reasons for denial or reduction would undermine the effectiveness of an ASC X12N 835 transaction.

viii. *Comment:* A few commenters asked for a code to indicate that a health plan was knowingly issuing an ASC X12N 835 transaction that did not balance. It was reasoned that not all health plans might be able to issue an ASC X12N 835 transaction that balances when the transaction becomes effective as a national health care standard.

Response: This request can not be accommodated. As explained in the implementation specification, an ASC X12N 835 transaction must balance at the line, claim and provider levels. To be in balance, the amount billed, less the amount of any adjustments, must equal the amount paid. An out of balance ASC X12N 835 would not be in compliance with the version 4010 implementation specification. Health plans are responsible for making all changes as needed to issue complete and compliant ASC X12N 835 version 4010 transactions. An out of balance ASC X12N 835 is of little to no value to a health care provider, raises more questions than it settles, and consumes the resources of health care providers and health plans who must explain why it does not balance.

ix. *Comment:* A health care clearinghouse asked if it would share any liability for non-compliance if it forwarded out of balance remittance data from a health plan to a health care provider.

Response: Liability issues will be discussed in a later enforcement regulation.

x. *Comment:* One commenter asked that all new codes or changes to codes considered for inclusion in an ASC X12N 835 implementation specification be circulated to all health plans for review and comment prior to inclusion.

Response: This is not practical at this time. There is not yet a central registry of health plans and, even if there were, the cost of such distribution and analysis of responses would be a significant financial burden on the code set maintainers. Such a process would also greatly extend the clearance time for such changes, preventing maintainers from meeting immediate business needs. Affected health plans can comment on code additions and changes included in or referred to in a later implementation specification through the maintenance and modification process set out at § 162.910. Affected health plans are also encouraged to increase their involvement with the organizations responsible for code set maintenance. Health plans are encouraged to submit any new data requests to the DSMOs.

xi. *Comment:* A few State Medicaid agencies requested that they be permitted to use the ASC X12N 835 format, rather than the ASC X12N 820, to pay premiums to managed care companies under contract to provide care to Medicaid beneficiaries.

Response: Although the ASC X12N 835 can accommodate claims and capitation payments to health care providers, including managed care companies, the payments described in these comments are considered health plan premium payments, rather than payment for direct patient care. As discussed below under ''Comments and Responses on the Transaction Standard for Health Plan Premium Payments,'' all health plan premium payments must be transmitted with the ASC X12N 820 standard for consistency. Also, the ASC X12N 820 Payroll Deducted and Other Group Premium Payment for Insurance Products implementation specification includes some data elements not contained in the ASC X12N 835, because it was designed specifically for premium payment, rather than claim payment.

xii. *Comment:* A number of commenters questioned whether they would be prohibited from use of the automated clearinghouse (ACH) transaction for electronic funds transfer (EFT) of health care payments once the ASC X12N 835 is effective as a HIPAA transaction standard.

Response: The ACH is an acceptable mode of EFT under both the ASC X12N 835 and 820 transactions. The implementation specifications for the ASC X12N 835 and 820 transactions contain two parts, a mechanism for the transfer of dollars and one for the transfer of information about the payment, and allow these two parts to be transmitted separately. Consistent with the implementation specifications, actual payment may be sent in a number of different, equally acceptable ways,

including check and several varieties of electronic funds transfer. When the transfer of funds is part of paying a health care premium or a health care claim, the ACH transaction may continue to be used as a valid part of an ASC X12N 835 or 820 transaction where the other part of the transaction is sent to the health plan or health care provider, directly or indirectly (through a clearinghouse or financial institution). Although these standard transactions allow transmission of one or both parts through a financial institution, they do not require both parts to be sent to the financial institution and the financial institution is not required by this regulation to accept or forward such transactions.

Health plans may continue to use the ACH transaction alone to authorize the transfer of funds (electronic funds transfer) when such transfer is not part of paying a health care premium or a health care claim for an individual, because such a transaction would not be a transaction covered under this part. The Department of the Treasury has confirmed that this standard does not conflict with their requirements for disbursements.

xiii. *Comment:* One commenter criticized the ASC X12N 835 format as inadequate to explain benefit payments to subscribers. The commenter was under the impression that ASC X12N 835 transactions would be issued electronically to patients as well as health care providers or their clearinghouses.

Response: We clarify that the ASC X12N 835 will be sent from a health plan to health care providers and/or health care clearinghouses. We are not regulating the explanations of benefits (EOBs) that health plans send to their subscribers. We believe subscribers will still receive an adequate explanation of benefits.

xiv. *Comment:* A health plan asked if it would be prohibited from sending paper EOBs to a health care provider who was sent an ASC X12N 835 transaction for the same claims. The health plan currently issues electronic remittance advice but includes appeal information only on the corresponding paper remittance advice. The health plan was concerned about how it could distribute appeal information for denied or reduced claims.

Response: A health plan can choose to continue to send paper remittance advice notices to health care providers that are issued ASC X12N 835 transactions. However, all information in the paper notice that could have been expressed in the X12N 835 must be included in the X12N 835 transaction. If a health plan has a need to send data that is not on the X12N 835, it needs to work with the DSMOs to submit a request to modify the standard. It is anticipated, however, that with expanded acceptance of electronic transactions by health care providers, and increases in automated coordination of benefits among health plans, there may be less of a need for paper remittance advice notices. At some point, health plans may be able to reduce or eliminate most paper remittance notices to health care providers capable of receiving of the electronic notices.

Also, the ASC X12N 835 transaction may be used to notify a health care provider of appeal rights by using the ''remark codes'' segment. Please see the remark code menu item at www.wpc-edi.com for a listing of currently approved remark codes and instructions on how to request additional remark codes to meet your business needs.

xv. *Comment:* One commenter was confused as to whether the NCPDP standard for real time remittance information could continue to be used once version 4010 of the ASC X12N 835 became the national Health Care Payment and Remittance Advice standard.

Response: Yes, the NCPDP Telecommunications Standard Format may continue to be used for real time pharmacy transactions because it is designed to apply to such transactions. The ASC X12N 835 is the standard transaction for dental, professional, and institutional health care payment and remittance advice. The NCPDP standard was not originally proposed due to an oversight on our part regarding the functionality of the standard. The NCPDP standard is used for both claim and health care payment and remittance advice and is being adopted as the standard transaction for retail pharmacy.

xvi. *Comment:* A few commenters asked for guidance as to when version 4010 of the ASC X12N 835 might sunset in favor of a later version or a replacement format. They also asked whether version 4010 and a replacement version/format could be operated concurrently for 90 days or more to allow for an orderly conversion of health plans and health care providers between versions/formats.

Response: These issues will be addressed when the Secretary announces any successor version/format to version 4010 of the ASC X12N 835. Under HIPAA, however, as a general rule, new versions or formats cannot be required more than once every 12 months and health care providers must be allowed a minimum of 180 days advance notice to enable them to comply with the change. We do anticipate a need for a crossover period of at least 90 days to convert between versions/formats during which both the old and new versions/formats will need to be supported.

xvii. *Comment:* It was suggested that the ASC X12N 997 format be expanded or new format developed and recognized as a HIPAA standard to allow health care providers or health care clearinghouses to notify a health plan of some problem with the format or content of an ASC X12N 835 transaction.

Response: This issue has been referred to X12N. There is no implementation specification for a transaction of this type at present, but such a transaction can be considered for addition to the published HIPAA standards if and when it is developed, and the implementation specification is written.

xviii. *Comment:* One commenter was concerned that patient privacy could be violated if a full ASC X12N 835 transaction is sent to a health care provider's bank. The commenter asked what will be done to secure that data.

Response: A separate enforcement rule will address the penalties for violating the HIPAA rules. Separate privacy and security regulations are being prepared that will address privacy and security restrictions for health information.

xix. *Comment:* Several commenters recommended that we include the NCPDP telecommunications Standard 3.2 for the submission of remittance advice for the pharmacy service sector. Another commenter said that they use the NCPDP telecommunications Standard 3.2 for the claim and remittance transactions. Several commenters said the NCPDP meets their business needs and there is no business need to move to the ASC X12N 835 transaction for remittance advice inquiries.

Response: We agree with the commenter that remittance information is integral to the NCPDP Telecommunications Standard named in the proposed rule for retail pharmacy claims. As discussed previously, we are naming the NCPDP Telecommunications Standard 5.1 and NCPDP Batch Standard as the standard for health care payment and remittance advice within the retail pharmacy sector. We have added this requirement to § 162.1602.

c. Transaction Standard for Coordination of Benefits. In subpart M, redesignated in this rule as subpart R,

we proposed as the standards for coordination of benefits the following:

For pharmacy claims, the NCPDP Telecommunications Standard Format Version 3.2 and equivalent Standard Claims Billing Tape Format batch implementation, version 2.0.

For dental claims, the ASC X12N 837—Health Care Claim: Dental, Version 4010, Washington Publishing Company, 004010X097.

For professional claims, the ASC X12N 837—Health Care Claim: Professional, Version 4010, Washington Publishing Company, 004010X098.

For institutional claims, the ASC X12N 837—Health Care Claim: Institutional, Version 4010, Washington Publishing Company, 004010X096.

Comments and Responses on the Transaction Standard for Coordination of Benefits: Pharmacy

Comment: One commenter suggested that the final rule contain the correct version of the NCPDP Batch Standard Version. The correct version is 1.0, not version 2.0 as originally proposed.

Response: We agree to make the recommended change for the batch standard. The proposed version 2.0 was incorrect. The correct name of the standard may be found in § 162.1802. We are also changing the version to the NCPDP Telecommunications Standard Format Version for COB. The version is 5.1 as previously discussed.

Comments and Responses on the Transaction Standard for Coordination of Benefits: Dental, Professional, Institutional

i. *Comment:* One commenter recommended that claim/encounter data items should be distinguished from those data items that are part of the COB transaction process.

Response: One implementation specification is used for claims and coordination of benefits. The implementation specification clearly distinguishes between coordination of benefits data and claim data. For example, each coordination of benefits data element contains notes specifying when a particular data element is used.

ii. *Comment:* The majority of commenters supported the selection of the ASC X12N 837 for the coordination of benefits exchange standard. Some commenters believe that the decision to conduct COB in a certain manner is a business decision and not within the scope of HIPAA. Others would like all health plans to be required to participate in COB exchange using the plan to plan model in which the health care provider supplies the primary insurer with information needed for the primary insurer to then submit the claim directly to the secondary insurer. Several commenters stated that the plan to plan model would be quite costly and should be closely evaluated before being adopted at a national level.

Concern was expressed that if the standard COB transaction were sent to a health plan that does not conduct COB transactions, the health plan would reject the standard COB transaction because it contained COB information.

Response: Coordination of Benefits can be accomplished in two ways, either between health plans and other payers (for example, an auto insurance company), or from a health care provider to a health plan or other payer. The choice of model is up to the health plan.

Under this rule health plans are only required to accept COB transactions from other entities, including those that are not covered entities, with which they have trading partner agreements to conduct COB. Once such an agreement is in place, a health plan may not refuse to accept and process a COB transaction on the basis that it is a standard transaction. For example, a health plan receives a standard ASC X12N 837 transaction from a health care provider with which it has a COB trading partner agreement. If the health plan is not the primary payer, it must accept and process the COB information to adjudicate the claim. If the health plan has decided to conduct COB transactions with another payer, it must accept and store the COB information to use in a COB transaction with the other payer. If the health plan is the primary payer and does not have a trading partner agreement with the secondary payer, then it may simply dispose of the COB information and leave the COB activity up to the health care provider.

If a health plan electronically conducts COB with another health plan it must do so using the standard transaction. A health care provider that chooses to conduct COB electronically with a health plan must do so using the standard transaction. A COB transmission between a health care provider and a payer that is not a health plan would not be subject to the requirements of this rule; nor would the transmission of a COB transaction from a health plan to another payer that is not another health plan.

d. Transaction Standard for Health Care Claim Status. In subpart N, we proposed the ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, Washington Publishing Company, 004010X093 as the standard for health care claim status.

Comments and Responses on the Transaction Standard for Health Care Claim Status

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that all 94 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. *Comment:* We received several comments questioning whether the ASC X12N 277 ''Unsolicited Claims Status Request'' transaction will be included as a HIPAA standard transaction.

Response: The HIPAA transaction requirements do not include the ASC X12N 277 ''Unsolicited Claims Status Request.'' We expect to consider this transaction for adoption in a future regulation.

iii. *Comment:* Several commenters questioned whether a health care provider is mandated to use the ASC X12N 276 Health Care Claim Status Request transaction.

Response: A health care provider must use the ASC X12N 276 Health Care Claim Status Request transaction when transmitting the transaction electronically to a health plan. The health care provider has the option to submit nonstandard transactions to a health care clearinghouse for processing into the standard transaction and may of course choose to submit transactions in paper form.

iv. *Comment:* Several commenters questioned whether a health plan will be required to respond to an ASC X12N 276 request from a health care provider who did not have a business arrangement with the health plan.

Response: A health plan may not refuse to process a transaction simply because it is a standard transaction. Whether a health plan may refuse to process a transaction on other grounds may depend upon the particular business agreements the health plan has with the sender. Health plans may have contracts that require them to process out of service area transactions. Use of a standard transaction does not create a relationship or liability that does not otherwise exist. A health plan would not be required by these rules to respond to such a request from a health care provider with whom it does not have a business arrangement.

v. *Comment:* We received several comments relating to whether a State or health plan will be required to support the ASC X12N 276/277 transactions if they are currently using another application to provide this information.

Response: All health plans, including state Medicaid plans, must have the capability to accept, process, and send the ASC X12N 276/277 transactions.

e. Transaction Standard for Enrollment and Disenrollment in a Health Plan. In subpart O, we proposed the ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, Washington Publishing Company, (004010X095) as the standard for enrollment and disenrollment in a health plan.

Comments and Responses on the Transaction Standard for Enrollment and Disenrollment in a Health Plan

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 124 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Ten comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Twenty comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 20 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There was one comment which identified a business need that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issue by the ASC X12N work groups has identified a means of meeting the business need within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* Several commenters said that health plans must be free to accept enrollment data in non-standard formats if that option is chosen by a sponsor. In the proposed rule we stated, we would require health plans to use only the standard specified in § 142.1502 (63 FR 25293). Commenters suggested that we not include the word ''only'' in the final rule under health plan requirements. One commenter suggested the addition of the following language to the rule: ''However, health plans may require trading partners to use the standard transaction to conduct business.''

Response: We recognize that entities that are not covered under HIPAA, such as sponsors of health plans, including employee welfare benefit plans, are not required to use the HIPAA standards to perform EDI with health plans. The proposed rule stated that health plans are required to use only the standard specified in § 142.1502 for electronic enrollment and disenrollment in a health plan transactions. Sponsors, one of the primary trading partners with whom the health plans exchange enrollment and disenrollment in a health plan transactions, were proposed to be excluded from the requirements. Our reference to the requirements for health plans to accept ''only'' the standard specified was intended to preclude health plans from using data in formats other than the standard transaction when exchanging transactions with entities named in the law. It was not intended to impose requirements on sponsors. Thus, sponsors remain free to send enrollment data in nonstandard format if they choose, and health plans are free to accept the data.

We expect that sponsors may voluntarily accommodate a health plan's request to use the ASC X12N 834 by directly submitting the transaction in standard format or by using a health care clearinghouse to translate non-standard data into the standard transaction.

vi. *Comment:* Several commenters said that the ASC X12N 834 should not be used to collect demographic data for public health and health data research. A number of other commenters said that the ASC X12N 834 should be used for this purpose. These commenters also recognized that the demographic data collected by the ASC X12N 834, such as address, could change frequently. Commenters noted that the data collected in the ASC X12N 834 is needed by the enrolling entity so that it can perform certain functions, such as determining the eligibility of a person for enrollment into their offered health plan.

Response: The ASC X12N 834 is used to enroll and disenroll subscribers in a particular health plan, and demographic data are included in the data content. The decision to include demographic data as required data content was made through the ASC X12N 834 work group following the usual standards development process. We support the inclusion of such data in the implementation standard. The collection of demographic data is a means of monitoring progress towards eliminating disparities in health care for populations that historically have experienced discrimination and differential treatment based on factors such as race and national origin. We recognize the ASC X12N 834 Benefit Enrollment and Maintenance transaction set as the most favorable vehicle for collecting these data due to the mostly static nature of demographic information. While the public health and health research community does not currently have access to the enrollment data, we support a secondary use of the ASC X12N 834 for public health and health research. We see this as a mechanism for opening the lines of communication between the health data research community and the holders of the data.

Current Departmental policy supports increasing the use of demographic data for researching disparities in health care among demographic groups. However, the research community generally does not have access to the data collected by sponsors on the ASC X12N 834. While the research community is not opposed to collecting demographic data on the ASC X12N 834, they have requested that this data also be collected on the ASC X12N 837. This request would make no change to the ASC X12N 834 implementation specification. Most of the demographic data in the ASC X12N 837 implementation specification is marked as not used. As stated above, most of the demographic data in the ASC X12N 834 is currently not available to the research community. The business needs of the research community must be presented to the X12N 837 work group for consideration in a future version of the implementation specification.

We recognize that the enrollment and disenrollment in a health plan transaction was designed for use mainly by sponsors, but sponsors are not required by HIPAA to use the standard. Additionally, the conditions for use of the demographic data are stringent, as follows: ''This data should only be transmitted when such transmission is required under the insurance contract between the sponsor and payer and allowed by federal and state regulations.'' Therefore, we would not expect to see a widespread increase in

the collection of demographic data when these standards are implemented for the first time. Nor would we expect that this arrangement would provide public health and researchers with increased access to demographic information because of the difficulty creating dependable linkages between enrollment and encounter data.

If demographic data were collected routinely, facilities would more easily demonstrate compliance with Title VII of the Civil Rights Act of 1964, the nondiscrimination provisions of health and social services block grant programs, and other program statutes and regulations which prohibit discrimination on the basis of race or national origin.

Therefore, the Department intends to work with the industry to support efforts to revise future versions of the Health Care Claims or Equivalent Encounter Information (ASC X12N 837) implementation specification to allow collection of demographic data. We also support conditions for collection of these data that are less stringent than specified in the enrollment and disenrollment in a health plan transaction implementation specification. Many claim transactions cannot be linked to their respective enrollment data. Allowing transmission of racial and ethnic data in both the enrollment and disenrollment in a health plan and the claim transaction sets will increase the probability that this important information is available for utilization review, quality of care initiatives, disparity and nondiscrimination monitoring, and research. The Secretary believes it is critical to collect these data for the following reasons, all of which are high priorities for the Department:

- The need to measure racial and ethnic disparities in type, volume and appropriateness of care received.
- The need to focus efforts in areas/populations/health plans where there is evidence of disparities based on race and national origin.
- The need to monitor progress towards eliminating disparities in health and health care.
- The need to monitor and enforce statutes and regulations that prohibit discrimination on the basis of race and national origin.

We strongly recommend that the health care industry, including the public health and research community, work with the appropriate content committees and standard setting organizations to come to consensus on an approach that will enhance the collection of demographic data as well as be acceptable to the entire health care community. Departmental representatives to these committees and organizations will participate actively in this process, including articulation of the essential business needs. A solution that has met the test of the consensus process may be adopted as a national standard under HIPAA. The solution should promote uniformity, comparability, and the increased availability of demographic data for entities that depend upon this data to monitor progress towards eliminating disparities in health care. As we work with the data content committees and standard setting organizations to reach consensus on an approach that will enhance the collection of demographic data, the Department plans to explore approaches, including demonstration projects, for promoting and facilitating the voluntary collection of high quality demographic data in the health care environment.

vii. *Comment:* We received several comments regarding the role and responsibility of State agencies' use of the ASC X12N 834. One commenter stated we need to make it clear that if a State Health Agency does not participate in the enrollment function, it is not required to use the standard.

Response: Health plans, including State health agencies, are not required to conduct a standard transaction based solely on the fact that it is a standard transaction.

viii. *Comment:* Other commenters also asked what we recommend as a process and structure for the submission of monthly capitation claims from a managed care health plan to a State Medicaid agency.

Response: We interpret ''process and structure'' to mean implementation specification and standard transaction. Monthly capitation claims from a managed care organization (MCO) to a State Medicaid Agency do not fall within the rules we have established for transactions between health plans. The transaction does not meet the definition of a health care claim or equivalent encounter information transaction. It does not need to be conducted as a standard transaction.

ix. *Comment:* Another commenter said that an interface between a State and the State's processing associate, specifically for data entry, should not be required to be in standard format.

Response: We agree. In this scenario, data entry does not fall within any of the definitions for standard transactions. Consequently, the communication for data entry purposes does not need to be in standard format.

x. *Comment:* Several commenters said that a State Medicaid program is excepted from using the ASC X12N 834 when contracting with a managed care health plan because it is functioning as a sponsor.

Response: A State Medicaid program is acting as a sponsor and is excepted from the HIPAA standard requirements only when purchasing coverage for its employees. The State Medicaid program is not acting as a sponsor when enrolling Medicaid recipients in contracted managed care health plans, and thus is not excepted from the law.

xi. *Comment:* Several commenters said that the ASC X12N 834 should not apply to the State ''buy-in'' process.

Response: The transmission between a State Medicaid Agency and HCFA for the purpose of buy-in is outside of the scope of this requirement. State buy-in, the process by which State Medicaid programs pay only the Medicare premium for certain categories of dually eligible individuals, is essentially a Medicaid subsidy, required under Federal law, of Medicare insurance. This transaction is neither an enrollment and disenrollment in a health plan nor a health plan premium payment transaction. It is a unique transaction created solely for the purpose of the buy-in program. States use a unique flat-file and coding structure for transmitting to HCFA a list of Medicaid beneficiaries who are already enrolled in Medicare whose income level entitles them to participate in the buy-in program for that month. HCFA then creates an internal billing file with accretions and deletions for each state. A paper billing notice, reflecting the total amount of premiums owed by the state for that month, is mailed to the state. The Medicaid agency sends premium payment to HCFA via Federal Wire to Treasury. No electronic health plan premium payment transaction occurs between HCFA and the Medicaid agency.

f. *Transaction Standard for Eligibility for a Health Plan.* In subpart P, redesignated in this rule as subpart L, we proposed the ASC X12N 270—Health Care Eligibility/Benefit Inquiry and ASC X12N 271—Health Care Eligibility/Benefit Response, Version 4010, Washington Publishing Company, (004010X092) as the standard for eligibility for a health plan.

Comments and Responses on the Transaction Standard for Eligibility for a Health Plan

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 224 comments identified areas where the implementation specification

could be improved, and the appropriate changes were made.

ii. Eleven comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Seven comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 7 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 10 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* We received one individual comment requesting changes to a set of codes which were not maintained by X12 or by a Federal agency, but were maintained by an external code source maintaining body.

Response: All code sources external to the X12 standard are listed in section C of the implementation specifications. All of these code sources have a mechanism for modifying their codes. The contact listed in the X12 code source list can provide detailed information regarding the process for updating their codes. The X12N subcommittee can also assist entities in determining how to contact an external code source maintenance body in order to request changes to the codes. Code sets not listed in the external code set appendices in the implementation specifications fall within X12N jurisdiction and are maintained through that organization's data maintenance procedures, in conjunction with the DSMOs.

vi. *Comment:* Several commenters recommended that we include the NCPDP telecommunications Standard 3.2 for the pharmacy service sector eligibility inquiries. One commenter said that this is the only automated eligibility inquiry allowed for use by pharmacy providers. A commenter said that it uses the transaction (the NCPDP telecommunications Standard 3.2) for the pharmacy service sector for both claim and eligibility transactions. Finally, additional commenters suggested that there is no business need that should force health care providers to move to the ASC X12N 270/271 transaction for the pharmacy service sector for eligibility inquiries. It was stated that thousands of eligibility transactions are performed each month by pharmacies and health plans using the NCPDP telecommunications Standard 3.2. Furthermore, there is no benefit in moving to the ASC X12N 270/271 for pharmacy eligibility inquiries since the NCPDP telecommunications Standard 3.2 is already fully supported.

Response: We agree with the commenter that eligibility and enrollment are integral to the NCPDP Telecommunications Standard named in the proposed rule for retail pharmacy claims. We name the NCPDP Telecommunications Standard 5.1 and the NCPDP Batch Standard as the standard for patient eligibility and coverage information within the retail pharmacy sector since the eligibility information is part of the NCPDP standard. We have added this requirement to § 162.1202.

vii. *Comments:* Several commenters suggested that the ASC X12N 270/271 Eligibility Roster implementation specification for eligibility for a health plan should be adopted as a HIPAA standard. One commenter suggested that the description of the roster implementation is incorrect in that it states that the roster is a separate part of the 270/271. The commenter went on to explain that the roster is essentially the same transaction as that being recommended for response to an X12N 270 inquiry, but the implementation specification has different values in some of the segments so that the X12N 271 response can be sent without an associated inquiry, and so that the hierarchy of benefits can be more fully described. It was also suggested that the example of a health plan sending the X12N 270/271 roster to alert a hospital about forthcoming admissions was not representative of the functionality of the roster. The commenter also stated that there are health care providers who currently use the X12N 270/271 electronic roster implementation, and it was misleading to use the term ''not recommended'' in connection with the roster implementation specification. Additionally, the commenter stated that it is incorrect to say that the roster implementation specification is not millennium compliant and that the standards development process for the implementation specification is not completed.

Response: We agree that a more precise description of the roster functionality would be to refer to it as another implementation rather than another part of the standard. Although the current version of this implementation specification is millennium compliant and complete, this was not true at the time the proposed rule was written. Thus, we did not recommend the use of the ASC X12N 270/271 to provide requests for eligibility. Another implementation of the ASC X12N 271 is designed to handle requests for eligibility ''rosters,'' which are essentially lists of entities—subscribers and dependents, health care providers, employer groups, health plans—and their relationships to each other. For example, this transaction might be used by a health plan to submit a roster of patients to a health care provider in order to designate a primary care physician.

The eligibility inquiry and response is the only implementation proposed under HIPAA for eligibility for a health plan. The implementation of the HIPAA standards will be a great undertaking and at this time we are limiting the transactions to those identified in the proposed rule. In addition, entities who move eligibility information in a roster format may do so using any available format, including the ASC X12N 270/271 roster implementation. After the implementation specification for the roster function is complete and approved by an accredited standard setting organization, we recommend that a request for adopting the new standard be submitted to the DSMOs. See § 162.910 for the process to request new standards.

viii. *Comment:* Several commenters recommended that the Interactive Health Care Eligibility/Benefit Inquiry (IHCEBI) transaction set and its companion, the Interactive Health Care Eligibility/Benefit Response (IHCEBR) transaction set, should also be adopted.

Response: The IHCEBI/IHCEBR is based on UNEDIFACT syntax, not ASC X12N syntax. At the time of the development of the proposed rule, the syntax used was a version subsequently modified by UNEDIFACT, resulting in the need to reformat the messages into the modified syntax before they could

be adopted by the UNEDIFACT body. Therefore, there was no uniform implementation specification developed for these standards. After consideration, we decided that, where possible, the transactions to be named in the proposed rule should have a uniform syntax structure. This was possible for all transactions; ASC X12N transactions were chosen because they met the criteria of having implementation specifications and having the same basic syntax structure. The NCPDP standards also met the criteria, and each transaction is designed using the same syntax structure. If, in the future, a millennium compliant interactive eligibility for a health plan transaction standard is approved by an ANSI accredited standards setting organization and an implementation specification exists, we shall consider it for adoption as a HIPAA standard.

ix. *Comment:* We received one comment that suggested we clarify that the eligibility response sent by a health plan is not the equivalent of a prior authorization of services, and does not guarantee coverage of a rendered service.

Response: We believe that the purpose and scope of the ASC X12N 270/271 is clearly defined in the ASC X12N 270/271 Health Care Eligibility Benefit Inquiry and Response implementation specification. An eligibility response sent by a health plan is not the equivalent of a prior authorization of services and does not guarantee coverage of a rendered service. Furthermore, the function of prior authorization of services is explicitly defined in the ASC X12N 278, Health Care Services Review—Request for Review and Response implementation specification, which is the recommended standard for this transaction.

x. *Comment:* One commenter suggested that we clarify the requirements to clearly state that while health plans must implement the ASC X12N 270/271 Eligibility Request/Response, they are not required to respond to all requests sent in the ASC X12N 270.

Response: We do not agree. A health plan may not reject a standard transaction because it contains information the health plan does not want. This principle applies to the data elements of all transactions in this rule. Health plans must accept a complete ASC X12N 270 and must respond with all applicable responses that are included in the ASC X12N 271. If health plans can arbitrarily respond or not respond to a standard transaction, then the cost saving effect of using the standards will be blunted by a requirement to negotiate aspects of every transaction with every trading partner.

xi. *Comment:* One commenter said that the ASC X12N 270 transaction requires an ASC X12N 271 response to every record, a one-to-one correspondence. The commenter recommended that the one-to-one response be negotiable between the parties that have a contract to exchange information.

Response: A one-to-one correspondence to every record is not required. The ASC X12N 270/271 transaction sets were built so that trading partners could use them in real time or batch mode. We agree that negotiation must occur between trading partners (including clearinghouses/switches) regarding the processing limits (i.e., file size, transmission speeds).

g. *Transaction Standard for Health Plan Premium Payments.* In subpart Q, we proposed the ASC X12N 820—Payment Order/Remittance Advice, Version 4010, Washington Publishing Company, (004010X061) as the standard for health plan premium payments.

Comments and Responses on the Transaction Standard for Health Plan Premium Payments

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 53 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. One comment identified a business need that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Six comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 6 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. *Comment:* Several commenters said that health plans must be free to accept premium payment data in non-standard formats if that option is chosen by a sponsor. In the preamble to the proposed rule, we stated that health plans must ''accept only the standard specified in § 142.1704.'' (63 FR 25295). Commenters suggested that we not include the word ''only'' in the final rule under the health plan requirements. One commenter suggested that we add language in the rule to state: ''However, health plans may require trading partners to use the standard transaction to conduct business.''

Response: We recognize that entities such as sponsors perform EDI with health plans. The proposed rule stated that health plans are required to use only the standard specified in § 142.1702 for electronic health plan premium payments. Sponsors, one of the primary trading partners with whom the health plans exchange health plan premium payment transactions, were proposed to be excluded. Our reference to the requirements for health plans to accept ''only'' the standard specified was intended to preclude health plans from using data in formats other than standard when conducting transactions that are standard transactions. It was not intended to impose requirements on sponsors. Thus, sponsors remain free to send health plan premium payments in nonstandard format if they choose, and health plans are free to accept the data.

We expect that sponsors may voluntarily accommodate a health plan's request to use the ASC X12N 820 by directly submitting the transaction in standard format, or by using a health care clearinghouse to translate non-standard data into the standard format.

v. *Comment:* One commenter said that Version 3040 is the most widely accepted version of the ASC X12N 820 in the financial community and, therefore, recommended its adoption. The commenter reasoned that by setting the minimum version at 3040, The Secretary would greatly increase the likelihood of successful implementation since it is currently in use for transmitting premium payments.

Response: We did not recommend version 3040 because it was not millennium ready.

vi. *Comment:* Several commenters, including the Department of the Treasury, said that the ASC X12N 820 should not be named as a payment order format for use by Treasury-disbursed Federal agencies since they use Federal implementation conventions and Treasury payment formats that may not be compatible with this standard. All Federal payment formats disbursed by these agencies must go through a commercial financial institution prior to delivery of the payment to the recipient. It was stated a distinction needs to be made in regard to the function of the

X12N 820. It is used as a ''payment order'' and a ''remittance advice'' delivery.

Response: The ASC X12N 820 is an appropriate format for use by all covered entities and is designed to provide the information needed to process a payment of health insurance premiums from an employer or other sponsor of health insurance to a health plan. If a Federal agency is a covered entity and conducts a transaction adopted under this part with another covered entity electronically, the transaction must be conducted as a standard transaction. If the other entity is not a covered entity, of course, the standard transaction need not be used unless the Federal agency is a health plan and the other entity requests the standard transaction.

This standard is quite flexible with respect to transfers of funds. The implementation specification for the ASC X12N 820 contains two parts, a mechanism for the transfer of dollars and one for the transfer of information about the payment. It allows these two parts to be transmitted separately. Consistent with the implementation guide, actual payment may be sent in a number of different, equally acceptable ways, including check and several varieties of electronic funds transfer, as long as the detailed information describing the payment is transmitted to the health plan using the ASC X12N 820 directly or indirectly (through a health care clearinghouse or financial institution). When the transfer of funds is part of paying a health care premium the ACH transaction may continue to be used as a valid part of an ASC X12N 820 transaction where the other part of the transaction is sent to the health plan. Although these standard transactions allow transmission of one or both parts through a financial institution, they do not require both parts to be sent to the financial institution, and the financial institution is not required by this regulation to accept or forward such transactions. The Department of the Treasury has confirmed that this standard does not conflict with their requirements for disbursements.

vii. *Comment:* One commenter asked whether a sponsor must use the 4010 version of the ASC X12N 820.

Response: Section 1172 of the Act identifies the entities required to comply with the HIPAA standards. Sponsors are not included in this provision. If sponsors choose to use the ASC X12N 820, we strongly encourage that they use the version of the standard named in this rule.

h. Transaction Standard for Referral Certification and Authorization. In subpart R, redesignated as subpart M, we proposed the ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, Washington Publishing Company, (004010X094) as the standard for referral certifications and authorizations.

Comments and Responses on the Transaction Standard for Referral Certification and Authorization

The majority of commenters expressed support for the selected standard.

i. Of those comments we referred to ASC X12N, the work groups determined that 146 comments identified areas where the implementation specification could be improved, and the appropriate changes were made.

ii. Thirteen comments identified business needs that ASC X12N judged could already be met within the current standard implementation specification. Detailed information on how the current implementation specifications can be used to meet these business needs has been provided by ASC X12N at the Internet site in § 162.920.

iii. Three comments alleged technical or editorial errors in the standard implementation specification. A technical review of these issues was conducted by work groups within ASC X12N. The work groups determined that the 3 comments identified areas where the implementation specifications were in fact correct and that no changes were needed. Changes to the implementation specification were not required.

iv. There were another 76 comments which identified business needs that ASC X12N judged could not be met directly within the current standard implementation specification. The implementation specifications could not be changed prior to the issuance of the final regulation because the X12 standards development process for modifying standards could not be completed in time. However, a review of the issues by the ASC X12N work groups has identified a means of meeting the business needs within the existing implementation specification as an interim measure. Organizations and individuals who submitted such comments are encouraged to work with the DSMOs to submit a request to modify the national standard.

v. *Comment:* Several commenters requested that we need to make clear that if a state health agency does not authorize referrals it is not required to use the standard.

Response: If a state health agency does not conduct referral certification and authorization, then the health plan is not required to support this transaction based solely on the fact that the transaction is one named as a HIPAA transaction. However, we note that most commercially available software packages are designed to support a suite of transactions. We anticipate that vendors will offer suites for all HIPAA transactions, which may encourage health plans to support this specific transaction.

vi. *Comment:* Several commenters recommended that we include the Inquiry and Response and Notification implementations of the ASC X12N 278.

Response: The Request for Review and Response is the only implementation proposed under HIPAA for referral certification and authorization. We are not accommodating this request, because at the time of the development of the proposed rule, the standards development process for the ASC X12N Inquiry and Response and Notification implementation specifications was incomplete and not supported by an accredited standard setting organization. The implementation of the HIPAA standards will be a great undertaking and at this time we are limiting the transactions to those identified in the proposed rule. Entities who use Inquiry and Response and Notification implementations may do so using any available format, including the ASC X12N 278 implementations until such time as we may adopt a standard for Inquiry and Response and Notification through regulation. After the implementation specification for these functions is complete and approved by an accredited standard setting organization, we encourage a request to test a proposed revision to the standard be submitted to the Secretary (see § 162.940).

G. Compliance Testing

Proposal Summary: We identified three levels of testing that are typically performed in connection with the adoption and implementation of the proposed standards and their required code sets:

- Level 1—developmental testing, the testing done by the standards setting organization during the development process
- Level 2—validation testing, the testing of sample transactions to see whether they are written correctly.
- Level 3—production testing, the testing of a transaction from a sender through the receiver's system.

Pilot production—Because of the billions of dollars that change hands each year as a result of health care claims processing, we stated that we believe the industry should sponsor

pilot production projects to test transaction standards that are not in full production prior to the effective date for adoption of the initial HIPAA standard formats.

We also stated that it would be useful to all participants if pilot production projects and the results of pilot projects were posted on a web site for all transactions. For the health care claims or equivalent encounter information transactions, we believe that posting pilot production projects and the results of pilot projects on a web site must be mandatory.

Comments and Responses on Compliance Testing

Comment: The majority of commenters recommended that the posting of pilot production results should be voluntary, not mandatory.

Several commenters suggested that all HIPAA standards projects be posted and that the government should provide funding or at least publicly advertise the results of all compliance testing projects. It was suggested that the Electronic Healthcare Network Accreditation Commission (EHNAC) could host a bulletin board or web site in which tests results could be published.

Several commenters asked whether entities providing validation testing will need to be certified. They stated that validation testing is only useful if certification is obtained. Several commenters recommended that the Secretary endorse the Standard Transaction Format Compliance System (STFCS) process established by EHNAC for validation testing, suggesting that EHNAC certification lends credibility and reliability to the process. However, other commenters wanted certification for compliance to be voluntary.

Several commenters recommended that WEDI, X12, or some other group further develop the various types of testing situations which might occur as well as tentative protocols for handling such tests.

Several commenters wanted the testing processes thoroughly defined prior to the implementation of the standards. For example, commenters wanted costs defined, and testing time frames, scheduling, and turn around times established. Others wanted to gain experience using the transactions first and allow testing to be done on a good faith effort basis.

The majority of commenters recommended that all of the transactions should be tested and any necessary modifications made prior to the publication of the final rule and as early as possible.

Response: We agree that posting of results for any HIPAA standard should be voluntary. As long as the transactions are successfully implemented in production, posting of the results is more of a marketing, advertising, and sales issue than a technical concern.

Since the HIPAA provisions do not require the Secretary to certify compliance with HIPAA standards, the Secretary is not conducting certification reviews or recognizing private organizations that have decided to conduct such reviews. Therefore, any certification of commercial entities performing validation testing will remain in the private domain and be voluntary. While receivers of transactions are likely to test whether a vendor that claims to be HIPAA compliant is, in fact, producing compliant transactions, this is a matter of business practice, and such tests are not being mandated in this rule.

The HIPAA provisions require the Secretary to adopt standards developed by standards setting organizations (SSOs) whenever possible. With this approach, the standards developed by a consensus of the health care industry will be implemented by the health care industry at large. Consistent with this approach, the Secretary is relying on those in the health care arena to come forward and test the designated standards. All of the standards have completed levels 1 and 2 of testing. Some of the standards have completed all three levels of testing and are in full production (for example, the NCPDP standard and many of the data code sets). We urge the health care industry to work in concert with the DSMOs. Health plans and vendors currently define their own test plans and conduct their own tests. We urge health plans to develop pilot test plans using the implementation specifications specified by the Secretary.

Certain types of testing are commonly conducted by organizations that transmit transactions electronically. These include site, unit, integration, connectivity, end to end, and parallel testing. ASC X12N has agreed to solicit private individuals, organizations, vendors and other interested parties to facilitate these types of testing and document their results and conditions on the X12N web site. Many government agencies will test and post results as well. X12N intends to continue to review and refine its testing process to make sure it continues to meet the requirements of the health care industry.

H. Enforcement

Proposal Summary: Under the statute, failure to comply with standards may result in monetary penalties. The Secretary is required by statute to impose penalties of not more than $100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed $25,000 for violations of a single standard for a calendar year.

We did not propose any enforcement procedures, but we will do so in a future **Federal Register** document.

We did, however, solicit input on appropriate mechanisms to permit independent assessment of compliance.

Comments and Responses on Enforcement

1. *Comment:* We received many comments regarding the timing of enforcement. Several commenters stated an enforcement and mediating body is needed immediately. The majority of commenters called for the delay of enforcement. Commenters also requested that HCFA permit initial compliance testing of these standard transactions to be based on good faith. It was also recommended that actual testing for compliance occur later. Several commenters said that we should not assess penalties in the first year. A few commenters requested that we establish a body to which a health care provider may go for help. Others requested advance notice of enforcement procedures.

A few commenters requested that we define the terms ''person'' and ''violation,'' as well as provide examples of violations and provide descriptions of how penalties will apply. Several commenters requested that fines apply only to health plans and health care clearinghouses, and not to health care providers.

One commenter suggested that the Electronic Healthcare Network Accreditation Commission (EHNAC) be endorsed as a process for establishing compliance in using the standards.

Response: The proposed rule, like the other three notices of proposed rulemakings (NPRMs) published in 1998 to implement the administrative simplification requirements of HIPAA, did not contain provisions for compliance and enforcement. We are, therefore, not adopting any compliance or enforcement provisions in this final rule. As we indicated in the proposed rule, we will be developing a separate compliance and enforcement rule to establish compliance and enforcement procedures for these and other

administrative simplification requirements. We plan to publish an NPRM requesting public comments next year, and to subsequently issue a final compliance and enforcement regulation that will become effective prior to the first compliance dates of these rules. We anticipate addressing the specific issues of compliance, timing, appeals, and technical assistance in the projected compliance and enforcement rulemaking. We also plan to address the practicability of using some type of self-certification or certification by external parties to demonstrate compliance with some or all of the requirements.

We encourage covered entities, trading partners and business associates to address issues relating to compliance and resolution of disputes concerning use of these standards in their trading partner agreements. The following resources are available to assist with questions of interpretation and application of specific transactions standards and implementation guides:

For assistance in resolving a particular X12N issue, submit the issue to the X12N Insurance list serve. To subscribe to the X12N Insurance list serve, go to http://www.x12.org.

For additional information regarding the interpretation of the NCPDP standards, go to http://www.ncpdp.org.

The Department will develop a plan for providing technical assistance to covered entities and others affected by the rule. We plan to announce the availability of technical assistance through the **Federal Register**, various web sites including the Department's Administrative Simplification web site and the web sites identified above, and through other means.

2. *Comment:* Several commenters suggested we address educational activities. It was stated that the changes required by the administrative simplification provisions of HIPAA cannot be implemented without a concerted and sustained educational effort.

Response: We agree that HIPAA educational activities are critical to the successful implementation of the standards. Industry organizations, such as X12N have begun to provide education about standard transactions. While not required by this rule, we encourage health care clearinghouses and vendors to educate their customers as well. The Health Care Financing Administration (HCFA) has scheduled a series of regional training sessions for Medicare and Medicaid. They have contracted with instructors who are nationally recognized experts in EDI standards. Medicare and Medicaid have also published health care provider education articles. Copies of these articles may be obtained from local HCFA contractors.

I. New and Revised Standards

We proposed a procedure for entities to follow if they want a new standard. We also proposed a procedure that we would follow if a standard needs to be revised.

Comments and Responses on the Procedures for New and Revised Standards

1. New Standards for Existing Transactions

Proposal Summary: To encourage innovation and promote development of new standards, we proposed to develop a process that would allow an organization to request a replacement of any adopted standard or standards.

An organization could request the replacement of an adopted standard by requesting a waiver from the Secretary of HHS to test a new standard. The organization, at a minimum, would have to demonstrate that the new standard clearly offers an improvement over the adopted standard. If the organization presented sufficient documentation that supported testing a new standard, we wanted to be able to grant the organization a temporary waiver to test the new standard while remaining in compliance with the law. We did not intend to establish a process that would allow organizations to request waivers as a mechanism to avoid using an adopted standard.

Comment: Most commenters supported the proposed process for testing proposed revisions to standards. Several commenters preferred the word ''exemption'' instead of the word ''waiver,'' since it makes it clearer that standards should generally not be waived. It was also suggested that the cost benefit analysis should apply to the report developed after the pilot study and not to the application phase of the temporary exemption. Another suggestion was to have organizations wishing to test a new standard submit written concurrences from trading partners who will participate in testing the new standard. Those organizations must also assure they will continue to support existing standards during the testing process.

Response: We agree that standards should generally not be ''waived.'' We agree with the substance of commenters concern and therefore, we have added language in § 162.940 to include the suggested changes and are using the term ''exception'' to indicate that the standard generally applies, but that a specific group of entities are not required to follow all or a portion of one standard to permit testing of proposed revisions. While industry practice uses 1 year for testing, we have decided to grant an exception for a period not to exceed 3 years. We decided to adopt a 3 year time frame because we believe this period gives us flexibility in determining the extent to which testing may be required. We emphasize that a new standard is a standard that is not one of the transactions defined in this rule, including code sets. A revised standard is specific to the version of the Secretary's standard and the implementation specifications.

2. Revised Standards/Proposals for Additional Standards

Proposal Summary: We recognized the very significant contributions that the traditional data content committees (DCCs) (the NUCC, the NUBC, the ADA, and the National Council for Prescription Drug Programs (NCPDP)) have made to the content of health care transactions over the years and, in particular, the work they contributed to the content of the proposed standards in the proposed rule. We proposed that these organizations be designated to play an important role in the maintenance of data content for standard health care transactions. We proposed that these organizations, assigned responsibility for maintenance of data content for standard health care transactions, would work with X12N data maintenance committees to ensure that implementation documentation is updated in a consistent and timely fashion.

We intended that the private sector, with public sector involvement, would continue to have responsibility for defining the data content of the administrative transactions. Both Federal agencies and private organizations would continue to be responsible for maintaining medical data code sets.

a. Code Sets. Comment: Several health care systems, State agencies, and insurance companies submitted comments agreeing that all coding systems adopted as HIPAA standards should have an open updating process, *e.g.,* the responsible panel or committee of experts should be representative of a broad cross-section of the relevant stake-holders; all panel or committee members should have voting privileges, any interested party should be eligible to submit proposals for additions and changes, and the meetings should be announced in advance and should be open to the public. They made specific criticisms of the current processes used

for updating HCPCS (for example, no representation from the commercial companies that actually pay claims), CPT, and ''The Code'' (dental).

Commenters made several favorable comments about the current process for obtaining public input and making decisions regarding changes to ICD–9–CM.

Response: We agree that the current process for making decisions regarding updates to the ICD9–CM provides a useful model, and we consider it to be probably the most workable approach for code sets. This process encourages broad input but gives final decision-making authority to the organizations responsible for developing the code sets. A purely democratic approach, under which all changes are put to a vote by the members of a particular standards committee and any organization eligible to become a voting member, is likely to have significant drawbacks for routine code set maintenance, *e.g.,* delays in updates, inability to make changes that are essential for a minority of players, and changes in the code set that undermine its logical structure. We received clarification from the developers of the ''The Code'' (dental) and the CPT–4 about their update processes that will be in place at the time these standards are implemented. We are confident that it will be a workable open updating process.

In response to the comments regarding the process for updating HCPCS, we have reviewed our current policies and procedures governing the submission of requests from the public for revisions/changes to the HCPCS. We have ensured that existing procedures are easy to use and are adequately communicated to the public. The current process for updating the HCPCS includes the following features:

- Identification of a central contact for information/assistance regarding the process for submitting requests to modify the coding system.
- Advance notice of meeting agendas.
- Identification of proposals submitted for coding consideration.
- Opportunity for public comment on the proposals.
- Subsequent posting of coding changes for public information.

b. Transaction Standards. Comment: While most commenters supported the proposal that the NUCC, NUBC, and the ADA be designated as the data content committees (DCCs), several commenters opposed this proposal. Commenters opposing designation of these bodies recommended that X12 be named as the sole content body, pointing out that X12 is sufficiently open to include views from the NUCC, NUBC, ADA and others. Some commenters believe that the NUBC and NUCC do not adequately support nor understand the health care providers they represent, and their expertise is grounded in paper rather than electronic transactions. Some commenters opposed selection of the ADA as it was perceived to include inadequate non-health care provider representation for data content issues. Others opposed the selection of the NUCC because it was perceived as non-representative of the full range of health care professionals.

Other commenters stated there should not be a separate DCC for each X12N transaction because a change in one transaction may impact another. Another commenter stated X12 should be allowed to have a permanent voting member on each DCC that is selected, and that X12 should retain responsibility for the maintenance of the data dictionary for the selected transactions. Some commenters recommended that the NUCC, NUBC, and ADA continue to interact with X12N, and did not see a need for government oversight of the process. They felt that the current process works well and should not be tampered with.

Several commenters recommended that these multiple content bodies should have consistent protocols and should implement them uniformly. They recommended that the committees have meetings open to the public with cross-industry representation, including input from the public sector. Commenters also suggested that the committees operate under an equitable consensus process, and that they sign a memo of understanding (MOU) with the Secretary to ensure due process, close cooperation with standard setting organizations, and balanced voting. They asked that the data maintenance and change process for the standards be clearly described in the final rule. A request was also made for the establishment of an oversight group responsible for arbitrating conflicting decisions reached by different data content committees; handling appeals on data content committee decisions; coordinating data requests involving more than one data content committee; and centrally coordinating with X12.

Some commenters recommended that while NUCC, NUBC and ADA have a DCC role, this role should focus primarily on claims information. These committees were not perceived as having experience with enrollment, eligibility, premium payment, remittance, claim status, and referral issues. It was recommended that X12N or another industry forum serve as the data content committee for these other standards.

A few commenters asked that, as an SSO, the NCPDP's role in the DCC process be addressed in the final rule. A number of comments were also submitted concerning appointment of a DCC for the attachments transaction standard under HIPAA.

Response: Only the NUCC, NUBC, ADA, NCPDP and X12N expressed an interest in having a role as a DCC for the X12N standards selected for the HIPAA transactions in this rule. To address the issues raised by these comments, representatives of the Secretary have contacted many officers and members of the NUCC, NUBC, ADA, NCPDP, X12N, WEDI and other organizations. Discussions centered on the following issues: Preferences; operational models; control and coordination issues; time frames for incorporation for a request for a data change in implementation specifications; membership composition; internal processing rules and voting requirements; willingness to serve; expectations; public participation; and other details.

In § 162.910, we state that the Secretary may designate an organization(s) to maintain the standards, propose modifications to existing standards, and propose new standards to the National Committee on Vital Health Statistics (NCVHS). These organizations, which can include DCCs (for example, the NUCC) and SSOs (for example, X12N), also receive and process requests for the creation of a new standard, or the modification of an existing standard. In the proposed rule, we referred to these organizations strictly as DCCs and SSOs. In this final rule, we call the organizations that are designated under § 162.910 Designated Standard Maintenance Organizations (DSMOs). The DSMOs are a subset of DCCs and SSOs, and we have published a notice announcing these organizations elsewhere in this **Federal Register**.

We recognize that not every medical specialty or health plan may consider itself to have sufficient voting representation or weight within the DSMOs. Therefore, the DSMOs will operate a process which allows open public access for requesting changes to the standards, consideration of the request by each organization, coordination and final agreement among the DSMOs on the request, an appeals process for a requester of a proposed modification if the final decision is not satisfactory. The DSMO's process will also allow for an expedited process to address content needs of the industry, and address new Federal legislation within the implementation date

requirements of the law. Recommendations will be presented by the DSMOs to the NCVHS, where appropriate. Change requests can be submitted via a designated web site that will be made available to the public.

The DSMOs will also improve coordination among themselves, publicize open meetings, and, in some cases, expand voting membership. The DSMOs understand that their appointments as DSMOs will be reconsidered if they fail to perform, coordinate, and respond to the public as described in § 162.910.

J. Proposed Impact Analysis

Proposal Summary: On the same day that we proposed the standards that are the subject of this final rule, we also published a rule to propose the national provider identifier (NPI)(63 FR 25320). In that rule, we set forth an impact analysis that covered the collective impact of most of the administrative simplification standards (including standards for security and the unique identifiers, but not including the costs of privacy standards, which will be detailed in the privacy final rule) since estimating the impact of them individually would be misleading. We did provide an impact analysis that was specific to each standard, but the impact analysis assessed only the relative impact of implementing a given standard.

Conclusion of impact analysis of proposed rules

We estimated that the impact of the proposed rules would result in net savings to health plans and health care providers of $1.5 billion during the first five years; use of the standards would continue to save the industry money.

Comments and Responses on the Proposed Impact Analysis—General

1. Cost/Benefit Analysis

a. *Comment:* Several commenters questioned the validity of the projected cost of implementing electronic data interchange standards (EDI) because it was based largely on data compiled in 1992 by WEDI. The WEDI report projected implementation costs ranging between $5.3 billion and $17.3 billion with annual savings projected to be between $8.9 billion and $20.5 billion. It was stated the WEDI report projected the costs as being much higher. One reason the projected cost was inflated by WEDI is because the HIPAA compliance process will be spread out over a longer period of time than is provided for in the statute. The HIPAA standards will require additional data elements, will replace local coding schemes with national ones, and will affect many business process associated with health plans and health care providers. Therefore, the modifications to existing systems will be extensive and time consuming, with a high degree of uncertainty regarding the projected benefits. The estimates in this section need to be recalculated taking into account more current figures and trends.

Response: The cost estimates used in the proposal cost analysis were based largely on data compiled in 1992 but updated to reflect 1998 costs. The report developed by WEDI projects implementation costs ranging from between $5.3 billion and $17.3 billion with annual savings projected to be between $8.9 billion and $20.5 billion. The Department has obtained more current data and information on costs and market trends, and these data are used in the final cost analysis. It is an accurate statement that the HIPAA standards would create new data elements and would remove local coding schemes in favor of national ones. However, some of the factors that would cause health care providers or health plans to incur a substantial financial burden have been spread out over a longer period of time than was suggested by the commenters. The removal of local coding schemes, for example, will not occur immediately, but will occur over a two year time period following the publication of this final rule. A longer time frame will spread out the implementation costs and therefore will not pose as great a burden as previously expected. With regard to Medicaid specifically, some of the unusual service type codes (i.e. taxi services) will also not have to be removed.

a. *Comment:* One commenter stated that although the methodology used in the WEDI report served as a basis for determining the cost/benefit analysis explored within the proposed rule, the concept of cost-benefit analysis is vague and resembles something of a ''black art.'' Because of the large number of variables and the complexity of the assumptions with which health care providers and health plans will have to deal in implementing of HIPAA, it is hard to determine the actual advantages or disadvantages for the HIPAA standards as a group.

Response: It is difficult to assess the cost and benefits of the HIPAA standards with absolute certainty. While there are no standard methods for doing these analyses, an effort was made not to overstate the benefits or understate the costs of implementation. The WEDI report is the most extensive industry analysis of the effects of EDI standards available.

c. *Comment:* Several commenters stated that the sweeping changes that HIPAA mandates make it difficult to do a precise cost-benefit analysis. One commenter noted that additional actuarial studies should be done, with the cooperation of health plans and health care providers. The commenter also stated that pilot programs should be initiated in different geographic regions in order to identify the feasibility of the scope and time frames for HIPAA implementation. Another commenter stated that they believed that the costs associated with the NPI and subsequent system changes required of covered entities may run into the six-figure range, which is not mentioned in the proposed rule.

Response: It is difficult to assess the cost and benefits of the HIPAA standards with complete accuracy. This is particularly true considering that these changes have no historical precedent. While initiating pilot programs in each region and conducting further actuary studies may provide detailed analysis, it is neither feasible nor practical. The time frame for implementation, as mandated by the statute, precludes this. The analysis given was derived from aggregate figures that provided the most realistic impact in terms of costs and savings. NPI costs are currently being evaluated by the Department of Health and Human Services and will be published in the final rule regarding the NPI.

d. *Comment:* Several commenters expressed concern with the cost-benefit analysis in regard to Medicaid. One commenter stated that dismantling 80% of the Medicaid systems that process EDI in order to accommodate the HIPAA standards will result in a loss. Furthermore, it was noted that the use of a dual health care provider assignment number will continue to be used in their Medicaid Management Information System (MMIS) which would mitigate any cost savings benefit.

Response: The rationale behind the Impact Analysis was to evaluate the cost and savings for the health care system as a whole. While the cost to a specific health plan or health care provider may outweigh the benefits to that entity, our analysis showed overall savings to the health care system. There is a greater possibility for savings in the future due to use of a common identifiers, the increased simplicity of processing transactions, and the overall coordination of benefits. We do not anticipate an immediate need to overhaul an entire system, but we do expect some implementation costs

which have been factored into the analysis. Translation software may be purchased at reasonable cost thus avoiding major reprogramming. (Since the translators will not affect the issues raised, they should have no impact.) Health plans and health care providers may also use a health care clearinghouse to perform the translation. We believe entities that use health care clearinghouses will see costs reduced or at least stabilized.

We do acknowledge that the $1 million cost estimate for redesigning a State Medicaid system to accommodate these standards may have been too low. Further analysis indicated that costs to individual State Medicaid programs may be in the $10 million range. While the cost in each State may differ somewhat, the Federal government will pay approximately 75–90 percent of these costs, leaving the costs to each State near the $1–2.5 million range. We believe that long-term benefits to States will outweigh the costs.

e. *Comment:* Several commenters stated that many of the numbers associated with our analysis were based upon calculations using aggregate data instead of evaluating the standards individually. It was stated that a separate assessment of each standard would yield more realistic results because the staged release of the proposed rules led to the impression that the HIPAA standards will be implemented in a staggered fashion. Assessing the cost of implementing each standard independently would not yield inflated costs, but would yield numbers that would approximate what the actual costs will be. A number of commenters suggested different approaches to make the rules more effective and beneficial, as well as make the implementation more orderly. One such approach was that the implementation of all of the standards be postponed until all of the proposed rules are published (*e.g.,* a single harmonized implementation date based on the date of the last published rule), perhaps with the exception of those standards that have been deferred such as the First Report of Injury and the Patient Identifier. Another would be to break down the implementation into phases. The first phase would be full implementation of the standards within 2 years of the publication dates of the final rule for identifiers for health care providers, employers, and health plans. Phase 2 would be the full implementation of all the transactions including attachments and the security rule within 2 years of the publication of the last of these final rules. Phase 3 would be the implementation of the individual identifier within 2 years after the publication of the identifier final rule. The last recommended approach is the simultaneous publication of the final rules for the health care provider, health plan and employer identifiers; the transaction sets, including the First Report of Injury and the attachments; and the security regulations. This method would ensure that health care providers and vendors will have the changes necessary for both internal application systems and external communications.

Response: While the original plan was to implement all of the standards at the same time, the realities of the regulatory process and the impact of millennium activities will cause a variety of effective dates. This rule is the first to be published, with other rules for standards following shortly. It is difficult to assess the cost-benefit of each standard individually because there are costs and benefits associated with the interaction of many of the standards. It is more realistic to assess cost-benefits of standardizing EDI in general, using aggregate data to give a more complete picture, than attempting to measure the impact of each standard. Many of the numbers associated with this analysis are based upon calculations using aggregate data.

2. Implementation Costs

a. *Comment:* One commenter noted that a translator does not address the problems health care providers will have in relating their health care provider type to State billing systems or in billing local codes.

Response: The local code issue has been addressed in this rule. The health care provider type issue will be addressed in the final rule for the National Provider Identifier. Translators will allow health care providers to accommodate most of the business process changes required by this rule.

b. *Comment:* Several commenters stated that we greatly underestimated the implementation costs. They claimed that the costs associated with translator devices were not included, and upgrades to EDI systems could continue annually and could involve multiple standards which would not be classified as short-term costs. Furthermore, it was stated that all methods of complying with the HIPAA requirements will have costs associated with them that will not be limited to the first three years of implementation. There will be ongoing costs for training and support that will surpass the estimates given by the impact analysis. In addition, third-party administrators opting for in-house programming have already spent large sums of money to prepare for administrative simplification before compliance is mandated. Some commenters fear that health care clearinghouses will potentially charge high yearly fees and high transaction fees due to an increase in demand. They believe high fees will not be eliminated after the three year time frame has ended and the costs could be passed on to health care providers, health plans and purchasers. Finally, while the proposed rule proposed the elimination of data entry clerks and mailing costs, it did not account for software engineers that will be needed to redesign or reprogram a system. The personnel costs associated with these individuals could be 4–6 times as high as a data entry clerk.

Response: These comments raise several important issues. The first one deals specifically with the cost of a translator. The cost of translators, in fact, were included in estimating upgrade costs. In addition, some of these EDI standards would have occurred without the passage of HIPAA due to the demands of the health care industry. Many of the other costs mentioned, such as costs for training and support, would have also occurred whether or not standards were mandated, so we do not believe them relevant to the impact of this rule. The financial data given in the Impact Analysis was based on the most reasonable estimates available and took into account the implementation costs, including software engineering, that will be incurred during the first three years. This justifies the categorization of expenditures associated with the HIPAA standards as one-time or short-term. All of the costs associated with a system upgrade have been included in the implementation time-frame noted in the Proposed Rule. Finally, redesigning or reprogramming work that will be done in accordance with this regulation has been included in the implementation costs. While it is an aggregate amount, it provides the most realistic estimate based on available data. Health care clearinghouse charges can be expected to decrease due to market forces.

c. *Comment:* One commenter noted that the statement that increased EDI claims submission has the potential to improve cash flow because those who use EDI get their payments faster runs counter to HCFA's decision to instruct its contractors to increase the waiting period before they issue checks to a health care provider. It was stated that HCFA's decision may cause cash flow problems for physicians and mute the benefits of increased efficiency that are supposed to be generated by electronic claims submission. It was also stated

that HCFA needs to refrain from taking actions that run counter to realizing the benefits envisioned by Congress and specified in the statute.

Response: Health care providers will share in many benefits of administrative simplification. HCFA is fully supportive of administrative simplification and will examine this issue carefully to ensure that there is no conflict. We have not instructed our contractors to change the waiting period for payment of Medicare claims, be they paper or electronic.

d. *Comment:* One commenter stated that before the industry begins to use any of the transactions in production, the National Provider System (NPS) should be fully loaded and tested. It was recommended that all health care providers be enumerated and NPS data should be ready for use on all transaction sets required under HIPAA within the first six months of the implementation period.

Response: The proposed rule acknowledged that there is a strong likelihood that implementation problems will result in rejected transactions, manual exception processing, payment delays, and requests for additional information. Therefore, the transaction formats allow for the use of current/legacy identifiers until the NPS is fully implemented. As recommended by a number of commenters, we have concluded that it would be best to implement the transactions and make sure they are implemented correctly before we begin requiring the identifiers be to used in the transactions.

e. *Comment:* Several commenters representing Medicaid have raised the notion that costs, both initial and long-term, will be far more expensive than originally anticipated. For example, one commenter stated that they currently use intelligent health care provider numbers with extensive hard coding and editing. Changing their MMIS would require changing the basic logic of 11 subsystems and 3 million lines of code. Another commenter estimated they will spend $6.5 million to implement the HIPAA standards despite the fact that 78% of their claims are already submitted electronically.

Response: The Impact Analysis generalized that standardization can be expected to lead to cost-effectiveness and avoidance of burden (see also the response to the comment in J. 1. d. in this section of the preamble). A number of States have provided cost estimates which indicate that the $1 million figure given may be too low. We do not disagree with this assertion, but believe that the costs will be spread out over a longer period of time than expected, and will not be as severe as anticipated. The costs to States to implement the HIPAA standards were carefully considered, but were not the only factor considered in developing the individual standards. A number of guiding principles (see B. Guiding Principles for Standard Selection in section IV. of this preamble) were followed and the overall adequacy and acceptance of these standards is dependent upon the standards meeting these guiding principles.

f. *Comment:* Several commenters expressed concern that the implementation time frame falls within the time period required to make millennium and Medicare Balanced Budget Act (BBA) changes. It was stated that the industry was given little flexibility in determining the most cost-effective way to implement the HIPAA standards.

Response: The Impact Analysis states that health care providers have considerable flexibility in determining how and when to accomplish changes in their systems to accommodate the HIPAA standards. Due to the longer than expected time to publish this final rule, the implementation time frame will fall beyond millennium changes and most BBA changes. Therefore, it is still possible to evaluate the most cost-effective approach.

g. *Comment:* One commenter stated that the impact analysis did not specifically mention who would provide the translator software that would be integrated into an existing system. If small physician practices are using older ''legacy'' type systems, they may not be able to create an interface with a translator that would accept the standard data. A complete system overhaul would be extremely costly to these specific health care provider groups.

Response: The Impact Analysis did not specifically mention who would provide the translator software that would be integrated into an existing system because we expect such software to be readily available on the open market. However, it did include estimates from the WEDI reports which were updated to reflect the current costs for small practices to convert their systems in order to use the standard formats. These estimates indicate an overall cost savings for physician practices. The most efficient way for small physician practices to circumvent high implementation costs may be to use a health care clearinghouse. If health care providers cannot create an interface with a translator, they have the option to use a health care clearinghouse. This would avoid the need to overhaul older type systems in order to accommodate the HIPAA standards. Furthermore, the costs for vendors and health care clearinghouses should be reduced due to the use of national EDI standards as well as the NPI. The overall homogeneity of these EDI formats should significantly reduce the high costs associated with the processing of different electronic claims formats. In turn, this would allow vendors and health care clearinghouses to provide services at lower costs, which should enable savings to be passed on to health care providers. In this regard, we also anticipate that market competition should tend to keep costs down.

h. *Comment:* One commenter believed that as part of a 1999 Presidential proposal, Medicare will charge one dollar for each paper Medicare claim that a physician submits. The commenter stated that this unfairly undermines a physician's ability to continue to submit paper claims.

Response: Medicare has not instituted a user fee for paper claims.

3. Benefits of Increased EDI for Health Care Transactions

Comment: One commenter stated that the impact analysis should factor in the cost of dismantling existing electronic interchange systems. It was also stated that health care providers may move from electronic to paper submission if they feel that the costs and burdens associated with the new standards are too great.

Response: There is no need to dismantle entire systems. Rather, provisions need to be made to accommodate the new standards. We believe that the benefits health care providers are currently realizing through EDI will continue and will increase with the adoption of these standards. Unlike current practices which compel health care providers to use multiple formats when sending and receiving, health care providers will only need to use one format for each HIPAA standard when they send and receive. If health care providers are unwilling to upgrade their EDI system, they have the option of using a health care clearinghouse, or reverting to paper claim submission.

4. The Role of Standards in Increasing the Efficiency of EDI

Comment: One commenter stated that there are many factors affecting a health care provider's decision as to when to convert to EDI. Thus, the idea that a health care provider may decide to delay conversion to EDI until it is ''cost-effective'' is made moot by other forces

affecting a health care provider's decision making process.

Response: Health care providers must use the standards if they wish to do business electronically. While other factors will impact their decision to do business electronically, we believe that the HIPAA standards will produce cost savings and efficiencies in EDI which should help convince health care providers of the benefits of EDI.

All known factors that may influence a health care provider's decision were taken into account when the proposed rule was written and published. However, other factors may arise that were not accounted for. It is impossible to account for every possible scenario for every health care provider. The Impact Analysis took into account factors based on the data available at the time. These factors, which represent a wide spectrum of possibilities, were included in the cost-effectiveness figures and the overall decision making process.

5. Cost/Benefit Tables

a. *Comment*: Several commenters representing Medicaid had a number of comments regarding these tables. First, with respect to Table 1 (63 FR 25344) (see VI. Final Impact Analysis, I. Cost/Benefit Tables of this preamble for the updated table) they stated it was difficult to assess where Medicaid was represented or whether any other Federal program was included. Second, regarding that same table, it was stated that the method of allocating savings was imprecise and illogical when consideration is given to existing EDI systems that will have to be changed. For high end-users, the costs to convert will consume most of the savings. Third, because so much of Medicaid is automated already, the estimated savings that will offset 50% of the upgrade cost will be less. The cost assumptions are also not inclusive of the numerous operational activities associated with the possible role of the enumerator. One Medicaid Agency specifically mentioned that they pay their fiscal associate $.2672 to process any type of claim. They stated that the savings estimates based on $1 per claim for health plans and physicians and $.75 per claim for hospitals and other health care providers does not relate to their experience.

Response: Medicare and Medicaid program costs and savings were not included in the table on cost and savings to health plans because the Impact Analysis was done for private sector health plans only, as required. Cost estimates were made using the WEDI report and may not be specific to Medicaid or other State Agencies. They are also not specific to any unique experience. The savings mentioned in the analysis are based on overall utilization.

b. *Comment*: Several commenters stated that the pharmacist enumeration costs were underestimated. Table 2 (63 FR 25344) (see VI. Final Impact Analysis, I. Cost Benefit/Tables of this preamble for the updated table) lists 70,100 pharmacies; however, no data was included regarding the number of pharmacists. There are about 200,000 pharmacists. It was stated that the enumeration costs should be adjusted accordingly.

Response: We did not enumerate pharmacists, because the pharmacy is the entity that does most of the billing and, therefore, is the appropriate unit for analysis.

c. *Comment*: One commenter raised several questions regarding Table 4a (63 FR 25346), which shows relative savings and volume of other transactions (note, Table 4a corresponds to Table 5 in VI. Final Impact Analysis, I. Cost/Benefit Tables of this preamble): (1) Was the ASC X12N 997 transaction included in the ''Claim'' transaction in Table 4a; (2) was the ASC X12N 277 included in the ''Claims Inquiry'' transaction; (3) does the ''Remittance Advice'' include payment data and Electronic Funds Transfer (EFT) payment; (4) has allowance been made for any charges by banks for passing on the payment data; (5) is the ASC X12N 275 included in one of the transactions listed; and (6) how was the ''Average Cost for Non-EDI Health Plans'' calculated?

Response: (1) The ASC X12N 997 is not a HIPAA transaction standard and was not included. (2) The ASC X12N 277 does represent a HIPAA transaction standard and was included in the analysis. (3) The ''Remittance Advice'' includes payment data and EFT payment. (4) The cost of the banks processing data was not included in the impact analysis because the EFT process will remain the same under the standards. Banks are not required to use the HIPAA standards; however, most, if not all, are expected to continue to use the Automated Clearinghouse (ACH) standard which they are now using for EFT (and which would be compliant with these standards). (5) The ASC X12N 275 was not included in the transactions listed. (6) The cost to non-EDI health plans was computed as follows: total entities $\times$ (1 $-$ EDI %) $\times$ average upgrade cost $\times$ 0.5.

d. *Comment*: One commenter stated that more information is needed on the methodology used to calculate the costs/benefits in order for each hospital to model the cost/benefits.

Response: The methodology for calculating the costs/benefits for health care providers was derived from the WEDI report and was mentioned at the beginning of the Impact Analysis. The WEDI report also documents how that methodology was applied.

6. Quantitative Impacts of Administrative Simplification

a. *Comment*: In regard to Medicaid, commenters noted that with the mandatory nature of EDI rules, the obligation to coordinate ''who pays when'' was not included (i.e., Medicaid is the payer of last resort). It was stated that standardization of data and transactions alone will not help unless health plans pass on those rules. Administrative simplification could facilitate coordination of benefits by having a standardized set of data that is known to all parties, along with standardized name and address information that tells where to route transactions.

Response: We agree that standardization will facilitate coordination of benefits by having in place a standardized set of data. This is one of the goals of administrative simplification. The HIPAA standards do require health plans to use the standard COB transaction for exchanging COB with other health plans.

b. *Comment*: Some comments stated that the administrative burden for health plans may increase as more data validation occurs in a post-adjudication environment. It was stated that the example of staff translation of codes due to standardized codes was misleading, since individuals must still perform coding actions in order to enter patient data into the hospital information system or other patient data systems.

Response: The implementation of the HIPAA standards will actually reduce the overall need for data validation as it will reduce the need for clerical entry. Although there may still be individual manipulation or translation of codes, it will be less labor intensive; this result will be due to the replacement of multiple EDI formats with one set of nationally accepted standards.

c. *Comment*: One commenter stated that the cost to maintain a proprietary health care provider file may remain basically the same or may increase as there may be an increased need to validate data between the proprietary file and the National Provider System database (NPS); this result would more than offset any savings that may have been realized through the elimination of other health care provider numbers.

Response: When the NPI is implemented, there will be a one time cost to entities to align their proprietary health care provider files to NPS data and add the NPI to their files. Once the NPI has been added, though, we would expect ongoing costs for several functions (COB, health care provider monitoring, communications with health care providers, etc.) to be reduced because of the uniform numbering system and the elimination of health care provider enumeration activities by individual health plans.

7. Regulatory Flexibility Analysis

a. *Comment*: One commenter recommended that the statement ''cost savings will be passed on to customers of health care clearinghouses and billing agencies'' should be reworded to state that cost savings ''should'' be passed on rather than imply that they will. It is possible that these savings won't be passed on because health care clearinghouses may be in a position to profit from the increased demand for their services. The possibility also exists that costs will decrease, and as a result prices will drop to reflect these savings.

Response: We believe that market forces will drive down costs, and as a result savings will be passed on to customers of health care clearinghouses and billing agencies.

b. *Comment*: One commenter stated that there is no guarantee that small health care providers will embrace EDI. There should be information about educational campaigns and how that educational outreach will occur.

Response: The Impact Analysis acknowledges that not everyone will move to the HIPAA standards and use EDI. However, since the catalyst behind this statute was the health care industry, we expect that health plans and others will recognize the benefits they can enjoy through administrative simplification, and will educate health care providers so that benefits will be realized.

8. Unfunded Mandates

a. *Comment*: Several commenters stated that it is possible that a portion of the costs which managed care organizations will incur due to HIPAA will be passed onto the Medicaid program in the form of increased capitation payments. It was stated that while the Secretary puts forth a Cost Budget Office (CBO) analysis indicating that States ''have the option to compensate by reducing other expenditures,'' they have first-hand knowledge of the challenges associated with ''reducing'' expenditures associated with entitlement programs. Furthermore, enrollment of Medicaid recipients into managed care programs does not eliminate the need for fee-for-service claims processing under the new standards. One commenter noted that $2 million is a conservative estimate of the cost to a State to modify its MMIS to comply with the HIPAA mandates. The improvements offered are geared towards EDI between commercial health plans and their health care providers. Benefits of increased EDI and health care provider enumeration accrue to all EDI participants at the expense of the Medicaid program.

Response: We do not agree that the benefits of EDI for the health care community would increase at the expense of the Medicaid program. We acknowledge that the implementation costs for each State may be underestimated. However, the benefits of administrative simplification should accrue to every health care entity, whether public or private. The costs to the Medicaid program will be spread out over a longer period of time than expected, which will mitigate any large financial impact. Additional provisions were also included for specialized delivery services. The Department will match 75–90% of the costs associated with the MMIS and the new software that will be integrated for the HIPAA standards. The long-term savings will offset implementation costs. We recognize that fee-for-service claims processing will continue.

b. *Comment*: Several commenters stated that it may be an inaccurate conclusion that the unfunded mandates of HIPAA will not result in significant costs to State governments. In fact, it may cost States between $2 and $10 million to restructure for HIPAA compliance. Furthermore, the start-up costs will be high in order to align current health care provider files with the NPS so that matches can be made. Start-up costs will probably exceed $1 million per health plan. There are also additional indirect costs which are not mentioned. Indirect costs may arise from having to reorganize business functions and possibly having to pay the implementation costs of health care providers, health care clearinghouses and health plans.

Response: We agree that the calculated costs may be underestimated and the Impact Analysis does state that it is difficult to assess cost/benefits of such a sweeping change. Many of the costs mentioned in the comment are short-term costs. The long-term savings that will accrue from administrative simplification will offset the short-term expenditures. Each health care provider will have to determine how to treat these initial costs until the savings begin to accrue.

c. *Comment*: One commenter stated that many areas of the payment processes are still done manually. Changes/upgrades to bulletin board type systems that receive electronic billing data from health care providers will also impact the costs of this unfunded mandate.

Response: The costs associated with these bulletin board type systems have been included in the estimated cost of system upgrades mentioned in the Impact Analysis.

IV. Summary of Changes to the Regulations

Listed below is a summary of changes made to 45 CFR.

- Added Part 160 and moved proposed §§ 142.101, 142.103, and 142.106 to Part 160.
- Added definitions for the following terms in § 160.103: ''business associate,'' ''compliance date,'' ''covered entity,'' ''implementation specification,'' ''modify,'' ''standard setting organization,'' ''state,'' ''trading partner agreement,'' and ''workforce.''
- Added definitions for the following terms in § 162.103: ''code set maintaining organization,'' ''data condition,'' ''data content,'' ''data element,'' ''data set,'' ''descriptor,'' ''designated standard maintenance organization,'' ''direct data entry,'' ''electronic media,'' ''format,'' ''maintenance,'' ''maximum defined data set,'' ''segment,'' ''standard transaction.''
- Deleted definitions for ''ASC X12,'' ASC X12N,'' ''medical care,'' and ''participant.''
- Added § 160.104 to describe the effective date and compliance date of a modification to an established standard.
- Included the word ''retail'' when referring to the NCPDP standard.
- Included language in § 162.923 (formerly 142.102) to include the requirements for the use of direct data entry and to clarify requirements for covered entities.
- Added § 162.910 to address the process for maintenance of the standards.
- Added section § 162.915 to include the requirements of trading partner agreements.
- Removed the words ''at no cost'' in § 162.920(a) when referring to the acquisition of implementation specifications.
- Revised language in § 162.925 (formerly § 142.104) to state that a health plan may not delay the transaction or attempt to adversely affect the entity or the transaction on the

basis that the transaction is a standard transaction. Added COB and code set requirements.

- Included language in § 162.930 to clarify compliance of health care clearinghouses.
- Added § 162.940 to include the process for requesting an exception to test proposed modifications to standards.
- Revised language in § 162.1000 to include the requirement for the use of applicable medical code sets and, in § 162.1002, we listed the name of all the standard medical code sets.
- Added § 162.1011 to address compliance dates for maintenance changes to code sets.
- Corrected language in § 162.1102 to reflect the correct version of the NCPDP Batch Standard, Version 1 Release 0.
- Added language in § 162.1602 to include the NCPDP standard for health care payment and remittance advice within the retail pharmacy sector.
- Added language in § 162.1202 to include the NCPDP standard for patient eligibility and coverage information within the retail pharmacy sector.
- Included the description of each transaction in subparts K through R, §§ 162.1101, 162.1201, 162.1301, 162.1401, 162.1501, 162.1601, 162.1701, and 162.1801.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment on a collection of information requirement submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency.
- The accuracy of the agency's estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

In summary, each of the sections identified below require health care plans, and/or health care providers to use the standards referenced in this regulation for all electronically transmitted standard transactions that require it on and after the effective date given to it.

Subpart I—General Provisions for Transactions

Section 162.923 Requirements for covered entities

Section 162.925 Additional requirements for health plans

Discussion: As referenced in the proposed rule, the emerging and increasing use of health care EDI standards and transactions has raised the issue of the applicability of the PRA. As such, we solicited comment on whether a regulation that adopts an EDI standard used to exchange certain information constitutes an information collection is subject to the PRA. Public comments were presented which suggested that the use of an EDI standard is not an information collection and under the PRA. The Office of Management and Budget, however, has determined that this regulatory requirement (which mandates that the private sector disclose information and do so in a particular format) constitutes an agency sponsored third-party disclosure as defined under the Paperwork Reduction Act of 1995 (PRA).

HIPAA mandates the Secretary to adopt standards that have been developed, adopted, or modified by a standard setting organization, unless there is no such standard, or unless a different standard would substantially reduce administrative costs. OMB has concluded that the scope of its review under the PRA would be limited to the review and approval of this regulatory requirement, that is, the Secretary's decision to adopt or reject an established industry standard, based on the HIPAA criterion of whether a different standard would substantially reduce administrative costs. For example, if OMB concluded under the PRA that a different standard would substantially reduce administrative costs as compared to an established industry standard, the Secretary would be required to reconsider its decision under the HIPAA standards. The Secretary would be required to make a new determination of whether it is appropriate to adopt an established industry standard or whether it should enter into negotiated rulemaking to develop an alternative standard (section 1172(c)(2)(A)).

The burden associated with these requirements, which is subject to the PRA, is the initial one-time burden on the entities identified above to modify their current computer system requirements. However, the burden associated with the routine or ongoing use of these requirements is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Based on the assumption that the burden associated with HIPAA, Title II systems modifications may overlap and the HIPAA standards would replace the use of multiple standards, resulting in a reduction of burden, commenters should take into consideration when drafting comments that: (1) One or more of these standards may not be used; (2) some of the these standards may already be in use by several of the estimated entities; (3) systems modifications may be performed in an aggregate manner during the course of routine business and/or; (4) systems modifications may be made by contractors such as practice management vendors, in a single effort for a multitude of affected entities.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please e-mail comments to Paperwork@hcfa.gov (Attn:HCFA–0149) or mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: HCFA–0149

And

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer

VI. Final Impact Analysis

A. Executive Summary

Title II of the Health Insurance Portability and Accountability Act (HIPAA) provides a statutory framework for the establishment of a comprehensive set of standards for the electronic transmission of health information. Pursuant to this Title, the Department of Health and Human Services published proposed regulations concerning electronic transactions and code sets (May, 1998), national standard health care provider identifier (May, 1998), national standard employer

identifier (June, 1998), security and electronic signature standards (August, 1998), and standards for privacy of individually identifiable health information (November, 1999).

Currently, there are numerous electronic codes available in the market. Without government action, a common standard might eventually emerge as the result of technological or market dominance. However, the uneven distribution of costs and benefits may have hindered the development of a voluntary industry-wide standard. Congress concluded that the current market is deadlocked and that the health care industry would benefit in the long run if government action were taken now to establish an industry standard. This approach, however, does entail some risks. For example, whenever the government chooses a standard, even one that is the best available at any point in time, the incentives to develop a better standard may be diminished because there is virtually no market competition and government-led standards often take longer to develop than those developed as the result of market pressures. The approach taken in this regulation is designed to encourage and capitalize on market forces to update standards as needs and technology change and have the government respond as quickly and efficiently as possible to them.

As discussed in the proposals, the regulations will provide a consistent and efficient set of rules for the handling and protection of health information. The framework established by these administrative simplification regulations is sufficiently flexible to adapt to a health system that is becoming increasingly complex through mergers, contractual relationships, and technical and telecommunication changes. Moreover, the promulgation of a final privacy standard will enhance public confidence that highly personal and sensitive information is being properly protected, and therefore, it will enhance the public acceptance of increased use of electronic systems. Collectively, the standards that will be promulgated under Title II can be expected to accelerate the growth of electronic transactions and information exchange in health care.

The final Impact Analysis provides estimates based on more current information and more refined assumptions than the original NPRM analysis. Since the original estimates were made, some of the voluntary development and investment in technology that was anticipated at the time of the proposal was diverted or delayed because of Y2K concerns; the investment is still expected but the timing of it has been delayed. The analysis utilizes more current data and reflects refinements in underlying assumptions based on the public comments and other information that has been collected on market changes. In addition, this analysis extended the time period for measuring costs and savings from five years to ten years. Given that the HIPAA provisions require initial expenses but subsequently produce a steady stream of savings, a ten year analysis more accurately measures the impact of the regulations.

This final rule has been classified as a major rule subject to Congressional review. The effective date is October 16, 2000. If, however, at the conclusion of the Congressional review process the effective date has been changed, we will publish a document in the **Federal Register** to establish the actual effective date or to issue a notice of termination of the final rule action.

Therefore, the following analysis includes the expected costs and benefits of the administration simplification regulations related to electronic systems for ten years. Although only the electronic transactions standards are being promulgated in this regulation, the Department expects affected parties to make systems compliance investments collectively because the regulations are so integrated. Moreover, the data available to us are also based on the collective requirements of the regulations; it is not feasible to identify the incremental technological and computer costs for each regulation based on currently available data. The Department acknowledges that the aggregate impact analysis does not provide the information necessary to assess the choice of specific standards.

The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. These costs include system conversion/upgrade costs, start-up costs of automation, training costs, and costs associated with implementation problems. These costs will be incurred during the first three years of implementation. Although there may be some ongoing maintenance costs associated with these changes, vendors are likely to include these costs as part of the purchase price. Plans and providers may choose to upgrade their systems beyond the initial upgrade required by the rule as technology improves over time. Since the rule only requires an initial systems upgrade, the costs of future upgrades are not included in the cost estimate of the rule. The benefits of EDI include reduction in manual data entry, elimination of postal service delays, elimination of the costs associated with the use of paper forms, and the enhanced ability of participants in the market to interact with each other.

In this analysis, the Department has used conservative assumptions and it has taken into account the effects of the trend in recent years toward electronic health care transactions. Based on this analysis, the Department has determined that the benefits attributable to the implementation of administrative simplification regulations will accrue almost immediately but will not exceed costs incurred by health care providers and health plans until after the second year of implementation. After the second year, however, the benefits will continue to accrue for an extended period of time. The total net savings for the period 2002–2011 will be $29.9 billion (a net savings of $13.1 billion for health plans, and a net savings of $16.7 billion for health care providers). The single year net savings for the year 2011 will be $5.6 billion ($2.5 billion for health plans and $3.1 billion for health care providers). The discounted present value of these savings is $19.1 billion over the ten years. These estimates do not include the sizeable secondary benefits that are likely to occur through expanded e-commerce resulting from standardized systems.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

B. Guiding Principles for Standard Selection

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the Paperwork Reduction Act of 1995. In order to be designated as a standard, a proposed standard should:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This

principle supports the regulatory goal of cost-effectiveness.

• Be consistent and uniform with the other HIPAA standards (that is, their data element definitions and codes and their privacy and security requirements) and with other private and public sector health data standards to the extent possible. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.

• Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.

• Be supported by an ANSI-accredited standard setting organization or other private or public organization that will ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.

• Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.

• Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when they are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.

• Be precise and unambiguous but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.

• Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.

• Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and health care provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

C. Introduction

The Department assessed several strategies for determining the impact of the various standards that the Secretary will designate under the statute. The costs and savings of each individual standard could be analyzed independently, or the Department could analyze the costs and savings of all the standards in the aggregate. The decision was made to base the analysis on the aggregate impact of all the standards. Given that all the standards are likely to be made final within a reasonable period of one another, it is likely that organizations will seek to make changes to comply with all the regulations at the same time, at least for those components of the regulations that require computer and technology changes. This will be the most efficient investment for most affected organizations, and the estimates the Department has obtained from industry sources are based on this assumption.

The statute gives health care providers and health plans 24 months (36 months for small health plans) to implement each standard after the effective date of the final rule. This provides the industry flexibility in determining the most cost-effective means of implementing the standards. Dictated by their own business needs, health plans and health care providers may decide to implement more than one standard at a time or to combine implementation of a standard with other system changes. As a result, overall estimates will be more accurate than individual estimates.

Assessing the benefits of implementing each standard independently could also be inaccurate. While each individual standard is beneficial, the standards as a whole have a synergistic effect on savings. For example, the combination of the standard health plan identifier and the standard claim format will improve the coordination of benefits process to a much greater extent than use of either standard individually.

It is difficult to assess the costs and benefits of such a sweeping change because no-one has historical experience with this unique area. Moreover, the standardization of electronic transactions will spur secondary innovations, particularly in e-commerce, that may be described generally but are too new to assess quantitatively. Consequently, the analysis of these secondary benefits will be qualitative.

D. Overall Cost/Benefit Analysis

To assess the impact of the HIPAA administrative simplification provisions, it is important to understand current industry practices. A 1993 study by Lewin-VHI estimated that administrative costs comprised 17 percent of total health expenditures. Paperwork inefficiencies are a component of those costs, as are the inefficiencies caused by the more than 400 different data transmission formats currently in use. Industry groups such as ANSI ASC X12N have developed standards for EDI transactions which are used by some health plans and health care providers. However, migration to these recognized standards has been hampered by the inability to develop a concerted approach. For example, even ''standard'' formats such as the Uniform Bill (UB–92), the standard Medicare hospital claim form (which is used by most hospitals, skilled nursing facilities, and home health agencies for inpatient and outpatient claims) are customized by health plans and health care providers.

Several reports have made estimates of the costs and/or benefits of implementing EDI standards. In assessing the impact of the HIPAA administrative simplification provisions, the Congressional Budget Office reported that:

> ''The direct cost of the mandates in Title II of the bill would be negligible. Health plans (and those health care providers who choose to submit claims electronically) would be required to modify their computer software to incorporate new standards as they are adopted or modified...Uniform standards would generate offsetting savings for health plans and health care providers by simplifying the claims process and coordination of benefits.'' (Page 4 of the Estimate of Costs of Private Sector Mandates in the Congressional Budget Office report)

The most extensive industry analysis of the effects of EDI standards was developed by WEDI in 1993, which built upon a similar 1992 report. The WEDI report used an extensive amount of information and analysis to develop its estimates, including data from a number of EDI pilot projects. The report included a number of electronic transactions that are not covered by HIPAA, such as materials management. The WEDI report projected implementation costs ranging between $5.3 billion and $17.3 billion (3, p. 9–4) and annual savings for the transactions covered by HIPAA ranging from $8.9 billion and $20.5 billion (3, pp. 9–5 and 9–6). Lewin estimated that the data standards proposed in the Healthcare Simplification and Uniformity Act of 1993 would save from 2.0 to 3.9 percent in administrative costs annually ($2.6 to $5.2 billion based on 1991 costs) (1, p.12). A 1995 study commissioned by the New Jersey Legislature estimated yearly savings of $760 million related to EDI claims processing, reducing claims rejection, performing eligibility checks, decreasing accounts receivable, and other potential EDI applications in New Jersey alone (4, p.316).

We have drawn on the 1993 WEDI report for many of our estimates because it is the most comprehensive available.

However, our conclusions differ, especially in the area of savings, for a number of reasons. The WEDI report was intended to assess the savings in an EDI environment that is much broader than is covered by HIPAA. Furthermore, EDI continued to grow through the 1990's (see Faulkner & Gray, 2000), and it is reasonable to assume that EDI would continue to grow for the foreseeable future even without HIPAA. The Department's objective in this analysis is to assess the effect of the legislation and these regulations on the health care sector; only a portion of the benefits of EDI identified by WEDI would be attributable to HIPAA.

E. Implementation Costs

The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. They can be characterized as follows:

1. System Conversion/Upgrade—Health care providers and health plans will incur costs to convert existing software to utilize the standards. Health plans and large health care providers generally have their own information systems, which they maintain with in-house or contract support. Small health care providers are more likely to use off-the-shelf software developed and maintained by a vendor. Examples of software changes include the ability to generate and accept transactions using the standard (for example, claims, remittance advices) and converting or cross walking medical code sets to chosen standards. However, health care providers have considerable flexibility in determining how and when to accomplish these changes. One alternative to a complete system redesign would be to purchase a translator that reformats existing system outputs into standard transaction formats. A health plan or health care provider could also decide to implement two or more related standards at once or to implement one or more standards during a software upgrade. Each health care provider's and health plan's situation will differ, and each will select a cost-effective implementation scheme. Many health care providers use billing associates or health care clearinghouses to facilitate EDI. (Although we discuss billing associates and health care clearinghouses as separate entities in this impact analysis, billing associates are considered to be the same as health care clearinghouses for purposes of administrative simplification if they meet the definition of a health care clearinghouse). Those entities would also have to reprogram to accommodate standards.

2. Start-up Cost of Automation—The statute does not require health care providers to conduct transactions electronically. To benefit from EDI, health care providers who choose to conduct electronic transactions but do not currently have electronic capabilities would have to purchase and install computer hardware and software as well as train their staffs to use the technology. However, this conversion is likely to be less costly once standards are in place because there will be more vendors providing support services. Furthermore, providers without electronic capabilities are more likely to conclude that the benefits of conducting transactions electronically justify a capital investment in EDI technology.

3. Training—Health care provider and health plan personnel will require training on the use of the various standard identifiers, formats, and code sets. For the most part, training will be directed toward administrative personnel, though clinical staff will also need training on the new code sets. With standardization, however, vendors are more likely to offer assistance in training as a means of increasing sales, thereby reducing the per unit cost of training.

4. Implementation Problems—The implementation of any industry-wide standards will inevitably create additional complexity in regard to how health plans and health care providers conduct business. Health plans and health care providers will need to work on re-establishing communication with their trading partners, and process transactions using the new formats, identifiers, and code sets. This is likely to result in a temporary increase in rejected transactions, manual exception processing, payment delays, and requests for additional information.

While the majority of costs are one-time costs related to implementation, there are also on-going costs associated with administrative simplification, such as subscribing to or purchasing documentation and implementation specifications related to code sets and standard formats and obtaining current health plan and health care provider identifier directories or data files. Because covered entities are already incurring most of these costs, the costs under HIPAA will be marginal. These small ongoing costs are included in the estimate of the system conversion and upgrade costs.

In addition, EDI could affect cash flow throughout the health insurance industry. Electronic claims reach the health plan faster and can be processed faster. This has the potential to improve health care providers' cash flow situations while decreasing health plans' earnings on cash reserves. However, improved cash flow is generally considered a benefit, particularly for small businesses.

F. Benefits of Increased Use of EDI for Health Care Transactions

Some of the benefits attributable to increased EDI can be readily quantified, while others are more intangible. For example, it is easy to compute the savings in postage from EDI claims, but attributing a dollar value to processing efficiencies is difficult.

The benefits of EDI to the industry in general are well documented in the literature. One of the most significant benefits of EDI is the reduction in manual data entry. The paper processing of business transactions requires manual data entry when the data are received and entered into a system. For example, the data on a paper health care transaction from a health care provider to a health plan have to be manually entered into the health plan's business system. If the patient has more than one health plan, the second health plan would also have to manually enter the data into its system if it cannot receive the information electronically. Repeated keying of information transmitted via paper results in increased labor as well as significant opportunities for keying errors. EDI permits direct data transmission between computer systems which, in turn, reduces the need to rekey data.

Another problem with paper-based transactions is that these documents are primarily mailed. Normal delivery times of mailings can vary anywhere from one to several days for normal first class mail. Shipping paper documents more quickly can be expensive. While bulk mailings can reduce some costs, paper mailings remain costly. Using postal services can also lead to some uncertainty as to whether the transaction was received, unless more expensive certified mail options are pursued. A benefit of EDI is that the capability exists for the sender of the transaction to receive an electronic acknowledgment once the data is opened by the recipient. Also, because EDI involves direct computer to computer data transmission, the associated delays with postal services are eliminated. With EDI, communication service providers such as value added networks function as electronic post offices and provide 24-hour service. Value added networks

deliver data instantaneously to the receiver's electronic mailbox.

In addition to mailing time delays, there are other significant costs in using paper forms. These include the costs of maintaining an inventory of forms, typing data onto forms, addressing envelopes, and the cost of postage. The use of paper also requires significant staff resources to receive and store the paper during normal processing. The paper must be organized to permit easy retrieval if necessary.

G. The Role of Standards in Increasing the Efficiency of EDI

There was a steady increase in the use of EDI in the health care market through the late 1990's, and there is likely to be some continued growth, even without national standards. However, the upward trend in EDI health care transactions will be enhanced by having national standards in place. Because national standards are not in place today, there continues to be a proliferation of proprietary formats in the health care industry. Proprietary formats are those that are unique to an individual business. Due to proprietary formats, business partners that wish to exchange information via EDI must agree on which formats to use. Since most health care providers do business with a number of health plans, they must produce EDI transactions in many different formats. For small health care providers facing the requirement of maintaining multiple formats, this is a significant disincentive to converting to EDI.

National standards will allow for common formats and translations of electronic information that will be understandable to both the sender and receiver. Multiple electronic formats increase associated labor costs because more personnel time and more skills are required to link or translate different systems. These costs are reflected in increased office overhead, a reliance on paper and third party vendors, and communication delays. National standards eliminate the need to determine what format a trading partner is using. Standards also reduce software development and maintenance costs that are required for operating or converting multiple proprietary formats. Health care transaction standards will improve the efficiency of the EDI market and will help further persuade reluctant industry partners to choose EDI over traditional mail services.

The statute directs the Secretary to establish standards and sets out the timetable for doing so. The Secretary must designate a standard for each of the specified transactions and medical code sets. Health plans and health care providers generally conduct EDI with multiple partners and the choice of a transaction format is a bilateral decision between the sender and receiver. Many health care providers and health plans need to support many different transaction formats in order to meet the needs of all of their trading partners. Single standards will maximize net benefits and minimize ongoing confusion.

Health care providers and health plans have a great deal of flexibility in how and when they will implement standards. The statute specifies dates by which health plans will have to use adopted standards, however, health plans can determine if, when, and in which order they will implement standards before the date of mandatory compliance. Health care providers have the flexibility to determine when it is cost-effective for them to convert to EDI. Health plans and health care providers have a wide range of vendors and technologies from which to choose in implementing standards and can choose to utilize a health care clearinghouse to transmit (produce and receive) standard transactions.

H. Updated Cost and Benefit Assumptions

As mentioned above, we have made changes to the original impact analysis published in the NPRM. In response to the public comments regarding the NPRM impact analysis, the Department did a thorough review of the original assumptions and data sources. In the review process, it became clear that the original data sources required updating and that there were some inconsistencies in the original assumptions. What follows is an explanation of each change and the rationale behind the new methodology.

Ten Year Time-Frame: This Impact Analysis changes the original NPRM's time-frame from five years to ten years. The need for this change results from the nature of the HIPAA regulations: there will be significant one-time initial investments followed by many years of savings. Because a five year impact analysis will show the full cost of the regulations but truncate the savings significantly, a ten year time-frame allows for a fuller presentation of the benefits administrative simplification offers the health care industry. As an illustration of the difference between a five year and a ten year time frame, the initial NPRM Impact Analysis estimated $1.5 billion in net savings to the industry, but a ten year analysis using identical assumptions as the original NPRM would estimate $24.2 billion in net savings. The Department believes it is more appropriate to use a time frame that more accurately estimates the long term impact of the regulations.

New Data: Given the length of time between the publication of the NPRM and the final rule, it was necessary to update data for the number of plans and providers, the number of claims, and the current proportion of claims that are electronic in the health care industry. Updated data on the number of different types of plans and providers were obtained from a variety of sources, including the 1997 Economic Census, the 1999 Statistical Abstract of the United States, the American Medical Association and other industry groups, the Department of Labor, and the Department of Health and Human Services. In the NPRM, the 1993 WEDI report was used to determine the total number of claims in the health care industry for 1993, which was trended forward using data from the 1996 edition of Faulkner and Gray's Health Data Directory to estimate the number of claims annually over the 1998 to 2002 time frame. For the final impact analysis, we used 1999 data (the most recent available) from the 2000 edition of Faulkner and Gray's Health Data Directory to determine the total number of claims in the industry, the number of claims by provider type, and the percent of claims that are billed electronically by provider type.

The baseline rate of growth in the number of claims and the rate of growth in the proportion of electronic claims were revised using historical trend data from the 2000 Faulkner and Gray report. In the final impact analysis, the average annual rate of growth over the 1995 to 1999 period is used to determine the annual increase in the number of claims and in the proportion of claims that are electronic, for all claims in the industry and by provider type.

New Electronic Claims Growth Assumptions: This Impact Analysis makes a refinement to the original assumptions for determining the rate of increase in electronic claims due to HIPAA. The model assumes that electronic claims submissions will increase in the first three years after the implementation at a rapid pace as many health care providers and health plans make the switch to electronic formats but then the rate will decrease over time. The model also assumes some providers will not make the transition to EDI during the ten year period. Specifically, we assumed that the proportion of manual claims will decrease by twenty percent annually from 2002 to 2005 and then will decrease by ten percent annually from

2006 to 2011. By contrast, the original NPRM model assumed the rate of increase in electronic claims would grow by two additional percentage points above the baseline rate each year.

Savings per Claim: This impact analysis uses more consistent assumptions for the savings per claim. In the original NPRM, the savings per claim for payers and each provider type was based on the ranges developed by WEDI. However, the NPRM did not consistently pick from a given point in the WEDI ranges, but rather various points were chosen for different groups based on limited anecdotal information. Upon further analysis, the Department no longer believes there is a justifiable basis to pick from different parts of the WEDI ranges, given the lack of additional evidence to support more precise assumptions. Therefore, the final impact analysis assumes the savings per claim will be at the mid-point of the WEDI ranges for payers and all providers.

Inflation Adjustment: The final Impact Analysis corrects an inconsistency found in the NPRM regarding an inflation adjustment to the annual savings per claim assumptions. Specifically, the NPRM increased the savings per claim by 3% annually to account for inflation. This adjustment was an inconsistency because no other figures in the NPRM impact analysis were adjusted for inflation. Therefore, for the final impact analysis, all dollar estimates, including the savings per claim, are in current 2000 dollars.

First Year Savings: Another change made to the impact analysis was to include savings in the first year of mandatory compliance with the rule. The NPRM assumed that there would be no savings in the first year of mandatory compliance, yet we believe that this assumption was in error because most entities must comply no later than two years after the effective date of the final rule (three years for small health plans), and therefore some savings will begin two years after publication of the rule. In fact, it could be argued that some entities will come into compliance prior to the two year deadline and begin to produce savings, but in order to produce a conservative estimate, this analysis only assumes that savings begin in the first year of mandatory compliance.

Impact of Changes: The cumulative effect of the changes made to the impact analysis increases the net savings from administrative simplification. Although the NPRM only showed five year costs and savings, the underlying analysis included ten year estimates as well. Compared to the original impact analysis, the final impact analysis increases the estimated gross costs of the rule from $5.8 billion to $7.0 billion over ten years. The original impact analysis produced gross savings of $30 billion and net savings of $24.2 billion over ten years while the new impact analysis produces gross savings of $36.9 billion and net savings of $29.9 billion over ten years. Although the new impact analysis now shows an additional $5.7 billion in savings over ten years, the Department believes the revised assumptions underlying these estimates are based on better, more up-to-date data, are more consistent, and are more reasonable. The discounted present value of the savings is $19.1 billion over ten years. Furthermore, the updated impact analysis still produces a conservative estimate of the impact of administrative simplification. For example, the new impact analysis assumes that over the ten-year post-implementation period, only 11.2% of the growth in electronic claims will be attributable to HIPAA. Given the widely recognized benefits standardization offers the health care industry, assuming that only 11.2% of all health claims will be affected by HIPAA represents a reasonably conservative estimate of the impact .

I. Cost/Benefit Tables

The tables below illustrate the essential costs and savings for health plans and health care providers to implement the standards and the savings that will occur over time as a result of the HIPAA administrative simplification provisions. All estimates are stated in 2000 dollars. The costs are based on estimates of a moderately complex set of software upgrades, which were provided by the industry. The range of costs and savings that health plans and health care providers will incur is quite large and is based on such factors as the size and complexity of the existing systems, ability to implement using existing low-cost translator software, and reliance on health care clearinghouses to create standard transactions. The cost of a moderately complex upgrade represents a reasonable mid-point in this range. In addition, we assume that health plans and health care providers that operate EDI systems will incur implementation costs related to manual operations to make those processes compatible with the EDI systems. For example, manual processes may be converted to produce paper remittance advices that contain the same data elements as the EDI standard transaction. These costs are estimated to equal 50 percent of the software upgrade cost. Health care providers that do not have existing EDI systems will also incur some costs due to HIPAA, even if they choose not to implement EDI for all of the HIPAA transactions. For example, a health care provider may have to change accounting practices in order to process the revised paper remittance advice discussed above. We have assumed the average cost for non-EDI health care providers and health plans to be half that of already-automated health care providers and health plans.

Savings due to standardization come from three sources. First, there are savings due to increased use of electronic claims submissions throughout the health care industry. Second, there will be savings based on simplification of the manual claims that remain in the system. Finally, there will be savings due to increased electronic non-claims transactions, such as eligibility verifications and coordination of benefits. It is important to view these estimates as an attempt to furnish a realistic context rather than as precise budgetary predictions. The estimates also do not include any benefits attributable to the qualitative aspects of administrative simplification, nor is there any inclusion of secondary benefits. Industry people have argued that standardization will accelerate many forms of new e-commerce. These innovations may generate significant savings to the health care system or improvements in the quality of health but they have not been included here.

More detailed information regarding data sources and assumptions is provided in the explanations for the specific tables.

Table 1 below shows estimated costs and savings for health plans. The number of plans listed in the chart is derived from the 1993 WEDI report, trade publications, and data from the Department of Labor. The cost per health plan for software upgrades is based on the WEDI report, which estimated a range of costs required to implement a fully capable EDI environment, and more current estimates provided by the industry. The high-end estimates ranged from two to ten times higher than the low-end estimates. Lower end estimates were used in most cases because, as explained above, HIPAA does not require changes as extensive as envisioned by WEDI. The estimated percentages of health plans that accept electronic billing are based on reports in the 2000 edition of Faulkner & Gray's Health Data Directory (5). The total cost for each type of health plan is the sum of the cost for EDI and non-EDI health plans. Cost for EDI health plans is computed as follows:

(Total Entities × EDI % × Average Upgrade Cost × 1.5)

Note: As described above, EDI health plans would incur costs both to upgrade software and to make manual operations compatible with EDI systems. The cost of changing manual processes is estimated to be half the cost of system changes.

Cost for non-EDI health plans is computed as follows:

Total entities × (1 − EDI %) × Average Upgrade Cost × 0.5

Note: As described above, cost to non-EDI health plans is assumed to be half the cost of systems changes for EDI plans.

The data available permit us to make reasonable estimates of the costs that will be borne by different types of health plans (Table 1). Unfortunately, though we can estimate the overall savings, we cannot reliably estimate their distributional effects. Hence, only the aggregate savings estimates are presented.

TABLE 1.—HEALTH PLAN IMPLEMENTATION COSTS AND SAVINGS

[2002–2011]

Type of health plan	Number of health plans	Average cost	% EDI	Total cost (in millions)	Savings (in millions)
Large commercials	250	$1,000,000	90	$350	
Small commercials	400	500,000	50	200	
Blue Cross/Blue Shield	48	1,000,000	100	98	
Third-party administrators	750	500,000	50	375	
HMO/PPO	1,630	250,000	60–85	487	
Self-administered	50,000	50,000	25	1,875	
Other employer health plans	2,550,000	100	00	127	
Total (Undiscounted)				$3,512	$16,600
Total (Discounted)				$3,300	$11,600

Note: The estimates in Table 1 show cost savings in 2000 dollars (estimates in the proposed rule were in 1998 dollars). The Office of Management and Budget now requires all agencies to provide estimates using a net present value calculation. Furthermore, OMB recommends the use of a 7 percent discount rate based on the current cost of capital. The discounted totals in the table are based on this rate beginning in 2003.

Table 2 illustrates the costs and savings attributable to various types of health care providers.

The number of entities (practices or establishments, not individual health care providers) is based on the 1997 Economic Census, the 1999 Statistical Abstract of the United States, the American Medical Association's Physician Characteristics and Distribution in the U.S. (2000–2001 edition), and Department of Health and Human Services data trended to 2002. Estimated percentages of EDI billing are based on the 2000 edition of Faulkner & Gray's Health Data Directory or are Departmental estimates.

The cost of software upgrades for personal computers (PCS) in provider practices or establishments is based on reports of the cost of software upgrades to translate and communicate standardized claims forms. The low end of the range of costs is used for smaller practices or establishments and the high end of the range of costs for larger practices/establishments with PCS. The cost per upgrade estimate for hospitals and other facilities is a Departmental estimate derived from estimates by WEDI and estimates of the cost of new software packages in the literature. The estimates fall within the range of the WEDI estimates, but that range is quite large. For example, WEDI estimates that the cost for a large hospital upgrade will be from $50,000 to $500,000.

The $20.2 billion in savings in Table 4 represents savings to health care providers for the first ten years of implementation. The discounted present value of these savings is $19.1 billion over ten years. They are included to provide a sense of how the HIPAA administrative simplification provisions will affect various entities.

TABLE 2.—HEALTH CARE PROVIDER IMPLEMENTATION COSTS AND SAVINGS

[2002–2011]

Type of health care provider	Number of health care providers (2002 est.)	Average cost	% EDI	Total cost (in millions)	Savings (in millions)
Federal Hospitals	266	$250,000	88	$92	
Non-Federal Hospitals <100 beds	2,639	100,000	88	364	
Non-Federal Hospitals 100+ beds	2,780	250,000	88	960	
Nursing facility <100 beds	9,606	10,000	90	134	
Nursing facility 100+ beds	8,833	20,000	90	247	
Home health agency	8,900	10,000	90	184	
Hospice	2,027	10,000	90	28	
Residential Mental Health/Retardation/Substance Abuse Facilities	22,339	10,000	10	134	
Outpatient care centers	24,034	10,000	75	300	
Pharmacy	43,900	4,000	96	256	
Medical labs	9,500	4,000	85	51	
Dental labs	7,900	1,500	50	12	
DME	112,200	1,500	50	168	
Physicians solo and groups less than 3	193,000	1,500	50	290	
Physicians groups 3+ with computers	20,000	4,000	90	112	
Physicians groups 3+ no automation	1,000	0	00	0	
Osteopaths	13,600	1,500	10	12	

TABLE 2.—HEALTH CARE PROVIDER IMPLEMENTATION COSTS AND SAVINGS—Continued

[2002–2011]

Type of health care provider	Number of health care providers (2002 est.)	Average cost	% EDI	Total cost (in millions)	Savings (in millions)
Dentists	120,000	1,500	30	144	
Podiatrists	9,100	1,500	05	8	
Chiropractors	32,000	1,500	05	26	
Optometrists	18,800	1,500	05	16	
Other professionals	33,400	1,500	05	28	
Total (Undiscounted)				$3,566	$20,200
Total (Discounted)				$3,300	$14,100

Note: The estimates in Table 2 show cost savings in 2000 dollars (estimates in the proposed rule were in 1998 dollars). The Office of Management and Budget now requires all agencies to provide estimates using a net present value calculation. Furthermore, OMB recommends the use of a 7 percent discount rate based on the current cost of capital. The discounted totals in the table are based on this rate beginning in 2003.

Table 3 shows the estimates we used to determine the portion of EDI claims increase attributable to the HIPAA administrative simplification provisions. The proportion of claims that would be processed electronically even without HIPAA is assumed to grow at the same rate from 2002 through 2011 as it did from 1995–1999. The proportion of ''other'' health care provider claims is high because it includes pharmacies that generate large volumes of claims and have a high rate of electronic billing.

The increase in EDI claims attributable to HIPAA is highly uncertain and is critical to the savings estimate. These estimates are based on an analysis of the current EDI environment. Most of the growth rate in electronic billing is attributable to Medicare and Medicaid; smaller private insurers and third party administrators (who are not large commercial insurers) have lower rates of electronic billing and may benefit significantly from standardization.

TABLE 3.—PERCENT GROWTH IN EDI CLAIMS ATTRIBUTABLE TO HIPAA AS PROVISIONS

[Cumulative]

Type of health care provider	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Physician:										
Percent before HIPAA	53	55	58	61	63	65	67	69	71	73
Percent after HIPAA	63	72	80	83	86	88	90	91	93	94
Difference	10	17	21	22	23	23	22	22	22	21
Hospital:										
Percent before HIPAA	87	88	89	89	90	91	91	92	92	93
Percent after HIPAA	90	93	95	95	96	97	97	98	98	98
Difference	3	5	6	6	6	6	6	6	6	6
Other:										
Percent before HIPAA	83	84	86	87	88	89	90	91	92	93
Percent after HIPAA	87	91	93	95	96	96	97	98	98	99
Difference	4	6	7	7	7	7	7	6	6	6

Table 4 shows the annual costs, savings, and net savings over a ten year implementation period which are gained by using the HIPAA standards. Virtually all of the costs attributable to HIPAA will be incurred within the first three years of implementation, since the statute requires health plans other than small health plans to implement the standards within 24 months and small health plans to implement the standards within 36 months of the effective date of the final rule. As each health plan implements a standard, health care providers that conduct electronic transactions with that health plan will also implement the standard. No net savings would accrue in the first year because not enough health plans and health care providers will have implemented the standards. Savings will increase as more health plans and health care providers implement the standards, thus exceeding costs in the fourth year. At that point, the majority of health plans and health care providers will have implemented the standards and, as a result, costs will decrease and benefits will increase.

The savings per claim processed electronically instead of manually is based on the mid-point of the range estimated by WEDI.: $1 per claim for health plans, $1.49 for physicians, $0.86 for hospitals and $0.83 for others. These estimates are based on surveys of health care providers and health plans. Total savings are computed by multiplying the per claim savings by the number of EDI claims attributed to HIPAA. The total number of EDI claims is used in computing the savings to health plans, while the savings for specific health care provider groups is computed using only the number of EDI claims generated by that group (for example, savings to physicians is computed using only physician EDI claims).

WEDI also estimated savings resulting from other HIPAA transactions, such as eligibility verifications, coordination of benefits, and claims inquiries (among others). The average savings per transaction was slightly higher than the savings from electronic billing, but the number of transactions was much smaller than the number of claims transactions. The estimates for transactions other than claims were derived by approximating a number of

transactions and estimating the anticipated savings associated with each transaction relative to those assumed for the savings for electronic billing (see table 5). In general, the approximations are close to those used by WEDI. For these non-billing transactions, the Department assumed that the simplification promoted by HIPAA will facilitate a significant conversion from manual to electronic formats. While today it is estimated that about 44% of these non-billing transactions are electronic, by the end of the ten year period it is estimated that 92% will become electronic.

Savings can also be expected from simplifications in manual claims. The basic assumption is that the savings are ten percent of savings per claim that are projected for conversion from manual to electronic billing. However, it is also assumed that the standards will only gradually allow health care providers and health plans to abandon old manual forms and identifiers by 10% annually; this staged transition is inevitable because many of the relationships that have been established with other entities will require a period of overlap during transitioning with entities with which they do business.

TABLE 4.—TEN YEAR NET SAVINGS
[$ Billions]

Costs and savings	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total (Undiscounted)	Total (Discounted)
Costs:.												
H.C. Provider	1.2	1.2	1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	3.5	3.3
Health Plan	1.2	1.2	1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	3.5	3.3
Total	2.4	2.4	2.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	7.0	6.8
Savings from Claims Processing:												
H.C. Provider	0.4	0.7	1.0	1.1	1.1	1.2	1.2	1.3	1.3	1.3	10.7	7.7
Health Plan	0.4	0.6	0.8	0.9	1.0	1.0	1.1	1.1	1.1	1.1	9.1	6.5
Total	0.8	1.4	1.8	2.0	2.0	2.2	2.3	2.4	2.4	2.5	19.8	14.2
Savings from Other Transactions:												
H.C. Provider	0.1	0.3	0.5	0.7	0.9	1.0	1.2	1.4	1.5	1.7	9.3	6.2
Health Plan	0.1	0.2	0.4	0.6	0.7	0.8	0.9	1.1	1.2	1.4	7.3	4.9
Total	0.1	0.5	0.8	1.3	1.6	1.9	2.1	2.4	2.7	3.1	16.6	11.1
Savings from Manual Transactions:												
H.C. Provider	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.2
Health Plan	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.2	0.1
Total	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.5	0.3
Total Savings:												
H.C. Provider	0.5	1.0	1.5	1.8	2.1	2.3	2.5	2.7	2.9	3.1	20.2	14.1
Health Plan	0.4	0.8	1.2	1.5	1.7	1.9	2.0	2.2	2.4	2.5	16.6	11.6
Total	0.9	1.9	2.7	3.3	3.8	4.1	4.5	4.9	5.2	5.6	36.9	25.6
Net:												
H.C. Provider	−0.7	−0.3	0.4	1.8	2.1	2.3	2.5	2.7	2.9	3.1	16.7	10.8
Health Plan	−0.8	−0.4	0.1	1.5	1.7	1.9	2.0	2.2	2.4	2.5	13.1	8.3
Total	−1.5	−0.5	0.5	3.3	3.8	4.1	4.5	4.9	5.2	5.6	29.9	19.07

Note: Figures do not total due to rounding.
Note: The estimates in Table 4 show cost savings in 2000 dollars (estimates in the proposed rule were in 1998 dollars). The Office of Management and Budget now requires all agencies to provide estimates using a net present value calculation. Furthermore, OMB recommends the use of a 7 percent discount rate based on the current cost of capital. The discounted totals in the table are based on this rate beginning in 2003.

The ratios in Table 5 were derived from the WEDI Report, which estimated the volume and savings of the listed non-billing transactions. By comparing the relationship between billing volume and savings to non-billing volume and savings, it is possible to estimate total savings due to other transactions. These ratios were used because the billing data has been updated by the Faulkner and Gray Health Data Directory, but WEDI has not updated the estimates for non-billing transactions. Therefore, this model implicitly assumes that the ratio of billing transactions to non-billing transactions has remained constant since 1993.

TABLE 5.—RELATIVE SAVINGS AND VOLUME OF OTHER TRANSACTIONS

Transaction	Savings	Volume
Claim	1.0	1.0
Claims inquiry	4.0	0.5
Remittance advice	1.5	0.10
Coordination of benefits	0.5	0.10
Eligibility inquiry	0.5	0.05
Enrollment/disenrollment	0.5	0.01
Referral	0.1	0.10

J. Qualitative Impacts of Administrative Simplification

Administration simplification produces more than hard-dollar savings. There are also qualitative benefits that are less tangible, but nevertheless important. These changes become possible when data can be more easily integrated across entities. WEDI suggests in its 1993 report that the implementation of an EDI infrastructure will cause a ''ripple-effect'' on the whole health care delivery system; this chain reaction will occur because there will be a reduction in duplicate medical procedures and processes as a patient is handled by a continuum of health care providers during an episode of care. WEDI also suggests that there will be a reduction in the exposure to health care fraud as security controls on electronic

transactions will prevent unauthorized access to financial data.

Standards may also reduce administrative burden and improve job satisfaction. For example, fewer administrative staff will be required to translate procedural codes, since a common set of codes will be used. All codes used in these transactions will be standardized, eliminating different values for data elements (for example, place of service).

Administrative simplification will promote the accuracy, reliability and usefulness of the information shared. For example, today there are any number of transaction formats in use. There are over 400 variations of electronic formats for claims transactions alone. As noted earlier, these variations make it difficult for parties to exchange information electronically. At a minimum, it requires data to be translated from the sender's own format to the different formats specified by each intended receiver. Translation usually requires additional equipment and labor.

Administrative simplification greatly enhances the sharing of data both within entities and across entities. It facilitates the coordination of benefits information by having in place a standardized set of data that is known to all parties, along with standardized name and address information that tells where to route transactions. Today, health care providers are reluctant to file claims with multiple health plans on behalf of the patient because information about a patient's eligibility in a health plan is difficult to verify. Most claims filed by patients today are submitted in hard copy. We anticipate that more health care providers will file claims and coordinate benefits on the patient's behalf once standard transactions are adopted and this information is made available electronically.

K. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, requires the Department to prepare a regulatory flexibility analysis if the Secretary certifies that a proposed regulation will have a significant economic impact on a substantial number of small entities. In the health care sector, a small entity is one with less than $5 million in annual revenues. For the purposes of this analysis (pursuant to the RFA), nonprofit organizations are considered small entities; however, individuals and States are not included in the definition of a small entity. We have attempted to estimate the number of small entities and provide a general discussion of the effects of the statute.

For the purpose of this analysis, all 31 nonprofit Blue Cross-Blue Shield Health Plans are considered small entities. 28% of HMOs are considered small entities because of their nonprofit status. Doctors of osteopathy, dentistry, podiatry, as well as chiropractors, and solo and group physicians' offices with fewer than three physicians, are considered small entities. Forty percent of group practices with 3 or more physicians and 100 percent of optometrist practices are considered small entities. Seventy-two percent of all pharmacies, 88% of medical laboratories, 100% of dental laboratories and 90% of durable medical equipment suppliers are assumed to be small entities as well.

We found the best source for information about the health data information industry is Faulkner & Gray's Health Data Directory. This publication is the most comprehensive data dictionary of its kind that we could find. The information in this directory is gathered by Faulkner & Gray editors and researchers who called all of the more than 3,000 organizations that are listed in the book in order to elicit information about their operations. It is important to note that some businesses are listed as more than one type of business entity; this is because in reporting the information, companies could list themselves as many as three different types of entities. For example, some businesses listed themselves as both practice management vendors and claims software vendors because their practice management software was ''EDI enabled.''

All the statistics referencing Faulkner & Gray's come from the 2000 edition of its Health Data Directory. It lists 78 claims clearinghouses, which are entities under contract that take electronic and paper health care claims data from health care providers and billing companies that prepare bills on a health care provider's behalf. The claims clearinghouse acts as a conduit for health plans; it batches claims and routes transactions to the appropriate health plan in a form that expedites payment.

Of the 78 claims clearinghouses listed in this publication, eight processed more that 20 million electronic transactions per month. Another 15 handled 2 million or more transactions per month and another 4 handled over a million electronic transactions per month. The remaining 39 entities listed in the data dictionary processed less than a million electronic transactions per month. Almost all of these entities have annual revenues of under $5 million and would therefore be considered small entities.

Another entity that is involved in the electronic transmission of health care transactions is materials management/supply ordering software companies (value added networks). They are involved in the electronic transmission of data over telecommunication lines. Faulkner & Gray list 21 materials management/supply ordering software vendors that handle health care transactions. We believe that almost all of these companies meet the definition of a small business. [1]

A billing company is another entity involved in the electronic routing of health care transactions. It works primarily with physicians in office and hospital-based settings. Billing companies, in effect, take over the office administrative functions for a physician; they take information such as copies of medical notes and records and prepare claim forms that are then forwarded to an insurer for payment. Billing companies may also handle the receipt of payments, including posting payment to the patient's record on behalf of the health care provider. They can be located within or outside of the physician's practice setting.

In the proposed rule we stated that The International Billing Association, a trade association representing billing companies, estimated that there were 4,500 billing companies in business in the United States. The International Billing Association's estimates are based on the number of names and addresses of actual billing companies on its mailing list. Since we were unable to find more recent information about these entities, we are assuming that the number of billing companies has not changed significantly and that all of the 4,500 billing companies continue to have revenues under $5 million annually.

Software system vendors provide computer software applications support to health care clearinghouses, billing companies, and health care providers. In particular, they work with health care providers' practice management and health information systems. These businesses provide integrated software applications for such services as accounts receivable management, electronic claims submission (patient billing), record keeping, patient charting, practice analysis and patient scheduling. Some software vendors are

[1] The SBA size standard for computer software related industries (SIC 7371–7379) is $18.0 million or less. Between 81% and 99% of the companies in these categories qualify.

also involved in providing applications for translating paper and nonstandard computer documents into standardized formats that are acceptable to health plans.

Faulkner & Gray list 78 physician practice management vendors and suppliers, 76 hospital information systems vendors and suppliers, 140 software vendors and suppliers for claims-related transactions, and 20 translation vendors (now known as Interface Engines/ Integration Tools). We were unable to determine the number of these entities with revenues over $5 million, but we assume most of these businesses would be considered small entities.

As discussed earlier in this analysis, the cost of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. They were characterized as follows: software conversion; cost of automation; training; implementation problems; and cost of documentation and implementation specifications. Rather than repeat that information here, we refer you to the beginning of this impact analysis.

1. Health care Providers and Health Plans

As a result of standard data format and content, health care providers and health plans that wish to do business electronically will be able to do so knowing that capital outlays they make are likely to be worthwhile, with some certainty on the return of their investment. This is because covered entities that exchange electronic health care transactions will be required to receive and send transactions in the same standard formats. We believe this will be an incentive for small physicians' offices to convert from paper to EDI. In a 1996 Office of the Inspector General study entitled ''Encouraging Physicians to Use Paperless Claims,'' the Office of the Inspector General and HCFA agreed that over $36 million in annual Medicare claims processing savings could be achieved if all health care providers submitting 50 or more Medicare claims per month submitted them electronically. Establishment of EDI standards will make it financially beneficial for many small health care providers to convert to electronic claim submissions because all health plans will accept the same formats.

Additionally, health care providers that currently use health care clearinghouses and billing agencies will see costs stabilize and will potentially enjoy some cost reduction. This will result from the increased efficiency that health care clearinghouses and billing companies will realize from being able to more easily link with health care industry business partners.

2. Third Party Vendors

Third party vendors include third party processors/health care clearinghouses (including value added networks), billing companies, and software system vendors. While the market for third party vendors will change as a result of standardization, these changes will be positive for the industry and its customers over the long term. However, the short term/one time costs discussed above will apply to the third party vendor community.

a. *Health Care Clearinghouses and Billing Companies.* As noted above, health care clearinghouses are entities that take health care transactions, convert them into standardized formats, and forward them to the insurer. Billing companies take on the administrative functions of a physician's office. The market for health care clearinghouse and billing company services will definitely be affected by the HIPAA administrative simplification provisions; however, there appears to be some debate on how the market for these services will be affected.

It is likely that competition among health care clearinghouses and billing companies will increase over time as standards reduce some of the technical limitations that currently inhibit health care providers from conducting their own EDI. For example, by eliminating the requirement to maintain several different claims standards for different trading partners, health care providers will be able to more easily link themselves directly to health plans. This could negatively affect the market for health care clearinghouses and system vendors that do translation services; however, standards should increase the efficiency in which health care clearinghouses operate by allowing them to more easily link to multiple health plans. The increased efficiency in operations resulting from standards could, in effect, lower their overhead costs as well as attract new health care clearinghouse customers to offset any loss in market share that they might experience.

Another potential area of change is that brought about through standardized code sets. Standard code sets will lower costs and break down logistical barriers that discouraged some health care providers from doing their own coding and billing. As a result, some health care providers may choose an in-house transaction system rather than using a billing company as a means of exercising more control over information. Conversely, health care clearinghouses may acquire some short-term increase in business from those health care providers that are automated but do not use the selected standards. These health care providers will hire health care clearinghouses to take data from the nonstandard formats they are using and convert them into the appropriate standards. Generally, health care clearinghouses can also be expected to identify opportunities in which they could add value to transaction processing and to find new business opportunities, such as in training health care providers on the new transaction sets. Standards will increase the efficiency of health care clearinghouses, which could in turn drive costs for these services down. Health care clearinghouses may be able to operate more efficiently or at a lower cost based on their ability to gain market share. Some small billing companies may be consumed by health care clearinghouses that may begin offering billing services to augment their health care clearinghouse activities. However, most health care providers that use billing companies will probably continue to do so because of the comprehensive and personalized services these companies offer.

Value added networks transmit data over telecommunication lines. We anticipate that the demand for value added network services will increase as additional health care providers and health plans move to electronic data exchange. Standards will eliminate the need for data to be reformatted, which will allow health care providers to purchase value added network services individually rather than as a component of the full range of health care clearinghouse services.

b. *Software Vendors.* As noted above, software vendors provide computer software applications support to health care clearinghouses and health care providers. In particular, they work with health care providers' practice management and health information systems. These entities will be affected positively, at least in the short term. The implementation of administrative simplification will enhance their business opportunities as they become involved in developing computerized software solutions that allow health care providers and other entities that exchange health care data to integrate the new transaction set into their existing systems.

L. Unfunded mandates

We have identified the private sector costs associated with the

implementation of these standards. Although these costs are unfunded, we expect that they will be offset by subsequent savings as detailed in this impact analysis.

Most costs to health care providers and health plans will occur in the first 3 years following the adoption of the HIPAA standards, with savings to health care providers and health plans exceeding costs in the fourth year. The total net savings for the period 2001–2011 will be $29.8 billion (a net savings of $13.1 billion for health plans, and a net savings of $16.7 billion for health care providers). The single year net savings for the year 2011 will be $5.6 billion ($2.5 billion for health plans and $3.1 billion for health care providers). The discounted present value of these savings is $19.1 billion over ten years. These estimates do not include the secondary benefits that will be realized through expanded e-commerce resulting from standardized systems.

The costs to State and local governments and tribal organizations are also unfunded, but we do not have sufficient information for programs other than Medicaid to provide estimates of the impact of these standards on those entities. As discussed previously, several State Medicaid agencies have estimated that it may cost as much as $10 million per state to implement all the HIPAA standards. However, the Congressional Budget Office analysis stated that ''States are already in the forefront in administering the Medicaid program electronically; the only costs—which should not be significant—would involve bringing the software and computer systems for the Medicaid programs into compliance with the new standards.'' The report went on to point out that Medicaid State agencies have the option to compensate for costs by reducing other expenditures. State and local government agencies are likely to incur less in the way of costs since most of them will have fewer enrollees than Medicaid agencies. Moreover, the Federal government pays a portion of the cost of converting State Medicaid Management Information Systems (MMIS) as Federal Financial Participation—75 percent for system maintenance changes and 90 percent for new software (if approved). Many States are in the process of changing systems as they convert many of the current functions in the move to enroll Medicaid beneficiaries in managed care. The net effect is that some States may have to pay $1 million to comply; however, numerous States may have already incurred some of these costs, though the Department does not have a complete record of State changes.

M. Code Sets—Specific Impact of Adoption of Code Sets for Medical Data

Affected Entities

Standard codes and classifications are required in some segments of administrative and financial transactions. Covered entities that create and process administrative transactions must implement the standard codes according to the implementation specifications adopted for each coding system and each transaction. Those that receive standard electronic administrative transactions must be able to receive and process all standard codes irrespective of local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are part of a standard transaction.

The adoption of standard code sets and coding guidelines for medical data supports the regulatory goals of cost-effectiveness and the avoidance of duplication and burden. The code sets that are being proposed as initial HIPAA standards are already in use by most health plans, health care clearinghouses, and health care providers.

Health care providers currently use the recommended code set for reporting diagnoses and one or more of the recommended procedure coding systems for reporting procedures/services. Since health plans can differ with respect to the codes they accept, many health care providers use different coding guidelines for dealing with different health plans, sometimes for the same patient. (Anecdotal information leads us to believe that use of other codes is widespread, but we cannot quantify the number.) Some of these differences reflect variations in covered services that will continue to exist irrespective of data standardization. Others reflect differences in a health plan's ability to accept as valid a claim that may include more information than is needed or used by that health plan. The requirement to use standard coding guidelines will eliminate this latter category of differences and should simplify claims submission for health care providers that deal with multiple health plans.

Currently, there are health plans that do not adhere to official coding guidelines and have developed their own plan-specific guidelines for use with the standard code sets, which do not permit the use of all valid codes. Again, we cannot quantify how many health plans do this, but we are aware of some instances when this occurs. When the HIPAA code set standards become effective, these health plans will have to receive and process all standard codes, without regard to local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are part of a standard transaction.

We believe that there is significant variation in the reporting of anesthesia services, with some health plans using the anesthesia section of CPT and others requiring the anesthesiologist or nurse anesthetist to report the code for the surgical procedure itself. When the HIPAA code sets become effective, health plans following the latter convention will have to begin accepting codes from the anesthesia section.

We note that by adopting standards for code sets we are requiring that all parties accept these codes within their electronic transactions. We are not requiring payment for all of these services. Those health plans that do not adhere to official coding guidelines must therefore undertake a one-time effort to modify their systems to accept all valid codes in the standard code sets or engage a health care clearinghouse to preprocess the standard claims data for them. Health plans should be able to make modifications to meet the deadlines specified in the legislation, but some temporary disruption of claims processing could result.

There may be some temporary disruption of claims processing as health plans and health care clearinghouses modify their systems to accept all valid codes in the standard code sets.

N. Transaction Standards

1. Specific Impact of Adoption of the National Council of Prescription Drug Programs (NCPDP) Telecommunication Claim

a. Affected Entities. Health care providers that submit retail pharmacy claims, and health care plans that process retail pharmacy claims, currently use the NCPDP format. The NCPDP claim and equivalent encounter is used either in on-line interactive or batch mode. Since all pharmacy health care providers and health plans use the NCPDP claim format, there are no specific impacts to health care providers.

b. Effects of Various Options. The NCPDP format met all of the 10 guiding principles used to designate a standard as a HIPAA standard, and there are no other known options for a standard retail pharmacy claim transaction.

2. Specific Impact of Adoption of the ASC X12N 837 for Submission of Institutional Health Care Claims, Professional Health Care Claims, Dental Claims, and Coordination of Benefits

a. Affected Entities. All health care providers and health plans that conduct EDI directly and use other electronic format(s), and all health care providers that decide to change from a paper format to an electronic one, would have to begin to use the ASC X12N 837 for submitting electronic health care claims (hospital, physician/supplier and dental). (Currently, about 3 percent of Medicare health care providers use this standard for claims; it is used less for non-Medicare claims.)

Some of the possible effects of adopting the ASC X12N 837 include the possibility of an initial disruption in claim processing and payment during a health plan's transition to the standard format and the possibility that health care providers could react adversely to implementation costs and thus revert to hard copy claims.

Despite the initial problems health care providers may encounter with administrative simplification, health care providers will, in the long run, enjoy the advantages associated with not having to keep track of and use different electronic formats for different insurers. This will simplify health care provider billing systems and processes as well as reduce administrative expenses.

Health plans will, as long as they meet the deadlines specified in the statute, be able to schedule their implementation of the ASC X12N 837 in a manner that best fits their needs, thus allaying some costs through coordination of conversion to other standards. Although the costs of implementing the ASC X12N 837 are generally one-time costs related to conversion, the cost of systems upgrades for some smaller health care providers, health plans, and health care clearinghouses may be prohibitive. Health care providers and health plans have the option of using a health care clearinghouse to satisfy the HIPAA standard requirements.

Coordination of benefits. Once the ASC X12N 837 has been implemented, health plans that perform coordination of benefits will be able to eliminate the support of multiple proprietary electronic claim formats, thus simplifying claims receipt and processing as well as reducing administrative costs. Coordination of benefits activities will also be greatly simplified because all health plans will use the same standard format. There is no doubt that standardization in coordination of benefits will greatly enhance and improve efficiency in the overall claims process and the coordination of benefits.

From a non-systems perspective (meaning policy and program issues), there should not be an adverse effect on the coordination of benefits process. The COB transaction will continue to consist of the incoming electronic claim and the data elements provided on a remittance advice. Standardization of the information needed for coordination of benefits will clearly increase efficiency in the electronic processes utilized by the health care providers, health care clearinghouses, and health plans.

b. Effects of Various Options. We assessed the various options for a standard claim transaction against the principles, listed at the beginning of this impact analysis above, with the overall goal of achieving the maximum benefit for the least cost. We found that the ASC X12N 837 for institutional claims, professional claims, dental claims, and coordination of benefits met all of the 10 guiding principles that were used to designate a standard as a HIPAA standard, but no other candidate standard transaction met all the principles.

Since the majority of dental claims are submitted on paper and those submitted electronically are being transmitted using a variety of proprietary formats, the only viable choice for the standard is the ASC X12N 837. The American Dental Association (ADA) also recommended the ASC X12N 837 for the dental claim standard.

The ASC X12N 837 was selected as the standard for the professional (physician/supplier) claim because it met the principles above. The only other candidate standard, the National Standard Format, was developed primarily by HCFA for Medicare claims. While it is widely used, it is not always used in a standard manner. Thus, we declined to adopt the National Standard Format. Many variations of the National Standard Format are in use. Moreover, the NUCC, the AMA, and WEDI recommended the ASC X12N 837 for the professional claim standard.

The ASC X12N 837 was selected as the standard for the institutional (hospital, nursing facilities and similar inpatient institutions) claim because it met the principles above. The only other candidate standard was the UB–92 Format developed by HCFA for Medicare claims. While the UB–92 is widely used, it is not always used in a standard manner. Consequently, we did not elect to adopt the UB–92.

The selection of the ASC X12N 837 does not impose a greater burden on the industry than the nonselected options because the nonselected formats are not used in a standard manner by the industry and they do not incorporate the flexibility necessary to adapt easily to change. The ASC X12N 837 presents significant advantages in terms of universality and flexibility.

3. Specific Impact of Adoption of the ASC X12N 835 for Receipt of Health Care Remittance

a. Affected Entities. Health care providers that conduct EDI with health plans and that do not wish to change their internal systems will have to convert the ASC X12N 835 transactions received from health plans into a format compatible with their internal systems either by using a translator or a health care clearinghouse. Health plans that want to transmit remittance advice directly to health care providers and that do not use the ASC X12N 835 will also incur costs to convert to the standard. Many health care providers and health plans do not use this standard at this time. We do not have information to quantify the standard's use outside the Medicare program. However, according to Medicare statistics, in 1996, 15.9 percent of part B health care providers and 99.4 percent of part A health care providers were able to receive this standard. All Medicare contractors must be able to send the standard.

Some of the possible effects of adopting the ASC X12N 835 include the potential for an initial delay in payment or the issuance of electronic remittance during a plan's transition to the standard format and the possibility that health care providers could react adversely to implementation costs and thus, revert to hard copy remittance notices in lieu of an electronic transmission.

Despite the initial problems health care providers may encounter with administrative simplification, health care providers will, in the long run, enjoy the advantage associated with not having to keep track of or accept different electronic payment/remittance advice formats issued by different health plans. This will simplify automatic posting of all electronic payment/remittance advice data, thus reducing administrative expenses. This will also reduce or eliminate the practice of posting payment/remittance advice data manually from hard copy notices, again reducing administrative expenses. Most manual posting occurs currently in response to the problem of

multiple formats; using standard transactions will eliminate this burden.

Additionally, once the ASC X12N 835 has been implemented, health plans' coordination of benefits activities, which will use the ASC X12N 837 format supplemented with limited data from the ASC X12N 835, will be greatly simplified because all health plans will use the same standard format.

As long as they meet the deadlines specified in the statute, health plans will be able to schedule their implementation of the ASC X12N 835 in a manner that best fits their needs, thus allaying some costs through coordination of conversion to other standards.

The selection of the ASC X12N 835 does not impose a greater burden on the industry than the nonselected options because the nonselected formats are not used in a standard manner by the industry and they do not incorporate the flexibility necessary to adapt easily to change. The ASC X12N 835 presents significant advantages in terms of universality and flexibility.

b. Effects of Various Options. We assessed the various options for a standard payment/remittance advice transaction against the principles listed above which aim at achieving the maximum benefit for the least cost. We found that the ASC X12N 835 met all the principles, but no other candidate standard transaction met all the principles, or even those principles supporting the regulatory goal of cost-effectiveness.

The ASC X12N 835 was selected as it met the principles above. The only other candidate standard, the ASC X12N 820, was not selected because, although it was developed for payment transactions, it was not developed for health care claims payment purposes. The ASC X12N subcommittee itself recognized this in its decision to develop the ASC X12N 835.

4. Specific Impact of Adoption of the ASC X12N 276/277 for Health Care Claim Status/Response

a. Affected Entities. Most health care providers that are currently using an electronic format for claim status inquiries (of which there are currently very few) and that wish to request claim status electronically using the ASC X12N 276/277 will incur conversion costs. We cannot quantify the number of health care providers that will have to convert to the standard, but we do know that no Medicare contractors use the standard; thus, we assume that few health care providers are able to use it at this time.

After implementation, health care providers will be able to request and receive the status of claims in one standard format from all health care plans. This will eliminate their need to maintain redundant software and will make electronic claim status requests and receipt of responses feasible for small health care providers, eliminating their need to manually send and review claim status requests and responses.

Health plans that do not currently directly accept electronic claim status requests and do not directly send electronic claims status responses will have to modify their systems to accept the ASC X12N 276 and to send the ASC X12N 277. No disruptions in claims processing or payment should occur.

After implementation, health plans will be able to submit claim status responses in one standard format to all health care providers. Administrative costs incurred by supporting multiple formats and manually responding to claim status requests will be greatly reduced.

b. Effects of Various Options. There are no known options for a standard claims status and response transaction.

5. Specific Impact of Adoption of the ASC X12N 834 for Enrollment and Disenrollment in a Health Plan

a. Affected entities. The ASC X12N 834 may be used by an employer or other sponsor to electronically enroll or disenroll its subscribers into or out of a health plan. Currently, most small and medium size employers and other sponsors conduct their subscriber enrollments using paper forms. We cannot quantify how many of these sponsors use paper forms, but anecdotal information indicates that most use paper. We understand that large employers and other sponsors are more likely to electronically conduct subscriber enrollment transactions because this method makes it easier to respond to the many changes that occur in a large workforce; for example, hirings, firings, retirements, marriages, births, and deaths. Large employers currently use proprietary electronic data interchange formats, which differ among health plans, in order to conduct subscriber enrollment. Nonetheless, it is our understanding, based on anecdotal information, that health plans still use paper to conduct most of their enrollment transactions.

We expect that the impact of the ASC X12N 834 transaction standard will differ, at least in the beginning, according to the current use of electronic transactions. As stated earlier, at the present time, most small and medium size employers and other sponsors do not use electronic transactions and will therefore experience little immediate impact from the adoption of the ASC X12N 834 transaction. The ASC X12N 834 will offer large employers, currently conducting enrollment transactions electronically, the opportunity to shift to a single standard format. A single standard will be most attractive to those large employers that offer their subscribers choices among multiple health plans. Thus, the early benefits of the ASC X12N 834 will accrue to large employers and other sponsors that will be able to eliminate duplicative hardware and software, and human resources required to support multiple proprietary electronic data interchange formats. In the long run, we expect that the standards will lower the costs of conducting enrollment transactions, thus making it possible for small and medium size companies to achieve significant additional savings by converting from paper to electronic transactions.

Overall, employers and other sponsors, and the health plans with which they deal, stand to benefit from the adoption of the ASC X12N 834 and electronic data interchange. The ASC X12N 834 and electronic data interchange will facilitate the performance of enrollment and disenrollment functions. Further, the ASC X12N 834 supports detailed enrollment information on the subscriber's dependents, which is often lacking in current practice. Ultimately, reductions in administrative overhead may be passed along in lower premiums to subscribers and their dependents.

b. Effects of Various Options. The only other option, the NCPDP Member Enrollment Standard, does not meet the selection criteria and would not be implemented in the larger health industry setting.

6. Specific Impact of Adoption of the ASC X12N 270/271 for Eligibility for a Health Plan

a. Affected Entities. The ASC X12N 270/271 transaction may be used by a health care provider to electronically request and receive eligibility information from a health care plan prior to providing or billing for a health care service. Many health care providers routinely verify health insurance coverage and benefit limitations both prior to providing treatment and/or before preparing claims for submission to the insured patient and his or her health plan. Currently, health care providers secure most of these eligibility determinations through telephone calls, proprietary point of sale terminals, or

using proprietary electronic formats that differ from health plan to health plan. Since many health care providers participate in multiple health plans, these health care providers must maintain duplicative software and hardware, as well as human resources to obtain eligibility information. This process is inefficient, often burdensome, and takes valuable time that could otherwise be devoted to patient care.

The lack of a health care industry standard may have imposed a cost barrier to the widespread use of electronic data interchange. The ASC X12N 270/271 is used widely, but not exclusively, by health care plans and health care providers; this may be due, in part, to the lack of an industry-wide implementation specification for these transactions in health care. We expect that adoption of the ASC X12N 270/271 and its implementation specification will lower the cost of using electronic eligibility verifications. Use of the ASC X12N 270/271 and its implementation specification will benefit health care providers because they will be able to move to a single standard format. Consequently, electronic data interchange will be feasible for the first time for small health plans and health care providers that rely currently on the telephone, paper forms, or proprietary point of sale terminals and software.

b. Effect of Various Options. There were two other options, the ASC X12N IHCEBI, and its companion, IHCEBR, and the NCPDP Telecommunications Standard Format. None of these meet the selection criteria and thus they would not be implementable.

7. Specific Impact of Adoption of the ASC X12N 820 for Payroll Deducted and Other Group Premium Payment for Insurance Product

a. Affected Entities. An employer or sponsor can respond to a bill from a health plan by using the ASC X12N 820 to electronically transmit a remittance notice to accompany a payment for health insurance premiums. Payment may be in the form of a paper check or an electronic funds transfer transaction. The ASC X12N 820 can be sent with electronic funds transfer instructions that are routed directly to the Federal Reserve System's automated health care clearinghouses or with payments generated directly by the employer's or other sponsor's bank. The ASC X12N 820 transaction is widely used by many industries (manufacturing, for instance) and government agencies (Department of Defense) in addition to the insurance industry in general. However, the ASC X12N 820 is not widely used in the health insurance industry and is not widely used by employers and other sponsors to make premium payments to their health insurers. This may be due, in part, to the lack of an implementation specification specifically for health insurance.

Currently, most payment transactions are conducted on paper, and those that are conducted electronically use proprietary electronic data interchange standards that differ across health plans. We cannot quantify how many of these transactions are conducted on paper, but anecdotal information suggests that most are. We believe that the lack of a health care industry standard may have imposed a cost barrier to the use of electronic data interchange; larger employers and other sponsors that often transact business with multiple health plans need to retain duplicative hardware and software, and human resources to support multiple proprietary electronic premium payment standards. We expect that the adoption of national standards will lower the cost of using electronic premium payments. This will benefit large employers that can move to a single standard format; national standards will make electronic transmissions of premium payments feasible for the first time for smaller employers and other sponsors whose payment transactions have been performed almost exclusively in paper.

At some point, an organization's size and complexity will require it to consider switching its business transactions from paper to electronic formats, due to the savings and efficiencies conversion would produce. The ASC X12N 820 would facilitate premium payment by eliminating redundant proprietary formats that are certain to arise when there are no widely accepted common standards. By eliminating the software, hardware, and human resources associated with redundancy, a business may reach the point where it becomes cost beneficial to convert from paper to electronic transactions. Also, those sponsors and health care plans that already support more than one proprietary format will incur some additional expense in the conversion to the standard, but they would enjoy longer term savings that result from eliminating the redundancies.

b. Effects of Various Options. There are no known options for premium payment transactions.

8. Specific Impact of Adoption of ASC X12N 278 for Referral Certification and Authorization

a. Affected Entities. The ASC X12N 278 may be used by a health care provider to electronically request and receive approval from a health plan prior to providing a health care service. Prior approvals have become standard operating procedure for most hospitals, physicians and other health care providers due to the rapid growth of managed care. Health care providers secure most of their prior approvals through telephone calls, paper forms or proprietary electronic formats that differ from health plan to health plan. Since many health care providers participate in multiple managed care health plans, they must devote redundant software, hardware, and human resources to obtaining prior authorization; this process is often untimely and inefficient.

The lack of a health care industry standard may have imposed a cost barrier to the widespread use of electronic data interchange. The ASC X12N 278 is not widely used by health plans and health care providers, which may be due, in part, to the lack of an industry-wide implementation specification for it. The adoption of the ASC X12N 278 and its implementation specification will lower the cost of using electronic prior authorizations. This will benefit health care providers that can move to a single standard format; the standard transaction will also make electronic data interchange feasible for the first time for smaller health plans and health care providers that perform these transactions almost exclusively using the telephone or paper.

At some point, an organization's size and complexity will require it to consider switching its business transactions from paper to electronic form, due to the savings and efficiencies conversion would produce. The ASC X12N 278 will facilitate that by eliminating duplicative proprietary formats that are certain to arise when there are no widely accepted standards. By eliminating the software, hardware, and human resources associated with redundancy, a business may reach the point where it becomes cost beneficial to convert from paper to electronic transactions. Health plans and health care providers that already support more than one proprietary format will incur some additional expense in converting to the standard, but will enjoy longer term savings that result from eliminating the redundancies.

b. Effects of Various Options. There are no known options for referral and certification authorization transactions.

VII. Federalism

Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64

FR 43255) requires us to ensure meaningful and timely input by State and local officials in the development of rules that have Federalism implications. Although the proposed rule (63 FR 25272) was published before the enactment of this Executive Order, the Department consulted with State and local officials as part of an outreach program early in the process of developing the proposed regulation. The Department received comments on the proposed rule from State agencies and from entities who conduct transactions with State agencies. Many of the comments referred to the costs incurred by State and local governments which will result from implementation of the HIPAA standards. We assume that government entities will have these costs offset by future savings, consistent with our projections for the private sector. A Congressional Budget Office analysis made the following points: States are already in the forefront of administering the Medicaid program electronically, Medicaid State agencies can compensate (for these costs) by reducing other expenditures, and the Federal government pays a portion of the cost of converting State Medicaid Management Information Systems.

Other comments regarding States expressed the need for clarification as to when State agencies were subject to the standards. Responses to comments from States and State organizations regarding the standard transactions set forth in this rule are found in this preamble.

In complying with the requirements of part C of title XI, the Secretary established interdepartmental implementation teams who consulted with appropriate State and Federal agencies and private organizations. These external groups consisted of the NCVHS Subcommittee on Standards and Security, the Workgroup for Electronic Data Interchange (WEDI), the National Uniform Claim Committee (NUCC), the National Uniform Billing Committee (NUBC) and the American Dental Association (ADA). The teams also received comments on the proposed regulation from a variety of organizations, including State Medicaid agencies and other Federal agencies.

VIII. Interaction with Privacy

The Secretary has developed this rule in conjunction with the development of standards to protect the privacy of individually identifiable health information, including information that will be transmitted pursuant to these transaction standards. Compliance with the privacy standards will be required at approximately the same time as the compliance dates of this rule. If the privacy standards are substantially delayed, or if Congress fails to adopt comprehensive and effective privacy standards that supercede the standards we are developing, we would seriously consider suspending the application of the transaction standards or taking action to withdraw this rule.

List of Subjects

45 CFR Part 160

Electronic transactions, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Reporting and recordkeeping requirements.

45 CFR Part 162

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter C, is added to read as follows:

SUBCHAPTER C—ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart A—General Provisions

Sec.
160.101 Statutory basis and purpose.
160.102 Applicability.
160.103 Definitions.
160.104 Modifications.

Subpart B—[Reserved]

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

Subpart A—General Provisions

§ 160.101 Statutory basis and purpose.

The requirements of this subchapter implement sections 1171 through 1179 of the Social Security Act (the Act), as added by section 262 of Public Law 104–191, and section 264 of Public Law 104–191.

§ 160.102 Applicability.

Except as otherwise provided, the standards, requirements, and implementation specifications adopted under this subchapter apply to the following entities:

(a) A health plan.

(b) A health care clearinghouse.

(c) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

§ 160.103 Definitions.

Except as otherwise provided, the following definitions apply to this subchapter:

Act means the Social Security Act.

ANSI stands for the American National Standards Institute.

Business associate means a person who performs a function or activity regulated by this subchapter on behalf of a covered entity, as defined in this section. A business associate may be a covered entity. Business associate excludes a person who is part of the covered entity's workforce as defined in this section.

Compliance date means the date by which a covered entity must comply with a standard, implementation specification, or modification adopted under this subchapter.

Covered entity means one of the following:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

Group health plan (also see definition of *health plan* in this section) means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care, as defined in section 2791(a)(2) of the Public Health Service (PHS) Act, 42 U.S.C. 300gg–91(a)(2), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that—

(1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or

(2) Is administered by an entity other than the employer that established and maintains the plan.

HCFA stands for Health Care Financing Administration within the Department of Health and Human Services.

HHS stands for the Department of Health and Human Services.

Health care means care, services, or supplies furnished to an individual and related to the health of the individual. Health care includes the following:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; counseling; service; or procedure with respect to the physical or mental condition, or functional status, of an individual or affecting the structure or function of the body.

(2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(3) Procurement or banking of blood, sperm, organs, or any other tissue for administration to individuals.

Health care clearinghouse means a public or private entity that does either of the following (Entities, including but not limited to, billing services, repricing companies, community health management information systems or community health information systems, and ''value-added'' networks and switches are health care clearinghouses for purposes of this subchapter if they perform these functions.):

(1) Processes or facilitates the processing of information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.

(2) Receives a standard transaction from another entity and processes or facilitates the processing of information into nonstandard format or nonstandard data content for a receiving entity.

Health care provider means a provider of services as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u), a provider of medical or other health services as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that —

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Health insurance issuer (as defined in section 2791(b) of the PHS Act, 42 U.S.C. 300gg-91(b)(2), and used in the definition of *health plan* in this section) means an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

Health maintenance organization (HMO) (as defined in section 2791 of the PHS Act, 42 U.S.C. 300gg–91(b)(3), and used in the definition of health plan in this section) means a Federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.

Health plan means an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg–91(a)(2)). Health plan includes, when applied to government funded programs, the components of the government agency administering the program. Health plan includes the following, singly or in combination:

(1) A group health plan, as defined in this section.

(2) A health insurance issuer, as defined in this section.

(3) An HMO, as defined in this section.

(4) Part A or Part B of the Medicare program under title XVIII of the Act.

(5) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396 et seq.

(6) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1)).

(7) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C. chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(13) The Federal Employees Health Benefit Program under 5 U.S.C. 8902 *et seq.*

(14) An approved State child health plan under title XXI of the Act, providing benefits that meet the requirements of section 2103 of the Act, 42 U.S.C. 1397 et seq.

(15) The Medicare + Choice program under part C of title XVIII of the Act, 42 U.S.C. 1395w–21 through 1395w–28.

(16) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg–91(a)(2)).

Implementation specification means the specific instructions for implementing a standard.

Modify or modification refers to a change adopted by the Secretary, through regulation, to a standard or an implementation specification.

Secretary means the Secretary of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Small health plan means a health plan with annual receipts of $5 million or less.

Standard means a prescribed set of rules, conditions, or requirements describing the following information for products, systems, services or practices:

(1) Classification of components.

(2) Specification of materials, performance, or operations.

(3) Delineation of procedures.

Standard setting organization (SSO) means an organization accredited by the American National Standards Institute that develops and maintains standards for information transactions or data elements, or any other standard that is necessary for, or will facilitate the implementation of, this part.

State refers to one of the following:

(1) For health plans established or regulated by Federal law, State has the meaning set forth in the applicable section of the United States Code for each health plan.

(2) For all other purposes, State means the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

Trading partner agreement means an agreement related to the exchange of information in electronic transactions, whether the agreement is distinct or part of a larger agreement, between each party to the agreement. (For example, a trading partner agreement may specify, among other things, the duties and responsibilities of each party to the agreement in conducting a standard transaction.)

Transaction means the exchange of information between two parties to carry out financial or administrative activities related to health care. It includes the following types of information exchanges:

(1) Health care claims or equivalent encounter information.

(2) Health care payment and remittance advice.

(3) Coordination of benefits.

(4) Health care claim status.

(5) Enrollment and disenrollment in a health plan.

(6) Eligibility for a health plan.

(7) Health plan premium payments.

(8) Referral certification and authorization.

(9) First report of injury.

(10) Health claims attachments.

(11) Other transactions that the Secretary may prescribe by regulation.

Workforce means employees, volunteers, trainees, and other persons under the direct control of a covered entity, whether or not they are paid by the covered entity.

§ 160.104 Modifications.

(a) Except as provided in paragraph (b) of this section, the Secretary may adopt a modification to a standard or implementation specification adopted under this subchapter no more frequently than once every 12 months.

(b) The Secretary may adopt a modification at any time during the first year after the standard or implementation specification is initially adopted, if the Secretary determines that the modification is necessary to permit compliance with the standard.

(c) The Secretary establishes the compliance date for any standard or implementation specification modified under this section.

(1) The compliance date for a modification is no earlier than 180 days after the effective date of the final rule in which the Secretary adopts the modification.

(2) The Secretary may consider the extent of the modification and the time needed to comply with the modification in determining the compliance date for the modification.

(3) The Secretary may extend the compliance date for small health plans, as the Secretary determines is appropriate.

Subpart B—[Reserved]

PART 162—ADMINISTRATIVE REQUIREMENTS

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162.1801 Coordination of benefits transaction.
162.1802 Standards for coordination of benefits.

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d—1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

Subpart A—General Provisions

§ 162.100 Applicability.

Covered entities (as defined in § 160.103 of this subchapter) must comply with the applicable requirements of this part.

§ 162.103 Definitions.

For purposes of this part, the following definitions apply:

Code set means any set of codes used to encode data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes. A code set includes the codes and the descriptors of the codes.

Code set maintaining organization means an organization that creates and maintains the code sets adopted by the Secretary for use in the transactions for which standards are adopted in this part.

Data condition means the rule that describes the circumstances under which a covered entity must use a particular data element or segment.

Data content means all the data elements and code sets inherent to a transaction, and not related to the format of the transaction. Data elements that are related to the format are not data content.

Data element means the smallest named unit of information in a transaction.

Data set means a semantically meaningful unit of information exchanged between two parties to a transaction.

Descriptor means the text defining a code.

Designated standard maintenance organization (DSMO) means an organization designated by the Secretary under § 162.910(a).

Direct data entry means the direct entry of data (for example, using dumb terminals or web browsers) that is immediately transmitted into a health plan's computer.

Electronic media means the mode of electronic transmission. It includes the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.

Format refers to those data elements that provide or control the enveloping or hierarchical structure, or assist in identifying data content of, a transaction.

HCPCS stands for the Health [Care Financing Administration] Common Procedure Coding System.

Maintain or *maintenance* refers to activities necessary to support the use of a standard adopted by the Secretary, including technical corrections to an implementation specification, and enhancements or expansion of a code set. This term excludes the activities related to the adoption of a new standard or implementation specification, or modification to an

adopted standard or implementation specification.

Maximum defined data set means all of the required data elements for a particular standard based on a specific implementation specification.

Segment means a group of related data elements in a transaction.

Standard transaction means a transaction that complies with the applicable standard adopted under this part.

Subparts B—H [Reserved]

Subpart I—General Provisions for Transactions

§ 162.900—Compliance dates of the initial implementation of the code sets and transaction standards.

(a) *Health care providers.* A covered health care provider must comply with the applicable requirements of subparts I through N of this part no later than October 16, 2002.

(b) *Health plans.* A health plan must comply with the applicable requirements of subparts I through R of this part no later than one of the following dates:

(1) *Health plans other than small health plans*— October 16, 2002.

(2) *Small health plans*— October 16, 2003.

(c) *Health care clearinghouses.* A health care clearinghouse must comply with the applicable requirements of subparts I through R of this part no later than October 16, 2002.

§ 162.910 Maintenance of standards and adoption of modifications and new standards.

(a) *Designation of DSMOs.* (1) The Secretary may designate as a DSMO an organization that agrees to conduct, to the satisfaction of the Secretary, the following functions:

(i) Maintain standards adopted under this subchapter.

(ii) Receive and process requests for adopting a new standard or modifying an adopted standard.

(2) The Secretary designates a DSMO by notice in the **Federal Register**.

(b) *Maintenance of standards.* Maintenance of a standard by the appropriate DSMO constitutes maintenance of the standard for purposes of this part, if done in accordance with the processes the Secretary may require.

(c) *Process for modification of existing standards and adoption of new standards.* The Secretary considers a recommendation for a proposed modification to an existing standard, or a proposed new standard, only if the recommendation is developed through a process that provides for the following:

(1) Open public access.

(2) Coordination with other DSMOs.

(3) An appeals process for each of the following, if dissatisfied with the decision on the request:

(i) The requestor of the proposed modification.

(ii) A DSMO that participated in the review and analysis of the request for the proposed modification, or the proposed new standard.

(4) Expedited process to address content needs identified within the industry, if appropriate.

(5) Submission of the recommendation to the National Committee on Vital and Health Statistics (NCVHS).

§ 162.915 Trading partner agreements.

A covered entity must not enter into a trading partner agreement that would do any of the following:

(a) Change the definition, data condition, or use of a data element or segment in a standard.

(b) Add any data elements or segments to the maximum defined data set.

(c) Use any code or data elements that are either marked ''not used'' in the standard's implementation specification or are not in the standard's implementation specification(s).

(d) Change the meaning or intent of the standard's implementation specification(s).

§ 162.920 Availability of implementation specifications.

(a) *Access to implementation specifications.* A person or organization may request copies (or access for inspection) of the implementation specifications for a standard described in subparts K through R of this part by identifying the standard by name, number, and version. The implementation specifications are available as follows:

(1) *ASC X12N specifications.* The implementation specifications for ASC X12N standards may be obtained from the Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD, 20852–2116; telephone 301–949–9740; and FAX: 301–949–9742. They are also available through the Washington Publishing Company on the Internet at http://www.wpc-edi.com. The implementation specifications are as follows:

(i) The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097, as referenced in §§ 162.1102 and 162.1802.

(ii) The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098, as referenced in §§ 162.1102 and 162.1802.

(iii) The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096, as referenced in §§ 162.1102 and 162.1802.

(iv) The ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092, as referenced in § 162.1202.

(v) The ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094, as referenced in § 162.1302.

(vi) The ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093, as referenced in § 162.1402.

(vii) The ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095, as referenced in § 162.1502.

(viii) The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091, as referenced in § 162.1602.

(ix) The ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, May 2000, Washington Publishing Company, 004010X061, as referenced in § 162.1702.

(2) *Retail pharmacy specifications.* The implementation specifications for all retail pharmacy standards may be obtained from the National Council for Prescription Drug Programs (NCPDP), 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016; telephone 602–957–9105; and FAX 602–955–0749. It may also be obtained through the Internet at http://www.ncpdp.org. The implementation specifications are as follows:

(i) The Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, National Council for Prescription Drug Programs, as referenced in §§ 162.1102, 162.1202, 162.1602, and 162.1802.

(ii) The Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996, National Council for Prescription Drug Programs, as referenced in §§ 162.1102, 162.1202, 162.1602, and 162.1802.

(b) *Incorporations by reference.* The Director of the Office of the Federal Register approves the implementation specifications described in paragraph (a) of this section for incorporation by reference in subparts K through R of this part in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the implementation specifications may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

§ 162.923 Requirements for covered entities.

(a) *General rule.* Except as otherwise provided in this part, if a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction.

(b) *Exception for direct data entry transactions.* A health care provider electing to use direct data entry offered by a health plan to conduct a transaction for which a standard has been adopted under this part must use the applicable data content and data condition requirements of the standard when conducting the transaction. The health care provider is not required to use the format requirements of the standard.

(c) *Use of a business associate.* A covered entity may use a business associate, including a health care clearinghouse, to conduct a transaction covered by this part. If a covered entity chooses to use a business associate to conduct all or part of a transaction on behalf of the covered entity, the covered entity must require the business associate to do the following:

(1) Comply with all applicable requirements of this part.

(2) Require any agent or subcontractor to comply with all applicable requirements of this part.

§ 162.925 Additional requirements for health plans.

(a) *General rules.* (1) If an entity requests a health plan to conduct a transaction as a standard transaction, the health plan must do so.

(2) A health plan may not delay or reject a transaction, or attempt to adversely affect the other entity or the transaction, because the transaction is a standard transaction.

(3) A health plan may not reject a standard transaction on the basis that it contains data elements not needed or used by the health plan (for example, coordination of benefits information).

(4) A health plan may not offer an incentive for a health care provider to conduct a transaction covered by this part as a transaction described under the exception provided for in § 162.923(b).

(5) A health plan that operates as a health care clearinghouse, or requires an entity to use a health care clearinghouse to receive, process, or transmit a standard transaction may not charge fees or costs in excess of the fees or costs for normal telecommunications that the entity incurs when it directly transmits, or receives, a standard transaction to, or from, a health plan.

(b) *Coordination of benefits.* If a health plan receives a standard transaction and coordinates benefits with another health plan (or another payer), it must store the coordination of benefits data it needs to forward the standard transaction to the other health plan (or other payer).

(c) *Code sets.* A health plan must meet each of the following requirements:

(1) Accept and promptly process any standard transaction that contains codes that are valid, as provided in subpart J of this part.

(2) Keep code sets for the current billing period and appeals periods still open to processing under the terms of the health plan's coverage.

§ 162.930 Additional rules for health care clearinghouses.

When acting as a business associate for another covered entity, a health care clearinghouse may perform the following functions:

(a) Receive a standard transaction on behalf of the covered entity and translate it into a nonstandard transaction (for example, nonstandard format and/or nonstandard data content) for transmission to the covered entity.

(b) Receive a nonstandard transaction (for example, nonstandard format and/or nonstandard data content) from the covered entity and translate it into a standard transaction for transmission on behalf of the covered entity.

§ 162.940 Exceptions from standards to permit testing of proposed modifications.

(a) *Requests for an exception.* An organization may request an exception from the use of a standard from the Secretary to test a proposed modification to that standard. For each proposed modification, the organization must meet the following requirements:

(1) *Comparison to a current standard.* Provide a detailed explanation, no more than 10 pages in length, of how the proposed modification would be a significant improvement to the current standard in terms of the following principles:

(i) Improve the efficiency and effectiveness of the health care system by leading to cost reductions for, or improvements in benefits from, electronic health care transactions.

(ii) Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

(iii) Be uniform and consistent with the other standards adopted under this part and, as appropriate, with other private and public sector health data standards.

(iv) Have low additional development and implementation costs relative to the benefits of using the standard.

(v) Be supported by an ANSI-accredited SSO or other private or public organization that would maintain the standard over time.

(vi) Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

(vii) Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, unless they are explicitly part of the standard.

(viii) Be precise, unambiguous, and as simple as possible.

(ix) Result in minimum data collection and paperwork burdens on users.

(x) Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

(2) *Specifications for the proposed modification.* Provide specifications for the proposed modification, including any additional system requirements.

(3) *Testing of the proposed modification.* Provide an explanation, no more than 5 pages in length, of how the organization intends to test the standard, including the number and types of health plans and health care providers expected to be involved in the test, geographical areas, and beginning and ending dates of the test.

(4) *Trading partner concurrences.* Provide written concurrences from trading partners who would agree to participate in the test.

(b) *Basis for granting an exception.* The Secretary may grant an initial exception, for a period not to exceed 3 years, based on, but not limited to, the following criteria:

(1) An assessment of whether the proposed modification demonstrates a significant improvement to the current standard.

(2) The extent and length of time of the exception.

(3) Consultations with DSMOs.

(c) *Secretary's decision on exception.* The Secretary makes a decision and

notifies the organization requesting the exception whether the request is granted or denied.

(1) *Exception granted.* If the Secretary grants an exception, the notification includes the following information:

(i) The length of time for which the exception applies.

(ii) The trading partners and geographical areas the Secretary approves for testing.

(iii) Any other conditions for approving the exception.

(2) *Exception denied.* If the Secretary does not grant an exception, the notification explains the reasons the Secretary considers the proposed modification would not be a significant improvement to the current standard and any other rationale for the denial.

(d) *Organization's report on test results.* Within 90 days after the test is completed, an organization that receives an exception must submit a report on the results of the test, including a cost-benefit analysis, to a location specified by the Secretary by notice in the **Federal Register**.

(e) *Extension allowed.* If the report submitted in accordance with paragraph (d) of this section recommends a modification to the standard, the Secretary, on request, may grant an extension to the period granted for the exception.

Subpart J—Code Sets

§ 162.1000 General requirements.

When conducting a transaction covered by this part, a covered entity must meet the following requirements:

(a) *Medical data code sets.* Use the applicable medical data code sets described in § 162.1002 as specified in the implementation specification adopted under this part that are valid at the time the health care is furnished.

(b) *Nonmedical data code sets.* Use the nonmedical data code sets as described in the implementation specifications adopted under this part that are valid at the time the transaction is initiated.

§ 162.1002 Medical data code sets.

The Secretary adopts the following code set maintaining organization's code sets as the standard medical data code sets:

(a) *International Classification of Diseases, 9th Edition, Clinical Modification, (ICD–9–CM), Volumes 1 and 2* (including The Official ICD–9–CM Guidelines for Coding and Reporting), as maintained and distributed by HHS, for the following conditions:

(1) Diseases.

(2) Injuries.

(3) Impairments.

(4) Other health problems and their manifestations.

(5) Causes of injury, disease, impairment, or other health problems.

(b) *International Classification of Diseases, 9th Edition, Clinical Modification, Volume 3 Procedures* (including The Official ICD–9–CM Guidelines for Coding and Reporting), as maintained and distributed by HHS, for the following procedures or other actions taken for diseases, injuries, and impairments on hospital inpatients reported by hospitals:

(1) Prevention.

(2) Diagnosis.

(3) Treatment.

(4) Management.

(c) *National Drug Codes* (NDC), as maintained and distributed by HHS, in collaboration with drug manufacturers, for the following:

(1) Drugs

(2) Biologics.

(d) *Code on Dental Procedures and Nomenclature,* as maintained and distributed by the American Dental Association, for dental services.

(e) The combination of *Health Care Financing Administration Common Procedure Coding System (HCPCS),* as maintained and distributed by HHS, and *Current Procedural Terminology, Fourth Edition (CPT–4),* as maintained and distributed by the American Medical Association, for physician services and other health care services. These services include, but are not limited to, the following:

(1) Physician services.

(2) Physical and occupational therapy services.

(3) Radiologic procedures.

(4) Clinical laboratory tests.

(5) Other medical diagnostic procedures.

(6) Hearing and vision services.

(7) Transportation services including ambulance.

(f) The *Health Care Financing Administration Common Procedure Coding System (HCPCS),* as maintained and distributed by HHS, for all other substances, equipment, supplies, or other items used in health care services. These items include, but are not limited to, the following:

(1) Medical supplies.

(2) Orthotic and prosthetic devices.

(3) Durable medical equipment.

§ 162.1011 Valid code sets.

Each code set is valid within the dates specified by the organization responsible for maintaining that code set.

Subpart K—Health Care Claims or Equivalent Encounter Information

§ 162.1101 Health care claims or equivalent encounter information transaction.

The health care claims or equivalent encounter information transaction is the transmission of either of the following:

(a) A request to obtain payment, and the necessary accompanying information from a health care provider to a health plan, for health care.

(b) If there is no direct claim, because the reimbursement contract is based on a mechanism other than charges or reimbursement rates for specific services, the transaction is the transmission of encounter information for the purpose of reporting health care.

§ 162.1102 Standards for health care claims or equivalent encounter information.

The Secretary adopts the following standards for the health care claims or equivalent encounter information transaction:

(a) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental Health Care Claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(c) *Professional Health Care Claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(d) *Institutional Health Care Claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart L—Eligibility for a Health Plan

§ 162.1201 Eligibility for a health plan transaction.

The eligibility for a health plan transaction is the transmission of either of the following:

(a) An inquiry from a health care provider to a health plan, or from one health plan to another health plan, to obtain any of the following information about a benefit plan for an enrollee:

(1) Eligibility to receive health care under the health plan.

(2) Coverage of health care under the health plan.

(3) Benefits associated with the benefit plan.

(b) A response from a health plan to a health care provider's (or another health plan's) inquiry described in paragraph (a) of this section.

§ 162.1202 Standards for eligibility for a health plan.

The Secretary adopts the following standards for the eligibility for a health plan transaction:

(a) *Retail pharmacy drugs.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental, professional, and institutional.* The ASC X12N 270/271–Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart M—Referral Certification and Authorization

§ 162.1301 Referral certification and authorization transaction.

The referral certification and authorization transaction is any of the following transmissions:

(a) A request for the review of health care to obtain an authorization for the health care.

(b) A request to obtain authorization for referring an individual to another health care provider.

(c) A response to a request described in paragraph (a) or paragraph (b) of this section.

§ 162.1302 Standard for referral certification and authorization.

The Secretary adopts the ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094 as the standard for the referral certification and authorization transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart N—Health Care Claim Status

§ 162.1401 Health care claim status transaction.

A health care claim status transaction is the transmission of either of the following:

(a) An inquiry to determine the status of a health care claim.

(b) A response about the status of a health care claim.

§ 162.1402 Standard for health care claim status.

The Secretary adopts the ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093 as the standard for the health care claim status transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart O—Enrollment and Disenrollment in a Health Plan

§ 162.1501 Enrollment and disenrollment in a health plan transaction.

The enrollment and disenrollment in a health plan transaction is the transmission of subscriber enrollment information to a health plan to establish or terminate insurance coverage.

§ 162.1502 Standard for enrollment and disenrollment in a health plan.

The Secretary adopts the ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095 as the standard for the enrollment and disenrollment in a health plan transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart P—Health Care Payment and Remittance Advice

§ 162.1601 Health care payment and remittance advice transaction.

The health care payment and remittance advice transaction is the transmission of either of the following for health care:

(a) The transmission of any of the following from a health plan to a health care provider's financial institution:

(1) Payment.

(2) Information about the transfer of funds.

(3) Payment processing information.

(b) The transmission of either of the following from a health plan to a health care provider:

(1) Explanation of benefits.

(2) Remittance advice.

§ 162.1602 Standards for health care payment and remittance advice.

The Secretary adopts the following standards for the health care payment and remittance advice transaction:

(a) *Retail pharmacy drug claims and remittance advice.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental, professional, and institutional health care claims and remittance advice.* The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart Q—Health Plan Premium Payments

§ 162.1701 Health plan premium payments transaction.

The health plan premium payment transaction is the transmission of any of the following from the entity that is arranging for the provision of health care or is providing health care coverage payments for an individual to a health plan:

(a) Payment.

(b) Information about the transfer of funds.

(c) Detailed remittance information about individuals for whom premiums are being paid.

(d) Payment processing information to transmit health care premium payments including any of the following:

(1) Payroll deductions.

(2) Other group premium payments.

(3) Associated group premium payment information.

§ 162.1702 Standard for health plan premium payments.

The Secretary adopts the ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, May 2000, Washington Publishing Company, 004010X061 as the standard for the health plan premium payments transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Subpart R—Coordination of Benefits

§ 162.1801 Coordination of benefits transaction.

The coordination of benefits transaction is the transmission from any

entity to a health plan for the purpose of determining the relative payment responsibilities of the health plan, of either of the following for health care:

(a) Claims.

(b) Payment information.

§ 162.1802 Standards for coordination of benefits.

The Secretary adopts the following standards for the coordination of benefits information transaction:

(a) *Retail pharmacy drug claims.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) *Dental claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(c) *Professional health care claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(d) *Institutional health care claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. The implementation specification is available at the addresses specified in § 162.920(a)(1).

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d-1320d-8), as added by sec. 262 of Public Law 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d-2 (note)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 24, 2000.

Donna Shalala,

Secretary.

[FR Doc. 00–20820 Filed 8–11–00; 3:41 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0149–N]

RIN 0938–AI58

Health Insurance Reform: Announcement of Designated Standard Maintenance Organizations

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This notice announces the organizations that the Secretary designates as Designated Standard Maintenance Organizations (DSMOs). These organizations maintain standards for health care transactions adopted by the Secretary, and receive and process requests for adopting a new standard or modifying an adopted standard. This notice is published in accordance with our final rule titled Standards for Electronic Transactions, published elsewhere in this **Federal Register**, which implements section 262 of the Health Insurance Portability and Accountability Act, which added sections 1171 through 1179 to the Social Security Act.

EFFECTIVE DATE: October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Stanley Nachimson, (410) 786–6153.

SUPPLEMENTARY INFORMATION:

Background

Section 262 of the Health Insurance Portability and Accountability Act (HIPAA) added sections 1171 through 1179 to the Social Security Act (the ''Act''). Section 1173(a) of the Act requires the Secretary to adopt standards for health care transactions to enable electronic exchange of health information. In addition, section 1172 of the Act requires consultation prior to the adoption of a standard with the following Data Content Committees (DCCs): National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association prior to the adoption of a standard. In the case of a standard that has been developed, adopted, or modified by a standard setting organization (SSO), the SSO is to consult with the above-named groups during such development, adoption, or modification. In the case of any other standard, the Secretary is required to consult with each of the above-named groups before adopting the standard and must also comply with the provisions of section 1172(f) of the Act regarding consultation with the National Committee on Vital and Health Statistics.

The final rule titled ''Standards for Electronic Transactions,'' published elsewhere in this **Federal Register**, establishes a new category of organization, the ''Designated Standard Maintenance Organization (DSMO).'' Section 162.910 of this final regulation provides that the Secretary may designate as DSMOs those organizations that agree to maintain the standards adopted by the Secretary. Section 162.910 also establishes criteria for the processes to be used in such maintenance. Several DCCs and SSOs have agreed to maintain those standards designated as national standards in the final rule ''Standards for Electronic Transactions'' according to the criteria established by the Secretary.

Provisions of the Notice

Pursuant to § 162.910, the Secretary designates the following organizations as DSMOs:

1. Accredited Standards Committee X12.
2. Dental Content Committee of the American Dental Association.
3. Health Level Seven.
4. National Council for Prescription Drug Programs.
5. National Uniform Billing Committee.
6. National Uniform Claim Committee.

Authority: Section 1172 of the Social Security Act (42 U.S.C. 1320d–1)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare— Supplementary Medical Insurance Program)

Dated: July 24, 2000.

Donna Shalala,

Secretary.

[FR Doc. 00–20821 Filed 8–11–00; 3:41 pm]

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Federal Register

Thursday,
August 17, 2000

Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 352, 357, and 385

Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts; Proposed Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 352, 357, and 385

[Docket No. RM99–10–000]

Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts

Issued July 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend parts 352, 357, and 385 of its regulations. The Commission proposes to revise Form 6 schedules and instructions to better meet current and future regulatory requirements and industry needs, update Uniform Systems of Accounts (USofA) requirements to be more consistent with current Generally Accepted Accounting Principles (GAAP), and amend its regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission is also testing the software and related elements of the electronic filing mechanism prior to its formal implementation.

DATES: Comments on the proposed rulemaking are due on or before October 16, 2000.

ADDRESSES: File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM99–10–000.

FOR FURTHER INFORMATION CONTACT:

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Appendix B—Summary of FERC Form No. 6: Annual Report of Oil Pipeline Companies Revisions

I. Introduction

The Federal Energy Regulatory Commission (Commission or FERC) proposes to amend Parts 352, 357, and 385 of its regulations to revise its FERC Form No. 6: Annual Report of Oil Pipeline Companies (Form 6) schedules and instructions to better meet current and future regulatory requirements and industry needs; update Uniform Systems of Accounts (USofA) requirements to be more consistent with current Generally Accepted Accounting Principles (GAAP); and amend its regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission also continues to test the software and related elements of the electronic filing mechanism prior to formal implementation. This proposed rule is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary accounting and reporting requirements and if adopted, these changes would reduce by about 24.7 percent the burden on regulated companies for maintaining and reporting information under the Commission's regulations.

II. Background

In 1977, the responsibility to regulate oil pipeline companies was transferred to the Commission from the Interstate Commerce Commission (ICC).[1] In accordance with the transfer of authority, the Commission was delegated the responsibility under section 1 of the Interstate Commerce Act (49 U.S.C. 1) to regulate the rates and charges for transportation of oil by pipeline and establish valuation of those pipelines, and under section 20 of that Act to require pipelines to file annual reports of information necessary for the Commission to exercise its statutory responsibilities.[2]

The ICC developed the Form P to collect information on an annual basis to enable it to carry out its regulation of oil pipeline companies under the Interstate Commerce Act. A comprehensive review of the reporting requirements for oil pipeline companies was performed on September 21, 1982, when the Commission issued Order 260 revising the former ICC Form P, ''Annual Report of Carriers by Pipeline'' and redesignating it as FERC Form No. 6, ''Annual Report of Oil Pipeline

[1] Section 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7172, provides that: ''[t]here are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer of component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or established the valuation of any such pipeline.''

[2] The Secretary of Energy delegated to the Commission the authority under the Interstate Commerce Act which was formerly vested in the ICC, as that statute relates ''to the transportation of oil pipeline to the extent that such . . . [statute is] not transferred to, and vested in, FERC by Section 402(b) of the DOE Act . . .'' (Delegation Order No. 0204–1, Oct. 1, 1977).

Companies.'' In 1994, the Commission addressed additional revisions to the Form 6 in Order Nos. 571 and 571–A, including adding a new page 700. The information included in the Form 6 was determined at that time to be the minimum necessary for Shippers to assess filed rate changes under Order 561.

The current oil pipeline regulations call for the Commission and its Staff to play a less active role in monitoring and overseeing pipeline rates and practices. Consequently, the oil pipeline Shippers have to play a more active role in monitoring and alerting the Commission to rate and tariff abuses. Unlike Shippers in the natural gas and electric industries regulated by the Commission, oil pipeline Shippers bear a greater burden in proving that proposed rate changes are unjust and unreasonable. Moreover, when a Shipper attempts to justify a complaint against an existing or grandfathered rate, it must satisfy a substantial evidentiary burden before a hearing and formal discovery rights are granted. This burden requires an in-depth analysis of oil pipelines' cost and revenue data.

As a result of the shift in responsibilities and the specific information requirements outlined in Commission Rule 206 for a protest or complaint, the Commission is proposing the following changes to Form 6 information collection in this NOPR.

On September 21, 1999, Commission Staff conducted a technical conference to solicit comments and discuss potential changes to Form 6 to better meet current and future regulatory requirements and industry needs.[3] Based on comments received during the staff technical conference and written comments filed with the Commission, this notice of proposed rulemaking proposes to revise the current Form 6 reporting requirements for oil pipeline companies to better meet current and future regulatory requirements and industry needs and updates related Uniform Systems of Accounts accounting requirements to be more consistent with current GAAP. The NOPR also proposes to amend the regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission is also testing the software and related elements of the electronic filing mechanism prior to formal implementation.

[3] 64 FR 42623 (Aug. 5, 1999) and 64 FR 45931 (Aug. 23, 1999).

III. Proposed Revisions to Form 6

The Commission is proposing to revise Part 357—Annual Special or Periodic Reports: Carriers Subject to Part I of the Interstate Commerce Act for pipeline carriers subject to the provisions of section 20 of the Interstate Commerce Act. For the most part, these proposed changes will revise the annual filing requirements for Form 6, and raise the minimal filing threshold for the Form 6. The Commission is also proposing to revise the Form 6 instructions and schedules to clarify definitions and general instructions, eliminate duplicate reporting requirements, remove and consolidate schedules, update current schedules, and revise current schedules. The changes are intended to lower the reporting burden on relatively small companies and clarify the Form 6 reporting requirements to promote consistent reporting practices among pipeline carriers. Also, since the Form 6 is intended to be both a financial and ratemaking document,[4] these changes will ensure that the Commission will have the financial, operational, and ratemaking information needed to carry out its regulatory responsibilities to monitor the oil pipeline industry in a dynamically changing environment.

A. Changes to the Form 6 Reporting Threshold

Current Requirements. The Commission's regulations currently require each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues have been more than $350,000 for each of the three previous calendar years to prepare and file a Form 6 with the Commission on or before March 31st of each year for the previous calendar year. Carriers exempt from filing the Form 6, however, must prepare and file page 700 ''Annual Cost of Service Based Analysis Schedule'' and page 1 ''Identification and Attestation'' schedule of the Form 6 on or before March 31 of each year.[5]

Industry Comments. The Association of Oil Pipe Lines (AOPL) proposed that the Commission raise the operating revenues reporting threshold for Form 6 reporting from $350,000 to $1,000,000 to lower the reporting burden on relatively small companies.

Sinclair Oil Corporation shares the AOPL's concerns but argues their research indicates that the AOPL's recommendation to increase the reporting threshold level from $350,000 to $1,000,000 would exclude too many pipelines from filing the report and recommends raising the reporting threshold level from $350,000 to $500,000.

Various Shipper Interests object to raising the operating revenues reporting threshold for Form 6 reporting since such a modification would result in inconsistencies in the statistics compiled by the Commission.

Commission's Proposal. The Commission reviewed the oil pipeline company operating revenues reported in their 1996, 1997, and 1998 Forms 6 to determine the impact of raising the Form 6 reporting threshold from $350,000 to $500,000 or $1,000,000 for calendar year 1999 reporting. We determined that for calendar year 1999, of the 149 pipeline companies that filed a complete Form 6 for 1998: s

- 137 pipelines would file complete Forms 6 if the $350,000 reporting threshold was retained. We determined 12 out of the 149 oil pipeline companies that filed a complete Form 6 in 1998, roughly 8% of the jurisdictional pipeline companies, would not be required to file a complete Form 6 if the current $350,000 reporting threshold was retained.
- 134 pipelines would file complete Forms 6 if the reporting threshold was raised to $500,000. Thus, if the reporting threshold was raised from $350,000 to $500,000 as proposed by Sinclair Oil Corporation, only 3 of the 149 oil pipeline companies that filed a complete Form 6 in 1998, approximately 2% of the jurisdictional pipeline companies, would not be required to file a complete Form 6 for 1999.
- 129 pipelines would file complete Forms 6 if the reporting threshold was raised to $1,000,000. We determined that 8 out of the 149 oil pipeline companies that filed a complete Form 6 in 1998, roughly 6% of the jurisdictional pipeline companies, would not be required to file a complete Form 6 if the reporting threshold increased from $350,000 to $1,000,000 as proposed by AOPL.

Based on the results of our review, the Commission is proposing to raise the operating revenues reporting threshold for Form 6 reporting from $350,000 to $1,000,000. The Commission understands the need to reduce the reporting burden on relatively small companies and concludes that exempting the eight oil pipeline companies from filing the Form 6 will not cause major inconsistencies in the

[4] Cost of Service Reporting and Filing Requirements for Oil Pipelines, FERC Stats., & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 at 31,169 and FERC Form No. 6, p. i, Roman Numeral I.

[5] 18 CFR 357.2 and FERC Form No. 6: Annual Report of Oil Pipeline Companies, OMB No. 1902–0022, p. i, Roman Numeral II (expires Jan. 31, 2002).

statistics compiled by the Commission or compromise the Commission's ability to gather meaningful data upon which to base its regulation of the oil pipeline industry.

The Commission currently assesses jurisdictional oil pipeline companies annual charges if their annual jurisdictional operating revenues are greater than $350,000 in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges.[6] Consequently, the Commission is also proposing to require jurisdictional oil pipeline companies with annual jurisdictional operating revenues greater than $350,000 but less than $1,000,000 for each of the three previous calendar years to prepare and file pages 1 ''Identification and Attestation,'' 301 ''Operating Revenue Accounts (Account 600),'' and 700 ''Annual Cost of Service Based Analysis Schedule'' of the Form 6 on or before March 31 of each year. This will enable the Commission to continue to obtain the information it needs to assess jurisdictional oil pipeline companies' annual charges as it has in the past.

Additionally, the Commission is proposing to require oil pipeline companies with annual jurisdictional operating revenues of $350,000 or less for each of the three previous calendar years to prepare and file with the Commission pages 1 ''Identification and Attestation'' and 700 ''Annual Cost of Service Based Analysis Schedule'' of FERC Form No. 6 on or before March 31 of each year for the previous calendar year. This will enable the Commission to continue to obtain the information reported on page 700 of the Form 6 since this page is an integral part of the Commission's data collection efforts to ensure that the index prescribed by Order No. 561[7] properly tracks industry costs.

B. Form 6 Revisions

1. General Instructions (Page 1–ii).[8]

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to enter on the Form 6 whole numbers (dollars) only, except where otherwise noted. Oil pipeline companies would enter cents for averages where cents are important.[9]

Industry Comments. The AOPL recommends the Commission revise the standard Form 6 reporting unit (page ii, II) from whole numbers (dollars) to thousands of dollars. AOPL states reporting in thousands of dollars rather than dollars as currently required, is more widely used in the financial world and would alleviate a reporting burden on companies that provides little or no benefit.

Commission's Proposal. The Commission is proposing to continue to require reporting of dollar amounts on the basis of whole dollars i.e., rounding cents to the nearest dollar. One reason is that rounding dollars to the nearest thousand may inaccurately reflect the operations of smaller companies. Also, if a number is currently not reported in the Form 6, the Commission knows the value is zero. If oil pipeline companies are permitted to round to the nearest $1,000 the Commission will not know whether a number is not reported because the value is zero or the value is rounded down to zero. In addition, dollar amounts are rounded to the nearest dollar in other Commission filings including Forms 1 and 2; therefore, rounding to the nearest dollar should be retained in the Form 6 for consistency. This is especially important since more companies are beginning to operate in cross-industry operations.

The Commission, however, is planning to perform a comprehensive review of the FERC's data collection requirements and believes this recommendation needs to be looked at during this review. The Commission believes revising the requirement to report dollar amounts on the basis of whole dollars prior to the comprehensive review would be premature. Therefore, the Commission is proposing that oil pipeline companies continue to report dollar amounts on the basis of whole dollars in order to continue providing consistent reporting across industries and between various filings and reports.

2. Definitions (Page iii)

Current Requirements. The Commission defines select terms commonly used throughout the oil industry to facilitate consistent reporting of information in the Form 6 between oil pipeline companies.[10] Currently, the Commission does not define ''system property'' in the Form 6.

The Commission defines ''crude oil'' in the Form 6; however, the term is inconsistently defined throughout the form. The Commission defines crude oil on page iii as ''oil in its natural state, not altered, refined, or prepared for use by any process.''[11] However, the Commission instructs oil pipeline companies to classify and report natural gasoline or other similar products, whenever blended with crude oil in transit as crude oil on page 600.[12]

a. System Property

Industry Comments. The AOPL recommends the Commission define system property as a company's interest in an undivided joint interest company. The AOPL recommends the Commission should not incorporate a geographic interpretation of the word (e.g., the east system, the west system) which can change over time and is used more for operational than financial reasons.

Refinery Holding Company, L.P., recommends the Commission define system property geographically as defined by the Commission in case law.[13]

Sinclair Oil Corporation, however, recommends the Commission define a pipeline system as a single trunk line or a group of trunk pipelines and all associated lines that are connected with each other.

Commission's Proposal. The Commission researched interpretations of the term ''system property'' and determined the industry and the Commission do not have a common understanding of the definition of system property. Some companies define system property as undivided joint interest property; where all the companies involved own a percentage of all the property rather than one company owning the entire pipeline or a company owning a discrete piece of the pipeline, such as the pump station, etc. (e.g., Trans Alaskan Pipeline). Other companies define system property as a geographically independent pipeline which comprises part of a company's entire pipeline ownership (e.g., the east system, the west system). To date, the Commission has not defined each company's pipeline geographically and does not currently have a need for oil pipeline companies to report property in this detail. To change this requirement would create additional burden on the Commission requiring it

[6] 18 CFR 382.102(c).

[7] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, 58 FR 58753 (Nov. 4, 1993) FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 30,985 (Oct. 22, 1993); Order No. 561–A, 59 FR 40243 (Aug. 8, 1994) FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 30,1006 (1994).

[8] **Note:** The page numbers referred to throughout the NOPR reference the page numbers in the revised Form 6 at Appendix C.

[9] FERC Form No. 6, p. ii, Instruction II.

[10] FERC Form No. 6, p. iii.

[11] FERC Form No. 6, p. iii, Definition No. 8.

[12] FERC Form No. 6, p. 600, Instruction No. 2.

[13] SFPP, L.P., 80 FERC ¶ 63,189 (1997).

to classify all pipeline property geographically and would increase the reporting burden on the industry.

For these reasons, the Commission is proposing to eliminate the term ''system property'' entirely since there is confusion as to its intended definition among the industry and Commission staff. The Commission is also proposing to replace the term ''system property'' with the term ''undivided joint interest property.'' The Commission proposes to define ''undivided joint interest property'' as ''carrier property owned as part of an undivided joint interest pipeline.'' [14] Further, the Commission is proposing to define an ''undivided joint interest pipeline'' as ''a common carrier by pipeline controlled by more than one common carrier.'' [15]

b. Crude Oil

Industry Comments. Sinclair Oil Corporation recommends redefining crude oil to exclude contaminants such as natural gasoline since quality-of-crude-oil issues have become increasingly important to Shippers in view of regulations imposed by the Environmental Protection Agency (EPA).

Commission's Proposal. The purpose of the Form 6 is to collect financial, operational, and ratemaking information [16] on an annual basis to enable the Commission to carry out its regulatory requirements under the Interstate Commerce Act. The Commission recognizes that Shippers have numerous requirements imposed on them by other government agencies, but currently has no plans to add reporting requirements to its Form 6 in support of EPA or other outside agency requirements if the additional information is not necessary for the Commission to meet its regulatory responsibility. For this reason, the Commission is not proposing to add crude oil reporting requirements to the Form 6. The Commission does agree, however, the different definitions of crude oil in the Form 6 are confusing and is proposing to revise the definition of crude oil on page iii. Definition eight will be revised to include natural gasoline and other similar natural constituents whenever blended with crude oil in transit as is currently required on page 600, Instruction No. 2. The Commission also proposes to delete the definition of crude oil defined in Instruction No. 2 on page 600 to eliminate redundancy and so the revised crude oil definition on page iii is used consistently throughout the Form 6.

c. Jurisdictional and Non-Jurisdictional

Industry Comments. ARCO Products Company, a Division of Atlantic Richfield Company, Tosco Corporation, and Ultramar Inc., state the Form 6 allows vertically integrated companies to subjectively allocate jurisdictional and non-jurisdictional costs and revenues.

Sinclair Oil Corporation agrees with ARCO and recommends redefining the terms ''jurisdictional'' and ''non-jurisdictional'' to prevent reporting discrepancies.

Commission's Proposal. The Interstate Commerce Act (ICA) provides guidance regarding what the Commission has jurisdiction over as it relates to oil pipeline companies. The determination of jurisdiction under the ICA depends on the specific facts of the individual case.[17] Attempting to further define the terms jurisdictional and non-jurisdictional beyond the guidance of the ICA could result in definitions which are too narrow and not all encompassing, and could create additional reporting discrepancies. For these reasons, the Commission is proposing that the industry and Shippers continue to rely on the ICA's jurisdictional parameters, and is not proposing to further define these terms at this time.

3. Receivables From Affiliated Companies (Page 200)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to report receivables from affiliated companies in excess of $500,000. For debtors whose balances are less than $500,000, a single entry may be made under a caption ''Minor accounts, each less than $500,000.'' [18]

Industry Comments. The AOPL recommends the Commission modify item 2 of the instructions to increase the threshold for reporting receivables from affiliated companies to $1,000,000.

Commission's Proposal. The Commission reviewed the 149 oil pipeline companies that filed the entire Form 6 with the Commission in 1998 and determined 29 companies reported receivables from affiliated companies less than or equal to $1,000,000. Of those 29 companies, 17 companies reported receivables from affiliated companies less than or equal to $500,000. Therefore, increasing the reporting threshold from $500,000 to $1,000,000 would eliminate 12 (29–17) companies from filing page 200 in detail. Since a significant amount of data would be lost by increasing the reporting threshold to $1,000,000, the Commission is proposing to retain the reporting threshold in Instruction No. 2 at $500,000. The Commission, however, is proposing to revise Instruction No. 2 to read as follows: In column (a), list every item amounting to $500,000 or more. For debtors whose balances were less than $500,000, a single entry may be made under a caption ''Minor accounts, less than $500,000.''

4. Instructions for Schedules 212–215 (New Title—Instructions for Schedules 212–217 (Page 211)

Current Requirements. The Commission currently provides instructions for completing pages 212 through 215 of the Form 6 on page 211.

Industry Comments. The AOPL recommends the Commission modify the instructions as necessary based on changes made to pages 212–215.

The AOPL recommends the Commission modify the instructions for column (e) on page 213 to make clear that this will generally be a positive number, so that the calculation in column (f) works properly. Carriers have interpreted the use of the word ''credit'' to have opposite meanings.

The AOPL also recommends the first instruction for pages 215 and 217 should make clear that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership. In other words, a company with multiple undivided joint ownership interests would file a 215a, 215b, 215c, and so on. A company with different depreciation rates on different parts of one system would be free to file additional sheets for those system parts.

Commission's Proposal. The Commission is proposing to revise page 211, Instruction No. 2 for pages 212–213, to make it clear that the information reported in column (e) on page 213 will generally be a positive number, so that the calculation in column (f) works properly. Additionally, the Commission is also proposing to delete the instructions on page 211 for the schedules on pages 214–215 and replace them with instructions for the revised schedule on

[14] FERC Form No. 6, p. iii, New Instruction No. 14.

[15] FERC Form No. 6, p. iii, New Instruction No. 13.

[16] Cost of Service Reporting and Filing Requirements for Oil Pipelines, FERC Stats., & Regs. [Regs. Preambles, 1991–1996] ¶31,006 at 31,169 and FERC Form No. 6, p. i, Roman Numeral I.

[17] SFPP, L.P., *et al.*, 80 FERC ¶ 61,200 (1997).

[18] FERC Form No. 6, p. 200, Instruction No. 2.

pages 214–215.[19] The Commission is also proposing to revise page 211 so the first instruction for pages 214–215 and 216–217 makes clear that undivided joint ownership information should be reported on pages 214–215 and 217, one page for each undivided joint ownership. In other words, a company with multiple undivided joint ownership interests would file a 214a, 215a; 214b, 215b; and so on. The Commission is also proposing to add instructions for completing pages 216–217. The Commission believes these changes will provide jurisdictional oil pipelines clearer instructions for more consistent industry reporting of property information on the Form 6.

5. Carrier Property (Pages 212–213)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to report carrier property by gathering, trunk, and general facilities. Additionally, the Commission requires companies to report property changes during the year showing its expenditures for new construction and existing property, and property sold or retired.

Industry Comments. The AOPL recommends the Commission condense the gathering, trunk, and general facility classifications into one category because this breakout of categories seems to require unnecessary detail of no known regulatory value, and the distinction is not made for any other reporting requirements.

Also, the AOPL recommends the Commission modify the heading of column (e) to make clear that this will generally be a positive number, so that the calculation in column (f) works properly. Carriers have interpreted the use of the word ''credit'' to have opposite meanings.

Commission's Proposal. The Commission is proposing to continue to require pipeline companies to report carrier property by gathering, trunk, and general facilities. The Commission believes these categories should not be combined because different classes of property have different rate designs, depreciation rates, and tariff rates. Further, each account reflects different service lives and different depreciation rates. Gathering lines generally are tied to one reserve, have a shorter depreciation life, and use units of property depreciation whereas trunk lines have many sources of life and use straight line depreciation. The Commission needs carrier property data as currently required to conduct depreciation studies. Additionally, the Commission uses this information to perform cost of service analysis. Generally, trunk lines and general facilities are used in the cost of service calculation and if this information is condensed, it will be difficult for the Commission to perform cost of service analysis.

The Commission, however, is proposing to modify column (e) on page 213 by deleting the words ''Credits for'' from the heading to eliminate confusion over whether the number should be positive or negative. Additionally, the Commission is proposing to revise column headings (c) , (e), and (h) to be consistent with the instructions on page 211 and clarify what information is required to be reported. The Commission proposes to revise column headings (c), (e), and (h) to read as follows:

(c)—Expenditures for New Construction, Additions, and Improvements
(e)—Property Sold, Abandoned, or Otherwise Retired During the Year
(h)—Increase or Decrease During the Year (*f*±*g*) (*In dollars*).

The Commission believes these changes will clarify the carrier property reporting requirements eliminating the confusion pipelines have experienced in the past and facilitate more consistent industry reporting.

6. Depreciation Base and Rates—Carrier Property (Page 214) and Depreciation Base and Rates—System Property (Page 215)

Current Requirements. Currently the Commission requires jurisdictional oil pipeline companies to report the beginning, ending, and average depreciation base and the annual composite/component rates for carrier and system property on pages 214 and 215, respectively. The current instructions require oil pipeline companies to report information on page 215 only when specifically directed by the Commission.[20]

Industry Comments. AOPL recommends the Commission eliminate page 214 and carry forward the depreciation rate information from page 214, column (e) to a new column on page 216, Accrued Depreciation—Carrier Property. The information on page 214 is virtually the same as shown on pages 212–213.

AOPL also recommends the Commission eliminate page 215. This page is rarely completed and appears to require unnecessary detail. To the extent carriers need to report this information, it could be accomplished through supplements(s) to pages 212 and 213, Carrier Property.

Subsequent to the Staff Technical Conference, AOPL submitted additional comments recommending the Commission eliminate page 215 and require carriers to report this information on page 214 instead. This combination will eliminate the filing of redundant and unnecessary information.

Various Shipper Interests oppose eliminating pages 214 and 215. They argue that eliminating these pages would severely hamper and restrict the ability of a Shipper on an oil pipeline to file a 154–B rate case in protest to an oil pipeline's rates, as allowed by the Commission in Order Nos. 561 and 571.

Commission's Proposal. The Commission is proposing to eliminate the schedules on pages 214 and 215 and carry forward the depreciation rate information reported in column (e) on both schedules to a new column (g) on pages 216 and 217, respectively. The Commission also proposes to revise column heading (g) on page 217 to read as ''Annual Composite/Component Rates (*In Percent*).'' The deletion of these schedules will not eliminate any information that the Commission and other users of the Form 6 cannot calculate from other information reported in the Form 6. For example, the Commission and users of the Form 6 can calculate the average balance for the year currently reported on pages 214 and 215 by dividing the amount reported in Account 540 on pages 216 and 217, column (c) by the annual composite/component rates reported in the new column (g) on pages 216 and 217, respectively. The Commission is proposing to transfer the annual composite/component rates to pages 216 and 217 since this information is not provided anywhere in the Form 6 and will centrally locate all the carrier and undivided joint interest property depreciation information on separate pages in the Form 6.

Additionally, the Commission is proposing to delete the instructions on page 211 for the current schedules on pages 214–215 and replace them with revised instructions for the revised schedule on pages 214–215. Instruction No. 1 for pages 214–215 would make it clear that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership.[21]

[19] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

[20] Form 6, Page 215, Instruction No. 1.

[21] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 4.

7. Depreciation Base and Rates—Carrier Property (Page 214) and Depreciation Base and Rates—System Property (Page 215) (New Title—Undivided Joint Interest Property) (Pages 214–215)

Current Requirements. Currently the Commission requires jurisdictional oil pipeline companies to report the beginning, ending, and average depreciation base and the annual composite/component rates for carrier and system property on pages 214 and 215, respectively. The current instructions require oil pipeline companies to report information on page 215 only when specifically directed by the Commission.[22]

Industry Comments. AOPL states although the current instructions require that system property pages should only be used when specifically instructed by the Commission, carriers have frequently used this page to report information on pipelines that form part of the parent company's ''system.''

AOPL and Sinclair Oil Corporation recommend pipeline companies that own part of an undivided joint interest in a pipeline should be required to file data separately for each pipeline system.

Commission's Proposal. The Commission is proposing to revise pages 214–215 for companies to report their interest(s) in Undivided Joint Interest Property. The Commission is proposing to revise these pages because the Commission currently does not receive detailed financial information on Undivided Joint Interest Property from another source of information. The Commission is proposing the revised pages have the same cost categories and format required for Carrier Property reported on pages 212–213. Additionally, the Commission is proposing to delete the instructions on page 211 for the current schedules on pages 214–215 and replace them with instructions for the revised schedule on pages 214–215. Instruction No. 1 for pages 214-215 would make it clear that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership.[23] The Commission believes that revising this page in combination with eliminating the term system property, defining undivided joint interest property,[24] deleting previous page 215,[25] and revising page 217 [26] will eliminate the confusion oil pipeline companies currently experience when reporting property information on the Form 6.

8. Accrued Depreciation-Carrier Property (Page 216)

Current Requirements. Currently the Commission requires jurisdictional oil pipeline companies to report details on the credits and debits to Account No. 31, Accrued Depreciation—Carrier Property.

Industry Comments. AOPL recommends the Commission eliminate the distinction between gathering and trunk lines. AOPL also recommends the Commission eliminate page 214 and carry forward the depreciation rate information from page 214, column (e) to a new column on page 216, Accrued Depreciation—Carrier Property.[27]

Commission's Proposal. The Commission is proposing to retain the distinction between gathering, trunk, and general. The Commission uses this information to calculate depreciation per account and to conduct depreciation studies, cost allocation, and trend analysis.[28] The Commission, however, is proposing to add a new column (g) on page 216 to report the annual composite/component rates currently reported on page 214.[29] The Commission is proposing to transfer this information to page 216 since it is not provided anywhere in the Form 6 and will centrally locate carrier property depreciation information on one page in the Form 6.

Additionally, the Commission is proposing to revise column headings (c) and (d) to replace the terms ''Charged'' and ''Charge'' with ''Debits'' and ''Debit.'' This proposed change will ensure the terms debits and credits are consistently used throughout the Form 6. The Commission proposes to revise column headings (c) and (d) to read as follows:

(c)—Debits to Account No. 540 of USofA (In dollars)

(d)—Net Debit From Retirement of Carrier Property (In dollars)

The Commission believes these changes will continue to provide the accrued depreciation information it needs to regulate carrier property and will clarify the Form 6 reporting requirement by uniformly using the terms debits and credits.

9. Accrued Depreciation—System Property (New Title—Accrued Depreciation—Undivided Joint Interest Property) (Page 217)

Current Requirement. The Commission requires jurisdictional oil pipeline companies to annually report accrued depreciation for system property. Currently, this page is only required to be used when specifically directed by the Commission.

Industry Comments. AOPL recommends the Commission eliminate page 217 and the information collected on this page be collected on page 216 because this page is rarely completed and appears to require unnecessary detail. It is also unclear to AOPL what is to be gained by having authorized ''System Property'' reported on page 217 instead of 216 with supplements filed as necessary if carrier normally reports information on these pages. Although the current instructions state that this page should only be used when specifically instructed by the Commission, carriers have frequently used this page to report information on pipelines that form part of the parent company's ''system.'' Requiring all carriers to report carrier property on pages 212 and 213 and accrued depreciation on page 216, supplemented as necessary, should result in more consistent industry reporting.

Subsequent to the Staff Technical Conference, AOPL submitted additional comments recommending the Commission modify page 217 so it includes the same cost categories as on page 216. AOPL asks that Instruction No. 1 to page 217 clarify that undivided joint ownership information should be reported on these pages, one page for each undivided joint ownership. A company with different depreciation rates on different parts of one system would be free to file additional sheets for those system parts.

Commission's Proposal. The Commission is proposing to add a new column (g) on page 217 to retain the annual composite/component rates currently reported on page 215. The Commission proposes the header for column (g) to read as follows: Annual Composite/Component Rates (In percent). The Commission is proposing to transfer this information to page 217 since it is not provided anywhere in the Form 6 and will centrally locate carrier property depreciation information for undivided joint interest pipelines on one page in the Form 6.

The Commission is proposing to eliminate the requirement that companies only report information on this page when directed by the

[22] Form 6, Page 215, Instruction No. 1.

[23] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 4.

[24] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 2.

[25] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

[26] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 9.

[27] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

[28] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 5.

[29] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 6.

Commission. The Commission is also proposing to revise the page title to eliminate the term ''System'' in the Form 6.[30] Additionally, the Commission is proposing to delete Instruction Nos. 1 through 3 on page 217 and add instructions for completing page 217 on page 211. Instruction No. 1 for pages 216–217 would make clear that undivided joint ownership information should be reported on page 217, one page for each undivided joint ownership.[31]

10. Noncarrier Property (Page 220)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to report noncarrier property of $250,000 or more. Items less than $250,000, may be combined in a single entry titled ''Minor items, each less than $250,000.''[32]

Industry Comments. The AOPL recommends the Commission modify item 2 of the instructions to increase the threshold for reporting noncarrier property to $1,000,000.

Kaneb Pipeline Company, L.P. proposes that the disclosure of noncarrier property items be limited to a single line entry in the Balance Sheet since the Commission, by definition, does not have regulatory authority over noncarrrier activities. Kaneb Pipeline Company, L.P. suggests that the detail required on page 220 appears to be more than required and lacks some standard format.

Commission's Proposal. The Commission is proposing to continue to require jurisdictional oil pipeline companies to report noncarrier property annually on page 220. However, the Commission is proposing to raise the noncarrier property reporting threshold in Instruction No. 2 from $250,000 to $1,000,000. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens. If the Commission should require a more detailed breakdown of the noncarrier property reported for a ratemaking proceeding, settlement, or hearing the Commission could request additional information at this time during discovery. The Commission is not proposing to revise page 220 to create a standard format for reporting noncarrier property. A standard format would be too cumbersome since the term ''noncarrier'' includes anything that is not carrier.

11. Other Deferred Charges (Page 221)

Current Requirements. The Commission requires jurisdictional oil pipeline companies to provide an analysis of Account No. 44, Other Deferred Charges, annually showing in detail each item or subaccount of $250,000 or more. Items less than $250,000 may be combined in a single entry designated Minor Items, Each Less Than $250,000.

Industry Comments. AOPL proposes to replace 28 out of the 43 pages in the Form 6 with GAAP financial statements and modify other pages to reflect these changes. One of the pages the AOPL proposes to eliminate is page 221 since adequate detail would be provided in the GAAP financial statements and Notes.

Commission's Proposal. The Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statements.[33] As such, the Commission is proposing to continue to require jurisdictional oil pipeline companies to file page 221 because it is the only source of information on deferred charges that the Commission receives from all reporting companies. However, the Commission is proposing to raise the other deferred charges reporting threshold from $250,000 to $500,000. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce reporting burden. If the Commission should require a more detailed breakdown of the other deferred charges reported during an audit, rate proceeding, settlement, or hearing the Commission could request additional information at this time during discovery.

12. Payables to Affiliated Companies (Page 225)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to report payables from affiliated companies in excess of $250,000. For creditors whose balances were less than $250,000, a single entry may be made under a caption ''Minor Accounts, Each Less Than $250,000.''[34]

Industry Comments. The AOPL recommends the Commission eliminate this page because the information is available in GAAP financial statements and notes.

Commission's Proposal. The Commission compared the information reported in the Form 6 to that reported in the GAAP financial statements and notes. Although the GAAP financial statements and notes contain much of the same type of financial information as the Form 6, the Commission noted material differences in the detail of information reported. GAAP financial statements contain less detailed reporting and lack a standard format. The current standard format allows anyone to collect and analyze data with relative ease. Performing an analysis in the future without some sort of standard format could be cumbersome and time consuming. For these reasons, the Commission is proposing to retain this page in lieu of accepting GAAP financial statements and notes.

The Commission, however, reviewed the possibility of raising the $250,000 reporting threshold currently required for oil pipeline companies to report payables to affiliated companies to $500,000 or $1,000,000. The Commission reviewed the 149 oil pipeline companies that filed the entire Form 6 with the Commission in 1998 and determined 43 companies reported payables from affiliated companies less than or equal to $1,000,000. Of those 43 companies, 26 companies reported payables from affiliated companies less than or equal to $250,000 and 34 reported payables from affiliated companies less than or equal to $500,000. Therefore, increasing the reporting threshold from $250,000 to $500,000 would eliminate 8 (34–26) companies from filing page 225 in detail. Based on the results of our review, the Commission is proposing to raise the reporting threshold from $250,000 to $500,000. The Commission is also proposing to delete Instruction No. 3 and to revise Instruction No. 2 to read as follows: In column (a), list every item amounting to $500,000 or more. For creditors whose balances were less than $500,000, a single entry may be made under a caption ''Minor accounts, less than $500,000. Raising the reporting threshold to $500,000 will provide consistent reporting requirements in the future for both payables from and receivables to affiliated companies. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens. If there is a need for a more detailed breakdown of affiliated company payables for a rate proceeding, settlement, or hearing the Commission

[30] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 2.

[31] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 4.

[32] FERC Form No. 6, p. 220, Instruction No. 2.

[33] See NOPR, Roman Numeral III, No. 19 (b)—Form 6 Reporting Alternatives.

[34] FERC Form No. 6, Page 225, Instruction Nos. 2 and 3.

or its Staff could request additional information at that time.

13. Analysis of Federal Income and Other Taxes Deferred (Pages 230–231)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to annually report Federal Income and Other Taxes Deferred data on the Form 6. The instructions on page 230, however, currently require pipelines to follow outdated Accounting Principles Board Opinion No. 11 (APB 11) requirements when reporting this data.

Industry Comments. The AOPL recommends the Commission eliminate this page since pipelines would adequately disclose this information on the GAAP financial statements and notes of taxable entities.

Various Shipper Interests oppose eliminating this page because this page contains essential elements for the ratemaking process. Additionally, since some of the reporting pipelines are not taxable entities, their information need 43 companies reported payables from affiliated companies less than or equal to $1,000,000. Of those 43 companies, 26 companies reported payables from affiliated companies less than or equal to $250,000 and 34 reported payables from affiliated companies less than or equal to $500,000. Therefore, increasing the reporting threshold from $250,000 to $500,000 would eliminate 8 (34–26) companies from filing page 225 in detail. Based on the results of our review, the Commission is proposing to raise the reporting threshold from $250,000 to $500,000. The Commission is also proposing to delete Instruction No. 3 and to revise Instruction No. 2 to read as follows: In column (a), list every item amounting to $500,000 or more. For creditors whose balances were less than $500,000, a single entry may be made under a caption ''Minor accounts, less than $500,000. Raising the reporting threshold to $500,000 will provide consistent reporting requirements in the future for both payables from and receivables to affiliated companies. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens. If there is a need for a more detailed breakdown of affiliated company payables for a rate proceeding, settlement, or hearing the Commission or its Staff could request additional information at that time.

13. Analysis of Federal Income and Other Taxes Deferred (Pages 230–231)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to annually report Federal Income and Other Taxes Deferred data on the Form 6. The instructions on page 230, however, currently require pipelines to follow outdated Accounting Principles Board Opinion No. 11 (APB 11) requirements when reporting this data.

Industry Comments. The AOPL recommends the Commission eliminate this page since pipelines would adequately disclose this information on the GAAP financial statements and notes of taxable entities.

Various Shipper Interests oppose eliminating this page because this page contains essential elements for the ratemaking process. Additionally, since some of the reporting pipelines are not taxable entities, their information ??l tariff may apply to the movements of only one Shipper, or it may be a tariff used by multiple Shippers. All Shippers are in competition with each other. For this reason, section 15(13) of the Interstate Commerce Act makes it illegal for a pipeline to divulge any information regarding a Shipper's volumes, routing, or other information that would constitute sensitive business information. To do so can be rewarded with fines and/or jail time.

Refinery Holding Company, L.P. recommends the following information be added to page 700 to assist Shippers in accurately assessing the justness and reasonableness of a rate under the 154–B methodology: Composite depreciation rate and base, last approved rate of return, debt-equity ratio, operations and maintenance expense actually incurred (not including reserves created), capital structure, SRB write-up and annual amortization, inflation adjustment rate used if different from the FERC index rate. Now that revised complaint procedures require a complainant to make detailed allegations in the original petition and support them with calculations and documentation this information is needed so a complaint is not rejected by the Commission. Rule 206(4) now requires a complaining party to ''make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction'' complained of. It is no longer adequate to allege in the complaint that the pipeline is overcharging.

AOPL states the revenue and cost of service information Shippers need to challenge a pipeline company's application of the index is filed on page 700 of the Form 6. Shippers, however, have access to information necessary to contest every pipeline filing without having to resort to information in the Form 6. If a Shipper or potential Shipper disagrees with a ''negotiated'' rate, it may file a statement with the Commission stating the pipeline must withdraw the rate or defend it using a cost-of-service methodology. Additionally, the public version of a pipeline filing requesting market-based rate treatment and requests for cost service treatment are supplied to all Shippers.

Sinclair Oil Corporation; ARCO Products Company, Tosco Corporation and Ultramar Inc.; and Various Shipper Interests also recommend page 700 be revised to correct the existing mismatch in reporting of revenues and expenses. They recommend the operating revenues be revised to report total company revenues to match total company cost of service.

Additionally, Sinclair Oil Corporation and ARCO Products Company, Tosco Corporation and Ultramar Inc. recommend the workpapers showing the derivation of the cost of service be included in the Form 6 or made available to customers upon request. Such a requirement would impose almost no additional burden on pipeline companies since they already must perform cost of service supporting calculations. The inclusion of this data, however, would help Shippers greatly in analyzing a pipeline's cost of service.

Commission's Proposal. The current state of oil pipeline regulation calls for the Commission and its Staff to play a less active role in terms of monitoring and oversight regarding pipeline rates and practices, and for oil pipeline Shippers to play a more active role in monitoring and alerting the Commission to rate and tariff abuses.[48] Given the shift in responsibilities, it is imperative that oil pipeline Shippers have the information they need in order to make

[48] Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs [Regs. Preambles, 1991–1996] ¶ 30,985 at 30,947–48 (1993) (it is expected that data will be available to the public and to the Commission which will allow determinations to be made as to the reasonableness of increases produced by the application of the index; cost data included in Form No. 6 can be used by an interested person to form the basis of a complaint or protest that the increase sought under any of the methodologies is not justified), and 30,955–56 (a protest must allege reasonable grounds for believing that the discrepancy between the actual cost increase to the pipeline and the proposed change in rate is so substantial that the proposed rate change is not just and reasonable within the meaning of the ICA; Form No. 6 data are available to all parties to challenge a pipeline's rate increase).

informed analyses and judgements regarding the pipelines they use (or may use). This is particularly true given the fact that many oil pipeline companies have affiliates who ship over the pipeline's capacity and affiliates who compete directly with other Shippers over that same line.

The burden upon Shippers to perform their own assessments, and thus their need for Form 6 information, has not abated since Order Nos. 561 and 571. If anything, the need for information has increased. The Commission has begun interpreting what is required for Shippers to demonstrate the ''substantial change in economic circumstances'' necessary to challenge rates.[49] For example, in *SFPP*, the Commission refers to the need for Shippers to address the ''economic basis'' of the rates they challenge, and suggests that the rate elements ???initions 30 (g) and ???e they are aggregated, and separately analyze rates. Specific functionalization issues arose in the *Williams*[37] and *SFPP* would not appear on the GAAP financial statements of taxable entities.

Sinclair Oil Corporation supports revising page 230 to adopt Statement of Financial Accounting Standards No. 109 (SFAS 109) use of the liability method for deferred taxes.

Commission's Proposal. The Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statement.[35] As such, the Commission is proposing to continue to require jurisdictional oil pipeline companies to file pages 230–231. The Commission uses the data on the page for auditing comparisons among various companies, and for decisionmaking in its rate proceedings. However, the Commission is proposing to update page 230 to include the current SFAS 109 reporting requirements. SFAS 109 adopted a liability approach for determining deferred income taxes rather than the previously used deferral method under APB 11. The structure of page 230 is generally consistent with the liability approach used for accounting for income taxes under GAAP, however, the Commission is proposing to revise the terminology which still refers to the deferral method of accounting for income taxes.

Additionally, the Commission is proposing to revise the following 18 CFR Part 352 accounting regulations to make them consistent with the SFAS 109 liability method of accounting for income taxes: Definition No. 30, Income Taxes; General Instruction 1–12, Accounting for Income Taxes; Account 19–5, Deferred Income Tax Charges; Account 45, Accumulated Deferred Income Tax Charges; Account 59, Deferred Income Tax Credits; Account 64, Accumulated Deferred Income Tax Credits; Account 671, Provision for Deferred Taxes; Account 695, Income Taxes on Extraordinary Items; and Account 696, Provision for Deferred Taxes—Extraordinary Items.[36]

As a result of these changes, the Commission is also proposing to revise the Form 6 titles for Balance Sheet Accounts 19–5 and 45 and Income Statement Accounts 59 and 64 on pages 110–114.

14. Operating Revenue Accounts (Account 600) (Page 301)

Current Requirement. The Commission's regulations currently require jurisdictional oil pipeline companies to report revenue by crude and products and to identify whether the revenue is associated with gathering, trunk, or delivery services.

Industry Comments. The AOPL recommends the Commission eliminate the distinction between crude and products revenue and provide comparative disclosure (i.e., current year versus prior year and variance). AOPL states the distinction dates back to the Department of Justice Consent Decree which allowed different rates of return for the two types of pipelines and is no longer needed with today's Commission methodologies. Also, those companies that manage systems on crude and products basis should already capture this information in GAAP financial statements according to SFAS 131.

Sinclair Oil Corporation opposes eliminating the distinction between crude oil and products services. Although pipelines may not always differentiate between crude oil and petroleum product lines for the purposes of their financial record keeping, the distinction between the two types of lines is reasonable and necessary in an operational sense. Crude oil and product lines have different operating costs and characteristics. They are usually physically distinct, serve entirely different markets, and each type of line has different costs associated with it. Additionally, the Commission's regulations require Shippers to file complaints and protests against an individual tariff. Pipeline operational data that distinguishes between crude oil and petroleum product lines serves as a useful tool for Shippers in evaluating the reasonableness of a tariff. This information is beneficial to Shippers who must evaluate the operating revenues incurred by different pipeline companies. The data must be maintained to preserve the ability of complainants to support their case using Form 6 data.

Sinclair Oil Corporation, however, recommends the Commission aggregate the trunk, gathering, and delivery services distinctions currently appearing on Form 6. These particular categories have rarely been relevant to an analysis of the pipeline industry.

Commission's Proposal. The Commission is proposing to continue to require jurisdictional oil pipeline companies to report operating revenues by crude and products and identify whether the revenue is associated with gathering, trunk, or delivery services. Keeping the revenue accounts reported by crude and products and between gathering, trunk, and delivery services coincides with the carrier property and expense accounts, and enables the Commission and other interested parties to match costs with revenues. Lumping all pipeline expenses into one category or function in the Form 6 would make it very difficult to properly separate the costs, functionalize them once they are aggregated, and separately analyze rates. Specific functionalization issues arose in the *Williams*[37] and *SFPP*[38] cases. Moreover, this type of distinction in information is useful for analyzing and making jurisdictional determinations, such as occurred in *Texaco Refining and Marketing v. SFPP,* 80 FERC ¶ 61,200 (1997), *Lakehead Pipe Line Co.,* 71 FERC ¶ 61,338 at 62,324–26 (1995), and *SFPP, supra* at 61,074. Issues concerning the propriety of pipeline functionalizations are not uncommon to oil pipelines, and this information should continue to be available to Shippers in the Form 6.

Additionally, the Commission does not see the benefit of revising page 301 to require pipelines to report the prior year revenues next to the current year revenues and report the variance. This will not provide the Commission any additional information it doesn't already have. If the Commission needs to compare the current and prior year revenues of a company it can retrieve

[35] See NOPR, Roman Numeral III, No. 19 (b)—Form 6 Reporting Alternatives.

[36] See NOPR, Roman Numeral IV, A—Changes in the Application of GAAP, No. 5.

[37] *See,* Williams Pipe Line Co., 84 FERC ¶ 61,022 at 61,109–110 (1998).

[36] See NOPR, Roman Numeral IV, A—Changes in the Application of GAAP, No. 5.

[37] *See,* Williams Pipe Line Co., 84 FERC ¶ 61,022 at 61,109–110 (1998).

[38] SFPP L.P., 86 FERC ¶ 61,022 at 61,080 (1999).

the company's prior year Form 6 filing and perform the calculation.

The Commission, however, is proposing to add a separate table to the bottom of page 301 to provide a standard format for pipelines to report interstate and intrastate revenue information which is currently reported as a footnote. The Commission believes a standard format will make it easier for the pipelines to report this information in the proposed electronic format.[39]

15. Operating Expense Accounts (Account 610) (Pages 302–304)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to report operating expenses by Operations, Maintenance, and General classes of operating costs.

Additionally, the Commission requires operating cost to be reported by crude and products and to identify whether the expense is associated with Gathering, Trunk, or Delivery services.

Industry Comments. The AOPL and Kaneb Pipe Line Company, L.P. recommend the Commission consolidate FERC Accounts 300 (Operations), 400 (Maintenance), and 500 (General). Additionally, the AOPL suggests that one account series be chosen for reporting purposes and these numbers should be reported on page 304. The only reported line items that would be affected are salaries and wages (300, 400, 500), supplies and expenses (310, 410, 510), and outside services (320, 420, 520). All other Operating Expense Accounts line items are unique, so that rolling them into one category would have no impact. The breakdown of operating expenses is burdensome, of no apparent regulatory use, and forces companies to engage in an artificial allocation that would not be made absent the FERC requirement. Consolidating these operating cost codes would greatly simplify the reporting process, accounting systems, and provide more relevant information on a company's total operating costs.

Sinclair Oil Corporation recommends consolidating the operating and maintenance accounts and dividing the expenses into two basic categories: direct and indirect, with appropriate subcategories in each grouping. This will provide a more accurate division of expenses between direct operating and maintenance expenses as opposed to indirect or overhead expenses. However, if the Commission wishes to retain the operations, maintenance and general categories, Sinclair Oil Corporation recommends the cost line items be standardized across these categories so that they match.

The AOPL recommends the Commission eliminate the distinction between crude and products and between gathering, trunk, and delivery services but proposes to add a comparative disclosure of the prior year's numbers and exclude from the pages amounts already specified on GAAP financial statements, such as depreciation and power.

Sinclair Oil Corporation agrees with aggregating the trunk, gathering, and delivery services distinctions currently appearing on Form 6. These particular categories have rarely been relevant to an analysis of the pipeline industry.

Sinclair Oil Corporation and various Shippers, however, oppose eliminating the distinction between crude oil and products. Although pipelines may not always differentiate between crude oil and petroleum product lines for the purposes of their financial record keeping, the distinction between the two types of lines is reasonable and necessary in an operational sense. Crude oil and product lines have different operating costs and characteristics. They are usually physically distinct and serve entirely different markets in practical usage. Additionally, each type of line has differing costs associated with it. Also, the Commission's regulations require Shippers to file complaints and protests against an individual tariff. Consequently, pipeline operational data that distinguishes between crude oil and petroleum product lines serves as a very useful tool for Shippers in evaluating the reasonableness of a tariff. This information is beneficial to Shippers that must evaluate the operating expenses incurred by different pipeline companies and must be maintained to preserve the ability of complainants to bring a rate case using the Form 6.

Commission's Proposal. The Commission is proposing to continue to require jurisdictional oil pipeline companies to report operating cost by crude and products and among gathering, trunk, and delivery services. However, the Commission is proposing to delete column (f) on page 303 because companies don't typically gather products at the refinery. The Commission is also proposing to delete page 304, but add column (i) to page 303 for companies to report the grand total of their operating expense accounts. The Commission is also proposing to consolidate the operating and maintenance accounts and revise the operating expense accounts as follows:

a. Eliminate Accounts 400, 410, 420, and 430;

b. Redefine the definitions for Accounts 300, 310, and 320 to include both operations and maintenance expenses;

c. Rename Account 310 ''Materials and Supplies'' and redefine its definition to include the items previous reported in Accounts 310, 410, and 430 except other expenses (i.e., the expenses of aircraft and vehicle operations; travel and other expenses of operating employees; and other related operations and maintenance expenses).

d. Add Accounts 350 Rentals and 390 Other Expenses. The Commission is proposing to include only those rental expenses related to operations and maintenance in Account 350. This should enable oil pipeline companies to more accurately report their operating and maintenance expenses. The Commission is proposing to create Account 390 to record the other expense items that are currently reported in Accounts 310 and 410 (i.e., the expenses of aircraft and vehicle operations; travel and other expenses of operating employees; and other related operations and maintenance expenses). These other expenses no longer apply to the renamed Account 310 so the Commission is proposing to report these expenses separately.

e. Rename Account 510 ''Materials and Supplies'' and redefine its definition to include materials and the items previously reported in Account 510 except other expenses (i.e., the expenses of aircraft and vehicle operations; travel and other expenses of operating employees; and other related operations and maintenance expenses).

f. Redefine Account 530. The Commission is proposing to include only those rental expenses related to general operations in Account 530.

g. Rename Account 550 ''Employee Benefits'' to better reflect the information reported in this account.

h. Add Account 590 Other Expenses. The Commission is proposing to create this account to record the other expense items that are currently reported in Account 510 (i.e., the expenses of aircraft and vehicles used for general purposes; travel and other expenses of general employees and offices; utilities services; and all other incidental general expenses). These other expenses no longer apply to renamed Account 510 so the Commission is proposing to report these expenses separately.

The Commission believes revising the operations, maintenance, and general operating expenses as proposed above will eliminate the interpretations problems companies have had in the past categorizing expenses between operations and maintenance. It will also

[39] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 19(a).

greatly simplify both the reporting process and accounting systems.

Also, keeping the expense accounts reported by crude and products and between gathering, trunk, and delivery services coincides with the carrier property and revenue accounts, and enables the Commission and other interested parties to match costs with revenues. Moreover, Commission policy generally requires that cost incurrence follow cost responsibility.[40] Lumping all pipeline expenses into one category or function in the Form 6 would make it very difficult to properly separate the costs, or to functionalize them once they are aggregated, in order to separately analyze rates. Moreover, this type of distinction in information is useful for analyzing and making jurisdictional determinations.

16. Income From Noncarrier Property (Page 335), Interest and Dividend Income (Page 336), and Miscellaneous Items in Income and Retained Income Accounts for the Year (Page 337)

Current Requirements. The Commission's regulations currently require jurisdictional oil pipeline companies to report detailed information about income from noncarrier property, interest and dividend income, and miscellaneous items in income and retained income accounts for the year on separate pages of the Form 6.

Industry Comments. AOPL proposes the Commission aggregate pages 335–337 to support other income (expenses) already reported on GAAP financial statements. The Commission could require further detail as necessary through the use of supplement sheets.

Kaneb Pipeline Company, L.P. proposes the disclosure of noncarrier property items on page 335 be limited to a single line entry in the Income Statement since the Commission, by definition, does not have regulatory authority over noncarrrier activities. The detail required on page 335 appears to be more than required and lacks a standard format.

Commission's Proposal. The Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statements.[41] The Commission is proposing to continue to require jurisdictional oil pipeline companies to report the information on pages 335, 336, and 337 as currently required. The Commission is not proposing to revise page 335 to create a standard format for reporting income from noncarrier property. A standard format would be too cumbersome since the term ''noncarrier'' includes anything that is not carrier.

Unlike Shippers in the natural gas and electric industries regulated by the Commission, oil pipeline Shippers bear the burden in most instances of proving that proposed rate changes are unjust and unreasonable. Moreover, any time a Shipper attempts to justify a complaint against an existing or grandfathered rate, it must satisfy a substantial evidentiary burden before it will even be granted a hearing and formal discovery rights. This burden requires an in-depth analysis of an oil pipeline's cost and revenue data. Thus, since most of the relevant information is not presented elsewhere, sufficient information must be made available in the Form 6.

The information provided on page 335 is useful to the Commission, and vital to Shippers in order to evaluate the proper separation of carrier and non carrier revenues and expenses. This information is required to allow Shippers to properly analyze proposed or existing rates.

In addition, pages 336 and 337 provide the Commission and Shippers with a detailed analysis of certain income and retained earnings accounts not provided on any other pages. The information on these pages provides data essential to Shippers when analyzing an oil pipeline's financial statement. The data required to be filed on page 336 becomes a key element in any complaint when used to assess a pipeline's profitability as measured by its earned equity return. It is particularly important to know whether income other than operating income is from sources in which the subject pipeline has some control, such as income from Securities Investments in Affiliated Companies.

Similarly, the data on page 337 is useful in order to determine gains or losses on reacquired debt in order to compute debt costs. All the information described above is essential to conducting the kind of thorough analyses which the Commission requires of any oil pipeline Shipper who attempts to contest an existing rate, or proposed rate.

17. Statistics of Operations (Pages 600–601) and Miles of Pipeline Operated at End of Year (Pages 602–603)

Current Requirements. The Commission's regulations currently require undivided joint interest oil pipeline companies to report information inconsistently between pages 600–601 and 602–603. The instructions on pages 602–603 indicate that mileage for undivided joint interest pipelines is not to be included where the pipeline is operated by another entity. No such limitation applies to pages 600 and 601.

Industry Comments. Sinclair Oil Corporation recommends the Commission revise pages 600–603 so each individual owner of an undivided interest pipeline report its volumes and pipeline mileage separately on both pages to ensure that the data reported in barrel miles and miles of pipeline are reported uniformly. Sinclair states that the instructions on pages 600–601 do not state on pages 602–603 that the volumes of crude oil and other liquids shipped on undivided interest pipelines are not to be included where the pipeline is operated by another entity.

Commission's Proposal. Based on the proposed changes to definitions of ''crude oil'' and ''system property,''[42] the Commission is proposing to eliminate Instruction No. 2 on page 600 and on pages 600–603 delete the word ''system'' entirely or replace the term ''system'' with ''pipeline'' as appropriate.

The Commission is also proposing to renumber Instruction No. 3 on page 600 to No. 2 and add the sentence ''Any barrels received into a pipeline owned by the respondent, but operated by others, should not be included on this schedule.'' Additionally, the Commission is proposing to renumber Instruction No. 4 on page 600 to No. 3 and add the sentence ''Any barrels delivered out of a pipeline owned by the respondent, but operated by others, should not be included on this schedule.'' If a pipeline owns several undivided joint interest pipelines, it would be required to separately submit volumes for each entity. Many undivided joint interest pipelines already file this information separately so this clarification should only apply to a few companies.

The Commission believes these changes will clarify how pipelines should report the volumes of crude oil and other liquids shipped on undivided interest pipelines on pages 600–601 so there is less redundancy and improved industry reporting.

18. Annual Cost of Service Based Analysis Schedule (Page 700)

Current Requirements. The Commission addressed revisions to the Form 6 in Order Nos. 571 and 571–A,[43]

[40] *See*, Williams Pipe Line Co., 84 FERC ¶ 61,022 at 61,109–110 (1998).

[41] See NOPR, Roman Numeral III, No. 19(b)—Form 6 Reporting Alternatives.

[42] See NOPR, Roman Numeral III, Section B—Form 6 Revisions, No. 2(a) and (b).

[43] Cost of Service Reporting and Filing Requirements for Oil Pipelines, 59 FR 59137 (Nov.

including adding a new page 700.[44] Page 700 of the Form 6 currently requires that a pipeline only provide single amounts for total annual cost of service (as calculated under the Order No. 154–B methodology), operating revenues, throughput in barrels and throughput in barrel-miles.[45] At that time, many of the requirements formerly included in the Form 6 were reduced or eliminated and the information now required to be included in the Form 6 was determined to be the minimum necessary ''to provide at least a preliminary basis for Shipper assessments of filed rate changes under Order No. 561.'' [46] Recently, however, the Commission revised Rule 206 of its Rules of Practice and Procedure outlining specific minimal information requirements complainants must now file before a protest or complaint will be reviewed by the Commission.[47]

Industry Comments. Sinclair Oil Corporation and Refinery Holding Company, L.P. recommend that page 700 be changed to report cost of service, revenue, and volume information on a tariff by tariff assessment, system-by-system, or segmented basis rather than a single company-wide computation. This will enable Shippers to file a complaint against a specific rate rather than all rates charged by a pipeline company since the burden of proof falls on Shippers when challenging a pipeline's rate that falls within the applicable index ceiling.

AOPL opposes reporting data on a tariff by tariff assessment, system-by-system, or segmented basis. AOPL states that to break information down in this way would be extremely costly and burdensome and/or illegal. An individual pipeline may have hundreds of rates. Some may be negotiated rates or market based rates, and set so that revenues do not exceed Opinion No. 154–B revenue requirements. An individual tariff may apply to the movements of only one Shipper, or it may be a tariff used by multiple Shippers. All Shippers are in competition with each other. For this reason, section 15(13) of the Interstate Commerce Act makes it illegal for a pipeline to divulge any information regarding a Shipper's volumes, routing, or other information that would constitute sensitive business information. To do so can be rewarded with fines and/or jail time.

Refinery Holding Company, L.P. recommends the following information be added to page 700 to assist Shippers in accurately assessing the justness and reasonableness of a rate under the 154–B methodology: Composite depreciation rate and base, last approved rate of return, debt-equity ratio, operations and maintenance expense actually incurred (not including reserves created), capital structure, SRB write-up and annual amortization, inflation adjustment rate used if different from the FERC index rate. Now that revised complaint procedures require a complainant to make detailed allegations in the original petition and support them with calculations and documentation this information is needed so a complaint is not rejected by the Commission. Rule 206(4) now requires a complaining party to ''make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction'' complained of. It is no longer adequate to allege in the complaint that the pipeline is overcharging.

AOPL states the revenue and cost of service information Shippers need to challenge a pipeline company's application of the index is filed on page 700 of the Form 6. Shippers, however, have access to information necessary to contest every pipeline filing without having to resort to information in the Form 6. If a Shipper or potential Shipper disagrees with a ''negotiated'' rate, it may file a statement with the Commission stating the pipeline must withdraw the rate or defend it using a cost-of-service methodology. Additionally, the public version of a pipeline filing requesting market-based rate treatment and requests for cost service treatment are supplied to all Shippers.

Sinclair Oil Corporation; ARCO Products Company, Tosco Corporation and Ultramar Inc.; and Various Shipper Interests also recommend page 700 be revised to correct the existing mismatch in reporting of revenues and expenses. They recommend the operating revenues be revised to report total company revenues to match total company cost of service.

Additionally, Sinclair Oil Corporation and ARCO Products Company, Tosco Corporation and Ultramar Inc. recommend the workpapers showing the derivation of the cost of service be included in the Form 6 or made available to customers upon request. Such a requirement would impose almost no additional burden on pipeline companies since they already must perform cost of service supporting calculations. The inclusion of this data, however, would help Shippers greatly in analyzing a pipeline's cost of service.

Commission's Proposal. The current state of oil pipeline regulation calls for the Commission and its Staff to play a less active role in terms of monitoring and oversight regarding pipeline rates and practices, and for oil pipeline Shippers to play a more active role in monitoring and alerting the Commission to rate and tariff abuses.[48] Given the shift in responsibilities, it is imperative that oil pipeline Shippers have the information they need in order to make informed analyses and judgements regarding the pipelines they use (or may use). This is particularly true given the fact that many oil pipeline companies have affiliates who ship over the pipeline's capacity and affiliates who compete directly with other Shippers over that same line.

The burden upon Shippers to perform their own assessments, and thus their need for Form 6 information, has not abated since Order Nos. 561 and 571. If anything, the need for information has increased. The Commission has begun interpreting what is required for Shippers to demonstrate the ''substantial change in economic circumstances'' necessary to challenge rates.[49] For example, in *SFPP*, the Commission refers to the need for Shippers to address the ''economic basis'' of the rates they challenge, and suggests that the rate elements that affect the economic basis for most rates are volumes, asset base, operating, and perhaps capital costs. A Shipper must

16, 1994), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 (Oct. 28, 1994); 60 FR 356 (Jan. 4, 1995), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,012 (Dec. 28, 1994).

[44] *Id.* at 31,168–70.

[45] Order No. 571 at 31,168.

[46] Cost of Service Reporting and Filing Requirements for Oil Pipelines, 59 FR 59137 (Nov. 16, 1994), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 at 31,169 (Oct. 28, 1994); 60 FR 356 (Jan. 4, 1995), FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶31,012 (Dec. 28, 1994).

[47] Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), III FERC Stats. & Regs. ¶ 31,072 at pages 21–23 and 50–52 (Mar. 31, 1999); Order 602–A, 64 FR 43600 (Aug. 11, 1999) III FERC Stats. & Regs. ¶ 31,076 (July 28, 1999); Order No. 602–B, 64 FR 53959 (Oct. 5, 1999), III FERC Stats. & Regs. ¶ 31,083 (Sept. 29, 1999).

[48] Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs [Regs. Preambles, 1991–1996] ¶ 30,985 at 30,947–48 (1993) (it is expected that data will be available to the public and to the Commission which will allow determinations to be made as to the reasonableness of increases produced by the application of the index; cost data included in Form No. 6 can be used by an interested person to form the basis of a complaint or protest that the increase sought under any of the methodologies is not justified), and 30,955–56 (a protest must allege reasonable grounds for believing that the discrepancy between the actual cost increase to the pipeline and the proposed change in rate is so substantial that the proposed rate change is not just and reasonable within the meaning of the ICA; Form No. 6 data are available to all parties to challenge a pipeline's rate increase).

[49] *See*, Santee Distribution Co. v. Dixie Pipeline Co., 75 FERC ¶ 61,254 at 61,821 (1996); SFPP L.P., 86 FERC ¶ 61,022 at 61,063–072 (1999).

not only show that a substantial change has occurred in at least one of these elements, but it must also explain why this change is likely to have rendered the existing rate unjust and unreasonable.[50] In *SFPP*, although the Shippers had access to much information in addition to that provided in the Form 6, and the Commission recognized that:

> [i]n the instant case it would have been difficult for a complaining party to attack an existing rate based on a settlement without access to information about the costs, revenues, and volumes that underlie SFPP's settlement rates.[51]

Additionally, recent revisions to Rule 206[52] outline specific information a Shipper must now file before a complaint or protest will be reviewed by the Commission.

Shippers need more information than that contained in the Form 6 to sustain a complaint or protest, not less. For these reasons, the Commission is proposing to revise Instruction No. 3 on page 700 to require oil pipeline companies to report total company revenues to be consistent with the total cost of service currently required. This should eliminate the confusion caused by companies comparing the operating revenues of the pipeline service to the total company cost of service.

The Commission is not proposing to require oil pipelines companies to provide information on a system-by-system, tariff by tariff, or segmented basis as this would be extremely burdensome for the industry and in some instances would make the Form 6 voluminous. However, the Commission is proposing to add the following reporting requirements: Operating and maintenance expenses, depreciation expense, AFUDC depreciation, amortization of deferred earnings, rate base, rate of return, return on rate base, and income tax allowance.

The Commission believes these additional requirements are merely a change in the number of line items reported on page 700 and could be provided with little or no additional burden since companies already calculate the data to determine the total cost of service reported. The Commission is also proposing to add Instruction No. 7 to page 700 which states subject to Commission discretion (e.g., under certain circumstances in a complaint proceeding), a pipeline company may need to make its cost of service work papers available for inspection upon request.

The Commission believes, in light of the burden placed upon oil pipeline Shippers to identify unreasonable rates and practices, the Form 6 should contain the additional information proposed on page 700. Such information would be invaluable in assisting Shippers to understand and evaluate how the cost of service was prepared and provide the additional information Shippers need to satisfy the minimum filing requirements now required to file a protest or complaint considered by the Commission.

19. Miscellaneous Items

a. Electronic Filing of Form 6

Current Requirements. The Commission, in the exercise of its authority under the Interstate Commerce Act,[53] collects data pertaining to the oil industry in the United States. One of the principal forms used for collection of this information is Form 6, which is submitted annually by about 159 oil pipeline companies. The Form 6 is currently submitted in a paper or hardcopy format. Form 6 respondents must file an original and three hard copies annually with the Office of the Secretary.[54]

During the course of the past year, the Commission has worked to develop procedures for filing the Form 6 electronically. During the Staff Technical Conference on September 21, 1999, several oil pipeline companies volunteered to participate in an electronic filing pilot program. The volunteers have been extremely supportive and responsive in providing the Commission comments as it continues to develop the appropriate software package to provide electronic filing for Form 6.

Industry Comments. The AOPL supports the FERC's efforts to develop a version of the Form 6 that may be filed electronically and is amenable to filing in both paper and electronic format for the first year, with the goal of only filing electronically in future years.

Sinclair Oil Corporation supports electronic filing as it will simplify Form 6 reporting by the industry, increase public accessibility of Form 6 data, and decrease the amount of data entry errors that have appeared in the Form 6 in the past.

Chevron Pipe Line Company also supports the electronic filing of the Form 6, if it can be accomplished without requiring oil pipeline companies to invest in costly new software solely for the purpose of the Form 6 filing.

Commission's Proposal. The Commission is proposing to require electronic filing of the Form 6 in addition to the currently required number of paper copies commencing with the report for calendar year 2000, due on or before March 31, 2001. To facilitate a smooth transition for industry, the Commission is inviting any additional parties interested in participating in the pilot program to contact Bolton Pierce in the Office of the Chief Information Officer at (202) 255–5465 or bpierce@ferc.fed.us.

The Commission is proposing to use a Windows 95/98/NT version software and to provide software distribution, set-up, updates, and submission of the electronic filing via the Internet. The Commission is also proposing to provide access to the Form 6 filings for viewing and printing via the Internet.

In order to disseminate information on the software and to keep interested parties aware of development status, the Commission is proposing to create a point-of-contact list for companies that file Form 6, other federal agencies, and state commissions. The Commission is proposing the point-of-contact information include: name, company/agency, address, phone number, and e-mail address, and be submitted via the Internet by accessing a form on the Commission's web site or by filing a paper copy.

Additionally, the Commission is proposing that persons who submit Form 6 either for their company, or as an agent for another company, register to get an Access Number(s) in order to file using the software. Federal and state agencies and others who access or use the data would not need an Access Number. The Commission is also proposing to add instructions to pages i and ii for filing the Form 6 electronically.[55] The Commission invites comments on the implementation of electronic filing for the revised Form 6. The Commission believes that the automation of Form 6 filing will yield significant benefits, including more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and overall reduction of reporting burden.

[50] *Id.* at 61,066–067.

[51] *Id.* at 61,072.

[52] Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), III FERC Stats. & Regs. ¶ 31,072 at pages 21–23 and 50–52 (Mar. 31, 1999); Order 602–A, 64 FR 43600 (Aug. 11, 1999) III FERC Stats. & Regs. ¶ 31,076 (July 28, 1999); Order No. 602–B, 64 FR 53959 (Oct. 5, 1999), III FERC Stats. & Regs. ¶ 31,083 (Sept. 29, 1999).

[53] 49 U.S.C. 20.

[54] FERC Form 6, p. i, Instruction Nos. II and III.

[55] FERC Form 6, Pages i and ii, Roman Numerals III and VIII.

b. Form 6 Reporting Alternatives

Current Requirements. The Commission's regulations currently require each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues have been more than $350,000 for each of the three previous calendar years to prepare and file a Form 6 with the Commission on or before March 31st of each year for the previous calendar year. Carriers exempt from filing the Form 6, however, must prepare and file page 700 ''Annual cost of Service Based Analysis Schedule'' and page 1 ''Identification and Attestation'' schedule of the Form 6 on or before March 31 of each year.[56] Additionally, the Commission currently authorizes carriers to prepare and publish financial statements in reports to stockholders and others, except in reports to the Commission, based on generally accepted accounting principles.[57]

Industry Comments. The AOPL and Chevron recommend the Commission move toward reporting data in accordance with GAAP, rather than the current Uniform Systems of Accounts (USofA) prescribed for oil pipelines. AOPL believes the bulk of the information now collected through the Form 6 would continue to be available by companies filing their financial statements and those pages of the Form 6 not covered by the financial statements. This change would substantially reduce the reporting burden on oil pipelines, since they would not have to contend with two often diametrically opposed accounting conventions. It would also reduce or eliminate additional regulatory burdens the industry incurs seeking approval to record transactions in accordance with GAAP.

AOPL proposes to replace 28 out of the 43 pages in the Form 6 with GAAP financial statements and modify other pages to reflect these changes. AOPL states that at one time the Form 6 conformed to GAAP accounting, but was not modified as GAAP accounting conventions changed over time creating a costly and unnecessary differentiation between GAAP and USofA accounting.

Sinclair Oil Corporation strongly opposes replacing the Form 6 reporting pages with GAAP financial statements certified by external accountants. The USofA statements require a standard reporting format and consistent definitions for all items reported by the pipeline companies. Filing reports in GAAP format would eliminate any standard, uniform format increasing the analytical burden on Shipper, Commission Staff, and pipeline companies themselves to compare financial data across companies and within one company over time.

Kaneb Pipe Line Operating Partnership, L.P. states that while the SEC Form 10–K requires much of the same financial information as the Form 6, it lacks a standard form. One of the benefits of the Form 6 has been its standard format. Analysis without some sort of standard format could be cumbersome and time consuming.

Commission's Proposal. The Commission compared the Form 6 of a company to its GAAP financial statements to determine the feasibility of accepting GAAP financial statements in lieu of the Form 6. During our review, the Commission noted several differences between the information reported in each report. Information is reported in dissimilar categories and several detailed line items on the Form 6 are rolled up into larger, less specific line items on the GAAP financial statements. These differences make it difficult to correlate and compare data between reports for the same year.

Additionally, not all pipeline companies currently produce externally audited financial reports. The Commission reviewed each jurisdictional company's structure to determine if the pipeline's financial statements would be certified by external accountants. Often the pipeline's operations are small and its financial information is rolled into the reporting company's financial statements. When this occurs, only the reporting company's financial statements are certified by the external accountants. The external accountants do not separately certify the pipeline's financial statements.

Based on our review, we determined 93 of the 172 (54%) jurisdictional companies in 1998 were either integrated or joint venture (integrated) pipelines and may not have financial statements currently certified by the external accountants. If the Commission were to accept GAAP financial statements in lieu of the Form 6, these 93 oil pipeline companies would incur an additional regulatory burden to produce externally audited financial reports.

For these reasons, the Commission is proposing to continue to require jurisdictional oil pipeline companies to file the Form 6 in lieu of GAAP financial statements. The Commission, however, does recognize the need to clarify and simplify the Form 6 and has proposed many changes to the Form 6 pages in this NOPR.[58] Additionally, the Commission is proposing to update the USofA regulations to reflect the current Statements of Financial Accounting Standards.[59]

The Commission believes the proposed Form 6 page changes will simplify the Form 6, reduce the overall reporting burden on pipeline companies, and result in more consistent industry reporting while providing the Commission the information it needs to regulate the oil industry.

IV. Revisions to the Uniform Systems of Accounts Regulations

The Commission is also proposing to revise Part 352— Uniform Systems of Accounts (USofA) for Oil Pipeline Companies subject to the provisions of the Interstate Commerce Act. These proposed changes will either clarify or update the Commission's accounting regulations in light of changes in standards issued by the Financial Accounting Standards Board (FASB) over the years. The changes are intended to promote consistency in accounting practices, while ensuring that the Commission will continue to have the information needed to carryout its regulatory responsibilities. Other proposed changes will streamline the aggregation of certain expense data because of changes in the Commission's monitoring efforts of the oil pipeline industry.

A. Changes in the Application of Generally Accepted Accounting Principles (GAAP)

The Commission generally maintains its USofA in conformity with the standards issued by FASB. However, in cases where there are conflicts between FASB's standards and Commission ratemaking and oversight responsibilities, the Commission's USofA regulations differ from those standards.

The Commission is proposing several changes to either clarify or update its USofA regulations in light of changes in standards issued by FASB over the years. Specifically, the Commission is proposing to revise its accounting regulations related to: (1) prior period adjustments; (2) contingent assets and liabilities; (3) accounting for improvements; (4) allowance for uncollectible accounts and (5) deferred income taxes.

[56] 18 CFR 357.2 and FERC Form 6, Page i, Roman Numeral II.

[57] 18 CFR 351.1.

[58] See NOPR, Section B—Form 6 Revisions, Nos. 1–19.

[59] See NOPR, Roman Numeral IV, Section A—Changes in the Application of GAAP.

1. Prior Period Adjustments

Current Requirements. Under General Instruction 1–6(d), Prior Period Adjustments, the correction of an error in the financial statements of a prior period is required to be reported as a prior period adjustment. In addition, a change in certain accounting principles may be reflected as prior period adjustments with the approval of the Commission.

Industry Comments. AOPL states the USofA only allows for the use of prior period adjustments for material correction of an error in a prior period financial statement. AOPL recommends that the Commission revise the USofA to allow for the recording of prior period adjustments under the additional criteria specified in GAAP.

Commission's Proposal. Under GAAP, an adjustment of previously issued financial statements is required if there is a correction of an error in the financial statements of a prior period, a change in certain accounting principles or if an enterprise realizes the income tax benefits of a preacquisition loss carryforward of a purchased subsidiary. General Instruction 1–6(d) does not address recording a prior period adjustment for the income tax benefits of a preacquisition loss carryforward of a purchased subsidiary. Therefore, the Commission proposes to revise General Instruction 1–6(d) to clarify that carriers can record a prior period adjustment for the income tax benefits of a preacquisition loss carryforward of a purchased subsidiary.

2. Contingent Assets and Liabilities

Current Requirements. Balance Sheet Account Instruction No. 2–7, Contingent assets and liabilities, currently requires that contingent assets and liabilities not be shown in the balance sheet but be explained in a footnote or supplementary statement.

Industry Comments. AOPL states that GAAP allows for the accrual of contingent liabilities if certain conditions are met, while the USofA does not allow for such accruals. AOPL recommends that the Commission revise the USofA to allow for the accrual of contingent liabilities under the conditions specified in GAAP.

Commission's Proposal. Under SFAS 5, Accounting for Contingencies, a loss contingency should be accrued if it is probable that an asset had been impaired or a liability incurred and the amount of the loss can be reasonably estimated. SFAS 5 requires disclosure of loss contingencies not meeting both those conditions if there is a reasonable possibility that a loss may have been incurred. The accounting provisions of SFAS 5 are consistent with the Commission's requirement that carriers keep their accounts using the accrual method of accounting. Therefore, the Commission is proposing to revise the instructions in Balance Sheet Account Instruction No. 2–7 to allow the accrual of loss contingencies if the conditions described in SFAS 5 are met.

3. Accounting for Improvements.

Current Requirements. Carrier Property Instruction 3–5, Improvements, currently requires that property improvements be accounted for by charging the cost of the improvement to the appropriate property account, except that any labor expense is to be charged to maintenance expense.

Industry Comments. AOPL states that GAAP allows for the capitalization of labor associated with improvements, while the USofA does not. AOPL recommends that the Commission revise the USofA to allow for the capitalization of labor associated with improvements.

Commission's Proposal. According to Definition 18 of the USofA, improvements are alterations or changes in structural design of property which result in increased service life or efficiency. Under GAAP, expenditures to improve the efficiency or extend the life of an asset, including labor expense, are capitalized since the expenditures benefit the operations of more than one period. The capitalization of labor costs associated with property improvements allows for the proper recognition of these expenses to future periods. Therefore, the Commission is proposing to revise Carrier Property Instruction 3–5 to allow for the capitalization of labor associated with improvements.

4. Allowance for Uncollectible Accounts

Current Requirements. Current USofA regulations provide for the write-off of uncollectible accounts at the time a specific account or note has definitely been established as uncollectible.

Industry Comments. AOPL states that the USofA should allow the use of the allowance method of recognizing uncollectible accounts as provided for by GAAP. AOPL recommends that the Commission revise the USofA to allow the allowance method of recognizing uncollectible accounts.

Commission's Proposal. GAAP requires companies, for financial statement purposes, to deduct asset valuation allowances [60] for losses such as those on receivables from the assets or groups of assets to which the allowances relate, with appropriate disclosure. The use of a valuation allowance allows for a proper matching of revenues and expenses in the period in which revenue is earned. Therefore, the Commission is proposing to allow carriers the flexibility to use either the allowance method of recognizing uncollectible accounts or continuing to use the approach to write-off uncollectible accounts at the time they are determined to be uncollectible. Further, the Commission is proposing to create a new account entitled Account 14–5, Accumulated Provision for Uncollectible Accounts, to record allowances for uncollectible accounts.

5. Deferred Income Taxes

Current Requirements. The current accounting instructions in the USofA require carriers to use comprehensive interperiod income tax allocation. The Commission's accounting and ratemaking treatment of income taxes is consistent with the liability approach of accounting for income taxes. However, some of the terminology in the USofA regulations still refer to the deferral method of accounting for income taxes.

Industry Comments. AOPL states that the USofA uses the deferred tax method of accounting for income taxes, while GAAP requires the use of the liability method for accounting for income taxes. AOPL recommends that the Commission revise the USofA to allow the liability method for accounting for income taxes.

Commission's Proposal. SFAS 109, Accounting for Income Taxes, significantly changed the manner in which enterprises account for income taxes. SFAS 109 superseded Accounting Principles Board Opinion No. 11, Accounting for Income taxes (APB 11). SFAS 109 adopted a liability approach for determining deferred income taxes rather than the previously used deferral method under APB 11. Under SFAS 109's liability approach, deferred income taxes are recognized for the deferred tax consequences of all events that have been recognized in the financial statements or tax returns, measured on the basis of enacted tax law. Under the deferral method, deferred tax consequences were recognized based on the differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

[60] FASB Concepts Statement No. 6, Elements of Financial Statements, in paragraphs 34 and 43, defines a valuation allowance as a separate item that reduces or increases the carrying amount of an asset or liability. Valuation allowances are part of the related assets or liabilities and are neither assets nor liabilities in their own right.

The current USofA requires carriers to use comprehensive interperiod income tax allocation. In addition, the Commission adopted normalization as the standard for oil pipeline ratemaking in Opinion No. 154–B.[61] The Commission also allows carriers to compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes. Consequently, the Commission's current accounting and ratemaking treatment of income taxes is generally consistent with the liability approach used for accounting for income taxes under GAAP. However, some terminology in the USofA regulations still refer to the deferral method of accounting for income taxes. Therefore, the Commission proposes to revise its accounting regulations to make them consistent with the liability method of accounting for income taxes by amending the following: (1) Definition No. 30, Income Taxes; (2) General Instruction 1–12, Accounting for Income Taxes; Account 19–5, Deferred Income Tax Charges; Account 45, Accumulated Deferred Income Tax Charges; Account 59, Deferred Income Tax Credits; Account 64, Accumulated Deferred Income Tax Credits; Account 671, Provision for Deferred Taxes; Account 695, Income Taxes on Extraordinary Items; and Account 696, Provision for Deferred Taxes—Extraordinary Items.

B. Other Accounting Changes

Aggregation of Operations and Maintenance Expenses

Current Requirements. The Commission's current accounting regulations require carriers to account for expenses related to operations and maintenance separately.

Industry Comments. The AOPL and Kaneb Pipe Line Operating Partnership, L.P., recommend the Commission consolidate the operations, maintenance, and general classes of operating expenses because the classifications are burdensome, of no apparent regulatory use, and inconsistently applied by companies because they do not understand the reason for this cost division.

The AOPL recommends the Commission eliminate the distinction between crude oil and products.

Various Shipper Interests oppose eliminating the distinction between crude and products because of the difference in operating costs and characteristics of the crude and products line.

[61] *See* 31 FERC ¶ 61,377, at p. 61,833.

Commission's Proposal. The Commission believes that aggregation of operations and maintenance expenses is no longer needed for its regulatory oversight in light of changes in the Commission's regulation of the oil pipeline industry. Therefore, the Commission proposes to revise its operations expense accounts to eliminate the separate aggregation of operations and maintenance expenses and group them in accounts of a similar nature. The Commission proposes to revoke Account 400, Salaries and Wages; Account 410, Supplies and Expenses; and Account 420, Outside Services. Expenses previously classified in these accounts will now be classified in Account 300, Salaries and Wages; Account 310, Materials and Supplies; and Account 320, Outside Services; respectively. The Commission proposes to redesignate Account 430, Maintenance Materials as Account 310 and revoke Account 430. The Commission is also proposing to add Account 350, Rentals and Accounts 390 and 590, Other Expenses. Additionally, the Commission is proposing to rename and redefine Account 510, Materials and Supplies; redefine Account 530, Rentals; and rename Account 550, Employee Benefits. The proposed changes will not diminish the Commission's ability to obtain the necessary information, as needed, to determine the reasonableness of a carrier's expense levels either through a rate proceeding or an audit.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[62] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended,[63] and also for information gathering, analysis, and dissemination.[64] The proposed rules changes do not substantially change the effect of the underlying legislation or change the Forms, and also involve information gathering. Accordingly, no environmental considerations are necessary.

[62] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

[63] 18 CFR 380.4(a)(2)(ii).

[64] 18 CFR 380.4(a)(5).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[65] requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elect. Coop.* v. *FERC,* 773 F. 2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration ''to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ''the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.* at 342. The Commission does not believe that this proposed rule will have an adverse impact on small entities, nor will it impose upon them any significant costs of compliance. Most filing entities regulated by the Commission do not fall within the RFA's definition of a small entity.[66] Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Information Collection Statement

The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[67] FERC identifies the information provided under Part 352 and § 357.2 as FERC Form No. 6.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected , and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Public Reporting Burden: Estimated Annual Burden

The proposed rule, if adopted, would establish new reporting requirements, modify existing reporting requirements and eliminate those requirements that are no longer applicable. The Commission seeks to simplify and

[65] 5 U. S. C. 601–612.

[66] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[67] 44 U.S.C. 3507(d).

streamline its requirements to reduce the burden on oil pipelines. The current public reporting burden for these information collections is estimated to average the following number of hours per response: 159 respondents, 130.9 hours (rounded off) per response for total annual hours of 20,811 hours.[68] These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 6	129	1	119	15,351
(Pages 1 & 700)	11	1	10	110
(Pages 1, 301 & 700)	19	1	11	209
Totals	159	1	99	15,670

Total Annual Hours for collections:
(Reporting + Record keeping, (if appropriate)) = 15,670 hours

The simplified filing requirements under the proposed regulations and projected reduced number of filings per year would result in a reduction of 5,141 hours per year from the revised OMB burden inventory for the above data collection.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Data collection	Annualized capital/start-up costs	Annualized costs (operations & maintenance)	Total annualized costs
FERC Form No. 6	$0.00	$840,341	$840,341

(For 129 respondents completing the FERC Form No. 6, the cost per company would be $6,382, pages 1 & 700 = $536 and pages 1, 301 & 700 = $590)

To consider the impact on the persons affected by this rulemaking, the Commission would like specific comments on the impact of this rule on individual oil pipeline companies. Both estimates of current burden and impact should be in work hours and dollar costs in sufficient detail to demonstrate methodology and assumptions.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[69] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC Form No. 6, Annual Report of Oil Pipeline Companies.

Action: Proposed Data Collection.

OMB Control No.: 1902–0022.

The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Businesses or other for profit.

Frequency of Responses: Annually.

Necessity of Information: The proposed rule revises the Commission's requirements contained in 18 CFR parts 352, 357, and 385. As explained in this NOPR, the proposed rule revises Form 6 schedules and instructions to better meet current and future regulatory requirements and industry needs; updates the USofA requirements to be more consistent with current GAAP accounting; and amends regulations to provide for the electronic filing of Form 6 commencing with reporting years 2000, due on or before March 31, 2001. The Commission uses the information for administration of the Interstate Commerce Act and in various rate proceedings.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's staff will use the data for compliance reviews on the financial conditions of regulated companies. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the oil pipeline industry. Data will contribute to well-informed decision-making and streamlined workload processing. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202)273–0873, email: *mike.miller@ferc.fed.us*

For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC, 20503. Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202)395–3087, fax: (202)395–7285.

VIII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. October 16, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–10–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette

[68] OMB's current inventory identifies FERC Form No. 6 as having 20,622 hours based on the filing by 148 respondents on the Form 6 in its entirety and 5 respondents filing the Page 700. However, an adjustment is being made to reflect the most recent filing (1998) which saw an increase in the number of respondents to 149 and 10 accordingly.

[69] 5 CFR 1320.11.

or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–10–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to *''comment.rm@ferc.fed.us''* in the following format. On the subject line, specify Docket No. RM99–10–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address *brooks.carter@ferc.fed.us.*

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us.*

IX. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document and FERC Form No. 6 via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 352, 357 and 385 of Chapter I, title 18 of the *Code of Federal Regulations,* as follows:

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 352 is revised to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2–4. In part 352, in List of Instructions and Accounts, Definitions, Definition 30, paragraphs (e) through (h) and paragraph (j) are revised to read as follows:

Definitions

* * * * *

30. * * *

(e) *Temporary difference* means a difference between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years when the reported amount of the asset or liability is recovered or settled, respectively. Some events recognized in financial statements do not have tax consequences. Certain revenues are exempt from taxation and certain expenses are not deductible. Events that do not have tax consequences do not give rise to temporary differences.

(f) *Deductible temporary difference* means temporary differences that result in deductible amounts in future years when the related asset or liability is recovered or settled, respectively.

(g) *Deferred tax asset* means the deferred tax consequences attributable to deductible temporary differences and carryforwards. A deferred tax asset is measured using the applicable enacted tax rate and provisions of the enacted tax law. A valuation allowance should be recognized if it is more likely than not (a likelihood of more than 50 percent) that some portion or all of the deferred tax asset will not be realized.

(h) *Deferred tax liability* means the deferred tax consequences attributable to taxable temporary differences. A deferred tax liability is measured using the applicable enacted tax rate and provisions of the enacted tax law.

* * * * *

(j) *Tax allocation within a period* means the process of allocating income tax expense applicable to a given period among continuing operations, discontinued operations, extraordinary items, and items charged or credited directly to shareholders' equity.

* * * * *

5. In General Instructions, Instruction 1–6, paragraph (d) is revised as follows:

1–6 *Extraordinary, unusual or infrequent items, prior period*

adjustments, discontinued operations and accounting changes.

* * * * *

(d) *Prior Period Adjustments.* The correction of an error in the financial statements of a prior period and adjustments that result from realization of income tax benefits of preacquisition loss carryforwards of purchased subsidiaries shall be accounted for as prior period adjustments and excluded from the determination of net income from the current year. All other revenues, expenses, gains, and losses recognized during a period shall be included in the net income of that period.

* * * * *

6. In General Instructions, Instruction 1–12, paragraph (a) is amended by removing the words ''where material timing differences (see definition 30(e)) occur between pretax accounting income and taxable income'' and adding, in their place, the words ''to all material temporary differences (see definition 30(e)) between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years''.

7. In General Instructions, Instruction 1–12, paragraphs (b) and (c) are revised to read as follows:

1–12 *Accounting for income taxes.*

* * * * *

(b) Under the interperiod tax allocation method of accounting a deferred tax liability or asset is to be recognized for all temporary differences (see definition 30(e)) that result in taxable amounts in future years when the related asset or liability is recovered or settled. Deferred taxes are classified as current or noncurrent based on the classification of the related asset or liability. A carrier shall apply the applicable enacted tax rate in determining the amount of deferred taxes. The carrier shall adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted. The adjustment shall be recorded in the proper deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.

(c) An entity shall record the income tax effects of a net operating loss carryforward or a tax credit carryforward as a deferred tax asset in the year the loss occurs. In the event that it is more likely than not (a likelihood of more than 50 percent) that some portion of its deferred tax assets will not be realized, a carrier shall reduce the asset by a valuation allowance. The valuation allowance should be recorded in a separate subaccount of the deferred tax asset account. The carrier shall disclose full particulars as to the nature and amount of each type of operating loss and tax credit carryforward in the notes to its financial statements.

* * * * *

8. In General Instructions, Instruction 1–12, paragraph (e) is amended by removing the words ''Accumulated deferred income tax credits'' and adding, in their place, the words ''Accumulated deferred income tax liabilities''.

9. In Instructions for Balance Sheet Accounts, Instruction 2–7 is revised to read as follows:

Instructions for Balance Sheet Accounts

* * * * *

2–7 *Contingent assets and liabilities.* (a) A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to a carrier that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

(b) An estimated loss from a contingent liability shall be charged to income if it is probable that an asset had been impaired or a liability had been incurred and the amount of the loss can be reasonably estimated. The carrier shall disclose in a footnote in its annual report any accrued contingent liabilities, along with any contingent liabilities not meeting both conditions for accrual if there is a reasonable possibly that a liability may have been incurred.

(c) Contingent assets should not be reflected in the accounts. The carrier shall disclose in a footnote in its annual report any contingencies that might result in an asset.

10. In Instructions for Carrier Property Accounts, Instruction 3–3, paragraph (11) is revised to read as follows:

Instructions for Carrier Property Accounts

3–3 *Cost of property constructed.*

* * *

(11)(i) Interest during construction includes the cost incurred in financing the construction of carrier property. The rate for calculating interest shall be determined as follows: If the carrier associates a specific new borrowing with an asset, it may apply the rate on that borrowing to the appropriate portion of the expenditures for the asset. A weighted average of the rates on other borrowings is to be applied to qualified expenditures not covered by specific new borrowings. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the carrier in that period.

(ii) In situations involving qualifying assets financed with the proceeds of restricted tax-exempt borrowings, the amount of interest cost to be capitalized shall be all interest cost of those borrowings less any interest earned on temporary investment of the proceeds of those borrowings from the date of borrowing until the specified qualifying assets acquired with those borrowings are ready for their intended use.

* * * * *

11. In Instructions for Carrier Property Accounts, Instruction 3–5, paragraph (a) is amended by removing the words ''except that the related labor expense shall be charged to the maintenance expense account''.

12. In Instructions for Operating Revenues and Operating Expenses, Instruction 4–4, paragraph (a) is revised, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b) to read as follows:

Instructions for Operating Revenues and Operating Expenses

4–4 *Expense classification.* * * *

(a) *Operations and maintenance expense.* This group of accounts includes all costs directly associated with the operation, repairs and maintenance of property devoted to pipeline operations including scheduling, dispatching, movement, and delivery of crude oil, oil products and other commodities.

* * * * *

13. In Balance Sheet Accounts, a new Account 14–5 is added to read as follows:

Balance Sheet Accounts

14–5 *Accumulated provision for uncollectible accounts.*

This account shall be credited with amounts provided for losses on notes and accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. This account shall be charged with any amounts which have been found to be impractical of collection.

14. In Balance Sheet Accounts, Account 19–5 is revised to read as follows:

Balance Sheet Accounts

19–5 *Deferred income tax assets.*

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net debit.

(b) A net credit balance shall be included in account 59, Deferred income tax liabilities.

15. In Balance Sheet Accounts, Account 45 is revised to read as follows:

Balance Sheet Accounts

45 *Accumulated deferred income tax assets.*

This account shall include the amount of deferred taxes determined in accordance with instruction 1–12 and the text of account 64, Accumulated deferred income tax liabilities, when the balance is a net debit.

16. In Balance Sheet Accounts, Account 59 is revised to read as follows:

Balance Sheet Accounts

59 *Deferred income tax liabilities.*

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net credit.

(b) A net debit balance shall be included in account 19–5, Deferred income tax assets.

17. In Balance Sheet Accounts, Account 64, the title is amended by removing the word ''credits'' and inserting, in its place, the word ''liabilities''; in paragraph (a), by removing the words ''material timing differences (see definitions 30 (g) and (e)) originating and reversing in'' and adding, in their place, the words ''changes in material temporary differences (see definition 30 (e)) during''; in paragraph (d), by removing the word ''unamortized'' in its entirety and removing the word ''timing'' and adding, in its place, the word ''temporary''; and in Notes A and B to Account 64, by revising the text to read as follows:

Balance Sheet Accounts

64 *Accumulated deferred income tax liabilities.*

* * * * *

Note A: The portion of deferred assets and liabilities relating to current assets and liabilities should likewise be classified as current and included in account 19–5, Deferred Income Tax Assets, or Account 59, Deferred Income Tax Liabilities, as appropriate.

Note B: This account shall include a net credit balance only. A net debit balance shall be recorded in account 45, Accumulated deferred income tax assets.

18. In Operating Expenses, the title ''Operations'' is revised to read ''Operations and Maintenance'' and Accounts 300, 310, and 320 are revised and Accounts 350 and 390 are added to read as follows:

Operating Expenses

Operations and Maintenance

300 *Salaries and wages.*

This account shall include the salaries and wages (including pay for holidays, vacations, sick leave and similar payroll disbursements) of supervisory and other personnel directly engaged in transportation operations and the maintenance and repair of transportation property.

310 *Materials and supplies.*

This account shall include the cost of materials applied in the repair and maintenance of transportation property. The salvage value of materials recovered in maintenance work shall be credited to this account. This account shall also include the cost of supplies consumed and expended in operations and in support of the maintenance activity.

320 *Outside services.*

This account shall include the cost of operating and maintenance services provided by other than company forces under contract, agreement, and other arrangement. The cost of service performed by affiliated companies shall be segregated within the account.

* * * * *

350 *Rentals.*

This account shall include the cost of renting property used in the operations and maintenance of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

390 *Other expenses.*

This account shall include the expenses of aircraft, vehicles, and work equipment used in support of operations and maintenance activities; travel, lodging, meals, memberships, and other expenses of operating and maintenance employees; and other related operating and maintenance expenses that are not defined or classified in other accounts.

19. In Operating Expenses, Maintenance, Accounts 400, 410, 420 and 430 are removed.

20. In Operating Expenses, General, Accounts 510, 530, and 550 are proposed to be revised and Account 590 is added to read as follows:

Operating Expenses

510 *Materials and supplies.*

This account shall include the cost of materials and supplies consumed and expended for administration and general services.

* * * * *

530 *Rentals.*

This account shall include the cost of renting property used in the administration and general operations of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

* * * * *

550 *Employee benefits.*

This account shall include the cost to the carrier of annuities, pensions, and benefits for active or retired employees, their beneficiaries or designees. Contributions to health or welfare funds or payment for similar benefits to or on behalf of employees shall be included herein. Premiums, to the extent borne by the carrier, for group life, health, accident and other beneficial insurance for employees shall also be included in this account.

* * * * *

590 *Other expenses.*

This account shall include the cost of expenses expended for administrative and general services including, the expenses of aircraft, vehicles, and work equipment used for general purposes; travel, lodging, meals, memberships, and other expenses of general employees and officers; utilities services; and all other incidental general expenses not defined or classified in other accounts.

21. In Income Accounts, Account 671, paragraph (a) is amended by removing the words ''all material timing differences (see definitions 30 (g) and (e)) originating and reversing in,'' and adding, in their place, the words ''changes in material temporary timing differences (see definition 30 (e)) during''.

22. In Income Accounts, Account 695, is amended by removing the words ''timing differences caused by recognizing an item in the account provided for extraordinary items in different periods in determining accounting income and taxable income'' and adding, in their place, the words ''temporary differences caused by recognizing an item in the account provided for extraordinary items''.

23. In Income Accounts, Account 696, is amended by removing the words ''debits or credits for the current accounting period for income taxes deferred currently, or for amortization of income taxes deferred in prior accounting periods'' and adding, in their place, the words ''the deferred tax expense or benefit related to temporary differences''.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 357 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2. Section 357.2 is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

(a) *Who must file.* (1) Each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues has been $1,000,000 or more for each of the three previous calendar years must prepare and file with the Commission copies of FERC Form No. 6, ''Annual Report of Oil Pipeline Companies,'' pursuant to the General Instructions set out in that form. Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed.

(2) Notwithstanding the exemption provided in (a) of this section, oil pipeline carriers exempt from filing Form No. 6 whose annual jurisdictional operating revenues has been more than $350,000 but less than $1,000,000 for each of the three previous calendar years must prepare and file pages 301, ''Operating Revenue Accounts (Account 600),'' and 700, ''Annual Cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting pages 301 and 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(3) Notwithstanding the exemption provided in paragraph (a) of this section, oil pipeline carriers exempt from filing Form No. 6 and pages 301 and whose annual jurisdictional operating revenues were $350,000 or less for each of the three previous calendar years must prepare and file page 700, ''Annual Cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must in page 1 of Form No. 6, the Identification and Attestation schedules.

(4) Notwithstanding the exemption provided in paragraph (a) of this section, oil pipeline carriers exempt from filing Form No. 6 must prepare and file page 700, ''Annual Cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(b) *When to file.* This report must be filed on or before March 31st of each year for the previous calendar year.

(c) *What to submit.* (1) This report form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the report form, and must be properly completed and verified.

(2) A copy of the report must be retained by the pipeline carrier in its files. The conformed copies may be produced by any legible means of reproduction.

(3) Filing on electronic media pursuant to § 385.2011 of this chapter will be required with report year 2000, due on or before March 31, 2001.

PART 385—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. In § 385.2011, paragraph (a)(7) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2001).

(a) * * *

(7) FERC Form No. 6, Annual Report of Oil Pipeline Companies.

* * * * *

Note: These appendices will not appear in the *Code of Federal Regulations.*

Appendix A—Comments Received

Pre-Staff Technical Conference Comments Received

ARCO Products Company, a Division of Atlantic Richfield Company; Tosco Corporation, and Ultramar Inc. (ARCO)
Association of Oil Pipe Lines (AOPL)
Chevron Pipe Line Company (Chevron)
Kaneb Pipe Line Operating Partnership, L.P. (Kaneb)
Refinery Holding Company, L.P. (Refinery)
Sinclair Oil Corporation (Sinclair)

Post-Staff Technical Conference Comments Received

Association of Oil Pipe Lines (AOPL)
Refinery Holding Company, L.P. (Refinery)
Sinclair Oil Corporation (Sinclair)
Various Shipper Interests (Shippers)

Appendix B—Summary of FERC Form No. 6: Annual Report of Oil Pipeline Companies Revisions

Schedule title	Old schedule page No.	New schedule page No.	Revised and changed schedules					Deleted complete schedule	Explanation
			As is	Changed threshold	Revised instructions	Revised schedule	Deleted columns		
General	i	i		X	X				Raised overall Form 6 reporting threshold from $350,000 to $1,000,000 under 18 CFR Part 3572. Added submission requirements for electronic filing.
General Instructions	ii	ii			X				Added resubmission requirements for electronic filing.
Definitions	iii	iii			X				Revised Definition No. 8 Crude Oil. Added Definition Nos. 13 and 14 for ''Undivided Joint Interest Pipeline'' and ''Undivided Joint Interest Property,'' respectively.
Identification/Verification	1	1	X						
Excerpts From the Law	iv	iv	X						

Schedule title	Old schedule page No.	New schedule page No.	Retained					Deleted complete schedule	Explanation
			As Is	Changed threshold	Revised instructions	Revised schedule	Deleted columns		
List of Schedules ..	2–3	2–3				X			Revised to show schedule changes.
General Information.	101	101	X						
Control Over Respondent.	102	102	X						
Companies Controlled by Respondent.	103	103	X						
Principal General Officers.	104	104	X						
Directors	105	105	X						
Important Changes During the Year.	108–109	108–109	X						
Comparative Balance sheet Statement.	110–113	110–113				X			Revised Account 19.5 to read ''Deferred Income Tax Assets'', Account 59 to read ''Deferred Income Tax Liabilities''. Account 45 to read ''Accumulated Deferred Income Tax Assets'', and Account 64 to read ''Accumulated Deferred Income Tax Liabilities'' as changed on page 230.
Income Statement	114	114	X						
Appropriated Retained Income.	118	118	X						
Unappropriated Retained Income Statement.	119	119	X						
Statement of Cash Flows.	120–121	120–121	X						
Notes to Financial Statements.	122–123	122–123	X						
Receivables From Affiliated Companies.	200	200							Revised Instruction No. 2 to include requirements for reporting amounts equal to $500,000.
General Instructions Concerning Schedules 202 Thru 205.	201	201	X						
Investments in Affiliated Companies.	202–203	202–203	X						
Investments in Common Stocks of Affiliated Companies.	204–205	204–205	X						
Instructions For Schedules 212–215 (New Title—Instructions for Schedules 212–217).	211	211			X				Revised instructions for pages 212–215 and added instructions for pages 216–217.
Carrier Property	212–213	212–213			X				Revised page 212 column (c) heading to read ''Expenditures for New Construction, Additions, and Improvement.'' Revised page 213 column (e) heading to read ''Property Sold, Abandoned, or Otherwise Retired During the Year.'' Revised page 213 column (h) heading to read ''Increase or Decrease During the Year (f±g) (In dollars).''
Depreciation Base and Rates—Carrier Property.	214	.....						X	Move column (e) to page 216.

Schedule title	Old schedule page No.	New schedule page No.	Retained					Deleted complete schedule	Explanation
			As Is	Changed threshold	Revised instructions	Revised schedule	Deleted columns		
Depreciation Base and Rates—System Property.	215	.....						X	Move column (e) to page 217. Revise column heading to read ''Annual Composite/Component Rates (In percent).''
Undivided Joint Interest Property.		214–215							Schedule added to allow for a more complete presentation of undivided joint interest carrier property.
Accrued Depreciation—Carrier Property.	216	216			X				Revised instructions, column (c) heading to read ''Debits to Account No. 540 of USofA (in dollars)'', and column (d) heading to read ''Net Debit From Retirement of Carrier Property (In dollars).'' Added column (e) from page 214. Renamed column (g).
Accrued Depreciation—System Property (New Title—Accrued Depreciation—Undivided Joint Interest Property).	217	217			X				Revised instructions, column (c) heading to ''Debits to Account No. 540 of USofA (In dollars)'', and column (d) heading to read ''Net Debit From Retirement of Carrier Property (In dollars).'' Added column (e) from page 215. Renamed the column (g) and revised column heading to read ''Annual Composite/Component Rates (In percent).'' Deleted requirement to report only when specifically directed by the Commission.
Amortization Base and Reserve.	218–219	218–219	X						
Noncarrier Property.	220	220		X					Raised threshold from $250,000 to $1,000,000 for grouping minor items.
Other Deferred Charges.	221	221		X					Raised threshold from $250,000 to $500,000 for grouping minor items.
Payables to Affiliated Companies.	225	225		X	X				Raised threshold from $250,000 to $500,000 for grouping minor items. Combined Instruction Nos. 2 and 3 and renumbered Instruction No. 2
Long-Term Debt ...	226–227	226–227	X						
Analysis of Federal Income and Other Taxes Deferred.	230–231	230–231			X	X			Updated to include current Statement of Financial Accounting Standards No. 109 requirements.
Capital Stock	250–251	250–251	X						
Capital Stock Changes During the Year.	252–253	252–253	X						
Additional Paid-In Capital.	254	254	X						

Schedule title	Old schedule page No.	New schedule page No.	Retained					Deleted complete schedule	Explanation
			As Is	Changed threshold	Revised instructions	Revised schedule	Deleted columns		
Operating Revenue Accounts.	301	301			X	X			Added table to provide a standard format for pipelines to report interstate and intrastate revenue which was previously reported in a footnote.
Operating Expense Accounts.	302–304	302–303				X	X		Deleted: —maintenance expense Accounts 400, 410, 420, and 430, —columns (a) and (f) on page 303, and —page 304 Added: —Account 350, Rentals, —Accounts 390 and 590, Other Expenses; —grand total column (i) on page 303. Combined: —Accounts 310 Supplies and Expenses and 430 Maintenance Materials. Redefined: —Account 530, Rentals
	302–303	302–303				X	X		Renamed: —Accounts 310 and 510, Materials and Supplies. —Account 550, Employee Benefits
Operating Expense Accounts (New Title-None).	304	None						X	
Pipeline Taxes (Other Than Income Taxes).	305	305	X						
Income From Noncarrier Property.	335	335	X						
Interest and Dividend Income.	336	336	X						
Miscellaneous Items in Income and Retained Income Accounts for the Year.	337	337	X						
Payments for Services Rendered by Other Than Employees.	351	351	X						
Statistics of Operations.	600–601	600–601			X				Revised instructions; header over columns (b), (c), and (d) to read ''Number of Barrels Received''; header over columns (f), (g), (h), and (i) to read ''Number of Barrels Delivered Out''; column (e) header to read ''Total Received (b+c+d); and column (i) header to read ''Total Delivered Out (f+g+h).''
Miles of Pipeline Operated at end of Year.	602–603	602–603			X				Revised instructions to clarify information to be reported.
Footnote Data	604	604	X						

Schedule title	Old schedule page No.	New schedule page No.	Retained					Deleted complete schedule	Explanation
			As Is	Changed threshold	Revised instructions	Revised schedule	Deleted columns		
Annual Cost of Service Based Analysis Schedule.	700	700			X	X			Revised Instruction No. 2. Added lines to report: Operating and Maintenance Expenses, Depreciation Expense, AFUDC Depreciation, Amortization of Deferred Earnings, Rate Base, Rate of Return, Return on Rate Base, and Income Tax Allowance.
Annual Cost of Service Based Analysis Schedule (Continued).	700	700			X	X			Revised Instruction No. 3 and Line 10 to report Total Company Revenues.
Index	Index 1–3	Index 1–3				X			Revised to show schedule changes.

[FR Doc. 00–19742 Filed 8–16–00; 8:45 am]

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S. 1629/P.L. 106–257

Oregon Land Exchange Act of 2000 (Aug. 8, 2000; 114 Stat. 650)

S. 1910/P.L. 106–258

To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York. (Aug. 8, 2000; 114 Stat. 655)

H.R. 4576/P.L. 106–259

Department of Defense Appropriations Act, 2001 (Aug. 9, 2000; 114 Stat. 656)

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